



IN THE SUPREME COURT OF THE STATE OF DELAWARE

IRA BROWN  
DEFENDANT BELOW  
APPELLANT

No. 178, 2014

v.

STATE OF DELAWARE,

APPELLEE.

APPELLANT'S REPLY BRIEF ON APPEAL FROM THE SUPERIOR  
COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

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## **ARGUMENT I**

Question Presented- Is the defendant entitled to a new trial based upon newly discovered evidence?

Scope of Review-In order to warrant the granting of a new trial on the ground of newly discovered evidence, it must appear (1) that the evidence is such as will probably change the result if a new trial is granted; (2) that it has been discovered since the trial, and could not have been discovered before by the exercise of due diligence; (3) that it is not merely cumulative or impeaching. State V. Hamilton, 406 A2d 879 ( DE Super 1974)

## **MERITS OF ARGUMENT**

The State argues in its answering brief that Brown is not entitled to relief because he entered a guilty plea thus waiving all his trial rights. Furthermore, that he is not asserting his innocence, nor is he claiming that the drugs were not heroin. During the discovery process, counsel provided Brown with the evidence that the State had against him. That included the medical examiner's report.

Brown therefore assumed that the medical report was accurate. What he did not know was that there were serious deficiencies in the way that the medical examiner was storing, transferring and testing the drugs. Those deficiencies would have been fertile grounds for cross examination and would have had an influence on the jury. In fact, the deficiencies were so substantial they may have led to the exclusion of the evidence.

Brown; however, would have more points to make as he could specifically pointed out that in **his case** a person was indicted for tampering with evidence and falsifying records. To wit: James Woodson was involved in the chain of custody in this case and he has been indicted by the Department of Justice.

A review of the police report, attached to the State's brief, shows that the police officer seized:

813 bags stamped "banshee"  
26 bags stamped "superpower"  
78 bags stamped "man down"  
(State Exhibit A page 5)

The medical examiner's report shows it received:

823 bags stamped "banshee"  
26 bags stamped "superpower"  
79 bags stamped "mandown" (A16)

How does one account for this discrepancy? How did the crime lab end up with 11 more bags than the police officer seized?

This evidence concerning the operation of the Medical Examiner's office was exculpatory and should have been turned over to Brown. It went to the very heart of the State's case, i.e. whether or not Brown possessed heroin. This newly discovered evidence seriously questions the accuracy of the State's assertion and the fairness of Brown's conviction and incarceration. Therefore, the matter should be remanded to the lower court.

## ARGUMENT II

Question Presented- Did the lower court err when it denied the defendant's motion to withdraw his guilty plea?

Scope of review- a decision to deny a motion to withdraw a guilty plea is reviewed for abuse of discretion. State V. Insley, 141 A2d 619 (DE 1958)

Objection noted. (A-7)

## MERITS OF ARGUMENT

Brown entered a guilty plea on April 24, 2012; however, sentencing was deferred until April 25, 2012 so that he could be sentenced simultaneously with another case against him. Prior to the Court imposing the sentence, Brown indicated to the court that he wanted to withdraw his guilty plea (A-7).

Brown - "Your Honor, I would like to ask you, may I take the plea bargain back "

The Court- "No you may not, you had a chance yesterday to finish the trial that you started. You stopped the trial when he told the court that you wanted to plead guilty, and but for that you would have gone to trial, you would have faced possible conviction on everything and the sentence would have been imposed as a result of that" (A7)

The Court - "counsel, let me ask, was a specific mention made, not that it's required as a matter of law, the fact that when a plea is entered, it's permanent, it's not something that you take back the next day once the jury has been dismissed ". (A8)

The prosecutor informed the court that the judge made a lengthy colloquy and the judge then denied the motion. (A8)

Brown then filed a formal motion which was subsequently reviewed by the Court. The court indicated that it was reviewing the motion pursuant to Rule 61. That Court reviewed the colloquy and Brown's relationship with his attorney. The Court found that the plea was entered knowingly and intelligently and voluntarily. Furthermore, the Court found that the conflict with the attorney had been resolved. The Court then denied the motion. The Court erred because the verbal motion was made before the sentence was entered and therefore should have been considered pursuant to Rule 32 (d). Rule 32 (d) has a lower threshold than Rule 61. Since Brown had made his verbal motion prior to sentencing, his motion should have been considered pursuant to Rule 32 (d).

In light of the newly discovered evidence concerning deficiencies in the operation of the office of the medical examiner, the indictment of a person involved in the chain of custody of Brown's evidence and the apparent discrepancy in the medical examiner's report in Brown's case, it appears that Brown's decision was not a fully informed decision.

Brown should have been able to withdraw his guilty plea and the Court's refusal to permit him to do so was an error. Therefore, the conviction should be reversed, and the matter remanded to the lower court.



## **CONCLUSION**

For the foregoing reasons, the conviction should be reversed, and the matter remanded to the lower court.