



IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILMER MILTON,

DEFENDANT BELOW,
APPELLANT,

v.

STATE OF DELAWARE

PLAINTIFF BELOW,
APPELLEE

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No.343, 2012

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

LAW OFFICE OF
EDWARD C. GILL, P.A.

/s/ Stephen W. Welsh
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DATED: February 26, 2013

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ARGUMENT I

A. QUESTION PRESENTED: DID THE TRIAL COURT ERR IN DENYING DEFENDANTS MOTION FOR JUDGMENT ACQUITTAL? DEFENDANT PRESERVED THIS ISSUE BY MOVING FOR JUDGMENT OF ACQUITTAL. (A7-11)

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The Defense has nothing further to add to its argument as set forth in Defendants opening brief.

ARGUMENT II

A. QUESTION PRESENTED: DID THE TRIAL COURT ERR IN CONDUCTING THREE OFF THE RECORD SIDEBAR CONFERENCES? (A1-4)

B. THE STANDARD AND SCOPE OF REVIEW: THE STANDARD AND SCOPE OF REVIEW IS PLAIN ERROR UNDER SUPREME COURT RULE 8. WHETHER THE TRIAL JUDGE MADE A PLAIN ERROR THAT AFFECTED A SUBSTANTIAL RIGHT.

C. MERITS OF THE ARGUMENT: THE TRIAL COURT ERRED AS A MATTER OF LAW AND SUPERIOR COURT RULE 26.1 WHEN IT CONDUCTED THREE SEPARATE OF THE RECORD SIDEBAR CONFERENCES.

The Defense has nothing further to add to its argument as set forth in Defendants opening brief.

ARGUMENT III

A. QUESTION PRESENTED: DID THE TRIAL COURT ERR IN SUSTAINING THE STATE'S OBJECTION TO DEFENSE COUNSEL QUESTIONING OF WITNESS DEA COLEMAN. DEFENDANT PRESERVED THIS ISSUE BY ARGUING IN FAVOR OF ALLOWING THE QUESTIONING. (A5-6)

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The State in its Answering Brief asserts that the trial judge ruled correctly in sustaining the State's relevancy objection. In arguing this, the State asserts that any potential testimony by Dea Coleman regarding a robbery prior to March 2011 would consist of inadmissible hearsay. The State next argues that Blackwell's reputation was already so harmed by his own testimony that any inconsistencies in his testimony, which may have been confirmed by cross examination of Coleman, would nonetheless fail to aide Defendant in his defense.

The State's first argument that any potential testimony by Coleman would consist of hearsay, is not based in the record and is speculative. First, the State did not object to this testimony under *Delaware Uniform Rule of Evidence 802* at the time of trial but limited its objection to that of relevancy, of which was addressed in Defendant's opening brief. Secondly, to argue that the testimony would have been hearsay is purely speculative as the witness also resided in the residence with Mr. Milton and thus possibly had direct

knowledge of the prior robbery. Thirdly, the testimony even if hearsay would likely have been admissible if not for the truth of the matter asserted, then for any prior statements made by Blackwell to Coleman regarding the prior robbery under 11 Del. C. 3507, as a prior statement of a witness.

The State argues that this potential testimony would not have aided the defense and that the defense has failed to show substantial prejudice resulting from the denial of the ability to cross examine Dea Coleman on the prior robbery. The State's argument seems to be that the Blackwell's credibility had already taken such a hit, that Coleman's potential testimony impeaching him wouldn't have made much a difference. Because of the trial judges ruling it is impossible to know what Coleman would have testified to, however, had Coleman testified as expected, that Blackwell was in-fact the victim of another robbery prior to March 2011, then all of Blackwell's testimony could have been called into question. If Coleman had testified as speculated, Blackwell either lied under oath about the prior robbery or forgot about the robbery, and either way this would raise substantial concerns about the validity of his account of the events of March 21, 2011. The defendant was substantially prejudiced by not being able to pursue this line of questioning.

CONCLUSION

For the reasons set forth herein Defendant respectfully prays that the Defendant's convictions at bar be reversed and an order be entered that all charges against the defendant are dismissed or, if that remedy is not granted, that all convictions of the Defendant be reversed and the matter remanded to the Superior Court for a new trial.

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DATED: February 26, 2013

AFFIDAVIT OF ELECTRONIC MAILING

BE IT REMEMBERED that on this 26th day of February, 2013 Elizabeth Stewart, Secretary for the Law Office of Edward C. Gill, P.A., does state that she forwarded, via electronic filing, two copies of: **Defendant Appellant's Reply Brief on Appeal from the Superior Court of the State of Delaware in and for Sussex County to:**

Abbey Adams, Esquire
Department of Justice
114 East Market Street
Georgetown, De 19947

/s/ Elizabeth Stewart
Secretary