EFiled: Sep 02 2014 06:42PM EDT
Filing ID 55970315
Case Number 683,2013

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALAN FOWLER,	)	
	)	
Defendant Below-Appellant,	)	No. 683, 2013
	)	
v.	)	Court Below---Superior Court of the State of Delaware in and for New Castle County ID No. 110800561A; 1108000561B
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below-Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

APPELLANT'S REPLY BRIEF

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Dated: September 2, 2014

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I. THE STATE ASSUMES, WITHOUT A VALID BASIS TO DO SO, THAT THE JULY 31st INCIDENT WOULD HAVE BEEN ADMISSIBLE IN A HYPOTHETICAL SEVERED TRIAL REGARDING THE JULY 2nd INCIDENT.

The State blithely asserts in its Answering Brief that "Fowler was not prejudiced by joinder because the evidence from one event would have been admissible in the trial for the other."[1] The State's argument is presumably premised on this Court's analysis set forth in *Getz v. State*, which discusses the admissibility of other bad acts at trial.[2]

The Superior Court's decision to deny Mr. Fowler's Motion to Sever prevented the parties from litigating this issue prior to trial. It also prevented the Superior Court from holding a *Getz* hearing and exercising its "gatekeeper" function. As such, the idea of admissibility pursuant to a *Getz* analysis is not ripe for discussion on appeal. Assuming *arguendo* that the admissibility of the two events in separate trials is relevant to this appeal, the State's argument presumes admissibility.

The State argues that any evidence from one incident would be admissible in the trial for the second incident on the basis of establishing identity. Identity is a

[1] State's Answering Brief ("Ans. Br.") at 16.

[2] *Getz v. State*, 538 A.2d 726 (Del. 1988).

proper purpose to introduce prior bad acts under D.R.E. 404(b). But the *Getz* analysis does not stop there. The very next consideration is whether the other crimes can be proved by evidence which is "plain, clear and conclusive."[3]

Nothing about the State's case was plain, clear and conclusive with respect to the admissibility of evidence in one trial or the other. Welcher testified that the shooter had a full sleeve tattoo. Testimony established that only Brett Chatman had full sleeve tattoos. This was the same Brett Chatman who fled to Florida despite his assertion that he had done nothing wrong. And the two young ladies in the back seat, Danielle Maslin and Tammi Boyd, both admitted to drinking alcohol and abusing prescription drugs on the night of the incident. This alone created a factual discrepancy that rendered the evidence short of plain, clear and conclusive.

[3] *Id*. at 734.

II. THE STATE SHOULD BE PRECLUDED FROM ARGUING "JUDICIAL ECONOMY" IN LIGHT OF ITS VOLUNTARY SEVERANCE TO ACCOMMODATE PRIOR TRIAL COUNSEL.

In its Answering Brief, the State argues that Mr. Fowler's "hypothetical assertion of prejudice" is outweighed by judicial economy.[4] This statement, however, neglects the fact that neither the State, nor the Superior Court, had judicial economy concerns while litigating Mr. Fowler's case. Indeed, the State *voluntarily* severed the two incidents in an effort to go forward with one trial, and the Superior Court granted the State's joint request with Mr. Fowler's trial counsel to sever.

It is not surprising that the State did not hesitate to voluntarily sever Mr. Fowler's trial when it was convenient for them. The State called 17 witnesses, with only one civilian witness overlapping - Brett Chatman, an uncharged coconspirator. Detective Anthony Dinardo and Detective Michael Eckerd are police officers who are compensated for their testimony as part of their duties. Dinardo was New Castle County Police Department's forensic evidence specialist and testified on two separate days.[5] Despite his role as the Chief Investigative Officer, Eckerd's testimony was fairly limited.[6] In other words, the State's case did not overlap to such a degree that the benefits of trying the cases together

[4] Ans. Br. at 12.

[5] A186-A214; A764-A812.

[6] A442-A464.

outweighed the harm caused to Mr. Fowler. The State and the Superior Court simply were not concerned with judicial economy. The proof is in the State's request. To rely on "judicial economy" after the fact does not present an accurate representation of the record below, and therefore this Court should not rely on it.

CONCLUSION

Based on the foregoing, as well as the arguments set forth in the Opening Brief, Appellant Alan Fowler respectfully requests that this Court grant him a new trial and any other relief the Court deems appropriate.

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