



IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDON ROBINSON,

Defendant Below,
Appellant,

v.

No. 347, 2012

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 OPENING BRIEF

BERNARD J. O'DONNELL
Office of Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801
(302) 577-5119

Attorney for Appellant

DATED: November 26, 2012

TABLE OF CONTENTS

TABLE OF CITATIONS	i
NATURE AND STATE OF PROCEEDINGS	1
SUMMARY OF THE ARGUMENT	2
STATEMENT OF FACTS	3
ARGUMENT	
I. THE PROSECUTION IMPERMISSIBLY VOUCHED FOR ITS COMPLAINANT WITNESS, THEREBY MAKING ITSELF A WITNESS TO THE RELIABILITY OF ITS EVIDENCE AND THE CORRECTNESS OF ITS PROSECUTION.	5
CONCLUSION	8
Trial Court Ruling	Exhibit A
Sentence Order	Exhibit B

TABLE OF CITATIONS

Cases

<i>Caldwell v. State</i> , 770 A.2d 522 (2001)	6
<i>Clayton v. State</i> , 765 A.2d 940 (Del.2001)	7
<i>Hughes v. State</i> , 437 A.2d 559 (1981)	7
<i>Richardson v. State</i> , 43 A.3d 906 (Del. 2012)	6
<i>Weber v. State</i> , 547 A.2d 948 (Del. 1988)	6
<i>White v. State</i> , 816 A.2d 776 (Del.2003)	7

NATURE AND STAGE OF THE PROCEEDINGS

The Defendant was arrested and charged by indictment with murder first degree, attempted murder first degree, and possession of a firearm during the commission of a felony (2 counts). A1.

He was convicted, after a jury trial, of murder first degree and possession of a firearm during the commission of a felony. He was acquitted of attempted murder first degree and the second count of possession of a firearm during the commission of a felony after a eight day jury trial in September 2012. [D.I. 48]. He was sentenced to, *inter alia*, natural life imprisonment for the murder first degree offense and eight years imprisonment at Level 5 for the firearm offense. (Sentence Order attached hereto as Exhibit B).

A notice of appeal was thereafter docketed. This is the Defendant's opening brief on direct appeal.

SUMMARY OF THE ARGUMENT

1. The prosecution impermissibly vouched for its complainant witness, thereby making itself a witness to the reliability of its evidence and the correctness of its prosecution by suggesting to the jury that it viewed the only eyewitness' testimony as credible where only identity was in question.

STATEMENT OF FACTS

On September 14, 2010 at about 9:50 p.m. Cameron Johnson was shot multiple times in the torso and died near the corner of Elm and South VanBuren Street in Wilmington. Police found a second shooting victim, Jarren Glandton, who had suffered a gunshot wound to his leg that later required surgery, nearby. A12.

Glandton, who survived the shooting, was the primary prosecution witness. Glandton testified that he had been with Cameron Johnson at the corner of Elm and VanBuren Streets sitting on the steps and eating when they were approached by three men, one of whom was the Defendant, known to him as "B" or Brandon. He later recognized one of the others as named "RC," whom he had seen earlier with a handgun, A46-48, but did not recognize the third individual. Glandton testified that he knew the Defendant for several years from seeing him in the neighborhood. A15-16. He testified that he was with Cameron Johnson while Johnson was selling narcotic pills near the corner for a female acquaintance. When the three individuals approached, one pulled money from Cameron Johnson's hands, and Glandton testified that he saw the Defendant pull a handgun out of his waistband and point it at Cameron Johnson. A20-22, 45-48. Glandton also testified that he saw that the Defendant was wearing rubber gloves. Glandton heard gunshots as he fled and was struck in the leg. A23.

Based on the post-shooting statement of Jarren Glandton, where Glandton had identified "B" as the man who shot him, police believed that the Defendant had shot and Cameron Johnson and Glandton. The Defendant turned himself in the next morning when he learned that police were looking for him. (D.I. 70, 9/20/12, pp. 37-50). While he was in a detained in an interrogation room, police officers testified that he attempted to swallow a piece of paper with Jarren Glandton's mother's cell-phone number on it. (D.I. 66, 9/16/12, pp. 124-155). No firearm was recovered and no forensic evidence connected the Defendant with the shooting.

I. THE PROSECUTION IMPERMISSIBLY
VOUCHED FOR ITS COMPLAINANT WITNESS,
THEREBY MAKING ITSELF A WITNESS TO
THE RELIABILITY OF ITS EVIDENCE AND
THE CORRECTNESS OF ITS PROSECUTION.

Question Presented

The question presented is whether the prosecution prejudicially erred by vouching for the credibility of its complaining witness, in effect making itself a witness to the reliability of its evidence and prosecution. The question was preserved by defense objection. A49.

Standard and Scope of Review

The Court reviews the Trial Court's ruling admitting the questioning for abuse of discretion.

Merits of Argument

Although in earlier statements, Jarren Glandton stated that the Defendant had shot Cameron Johnson and himself, on cross-examination he testified that he had only seen the Defendant pull out a gun before the shooting and admitted that he had not seen the Defendant fire any shots because he was already running away. A47-48. The defense was suggesting that it could have been RC, who had earlier been seen with a gun, who had fired the shots. In attempting to rehabilitate Glandton, the prosecutor asked him whether the prosecutor and police officers had told him what to testify to during a pre-trial interview, and specifically what he had been instructed.

A48. Glandton testified that he had been told by the prosecutor and police to "tell the truth." A49. The defense objected on the ground of relevance and hearsay. The Superior Court permitted the testimony on the ground that it had been asked and answered. A49.

This was an improper attempt to rehabilitate the State's primary witness and vouch for the reliability of the State's own prosecution. The State, particularly the prosecutor, was effectively making itself a witness. "A witness may not bolster or vouch for the credibility of another witness by testifying that the other witness is telling the truth ... improper vouching includes testimony that directly or indirectly provides an opinion on the veracity of a particular witness." *Richardson v. State*, 43 A.3d 906, 911 (Del. 2012) (internal citations omitted). Like *Richardson*, this case turned on one witness's credibility.

Furthermore, "[p]rosecutors are prohibited from vouching for the credibility of a witness by stating or implying personal knowledge of the truth of the testimony, beyond that which can be logically deduced from the witness' trial testimony." *Caldwell v. State*, 770 A.2d 522, 530 (2001). A prosecutor cannot give added weight to the credibility of a witness by personally vouching for the witness's credibility, giving it added weight that that may not have been warranted. *Weber v. State*, 547 A.2d 948 (Del. 1988). "Improper vouching

occurs when the prosecutor implies some personal knowledge that the witness has testified truthfully." *White v. State*, 816 A.2d 776, 779 (Del.2003); *Clayton v. State*, 765 A.2d 940, 942-43 (Del.2001) ("As a general rule, prosecutors may not express their personal opinion or beliefs about the credibility of witnesses or about the truth of testimony."). The prosecutor's rehabilitation of the witness suggested to the jury that the State would not have prosecuted the Defendant if the prosecutor did not have faith in the credibility of its primary witness. Thus, it is similar to and has the effect of prohibited comments that the State only arrests people who are guilty. Language which suggests to the jury that the "State would not arrest someone unless it is certain of his guilt" is improper because it destroys the presumption of innocence, however. *Hughes v. State*, 437 A.2d 559, 573 (1981). The prosecutor's rehabilitation of the witness, because it undermined the presumption of innocence, unfairly vouched for reliability of the State's case and deprived the Defendant of a fair trial.

CONCLUSION

For the reasons and upon the authorities cited herein,
the Defendant submits that his convictions and sentences
should be reversed.

Respectfully submitted,

/s/ Bernard J. O'Donnell
BERNARD J. O'DONNELL [#252]
Office of Public Defender
Carvel State Building
820 N. French Street
Wilmington, DE 19808
(302) 577-5119

DATED: November 26, 2012