



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDREW LLOYD,)
)
Defendant-Below,)
Appellant,)
)
v.)
) No.: 680, 2015
)
STATE OF DELAWARE,)
)
Plaintiff-Below,)
Appellee.)

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

APPELLANT'S REPLY BRIEF

BY: /s/Peter W. Veith
Peter W. Veith, Bar ID # 3548
1523 Delaware Avenue
First Floor
Wilmington, DE 19806
Attorney for Appellant

DATED: August 4, 2016

TABLE OF CONTENTS

Table of Citationsi

Argument

I. THE GIVEN JURY INSTRUCTION IS DEFICIENT UNDER THE CONTROLLING LAW.1

II. THE STATE’S DIRECT EXAMINATION QUESTIONS OF WITNESSES INQUIRING AS TO THE TRUTHFULNESS OF THEIR TESTIMONY WERE PEJUDICIAL TO LLOYD’S SUBSTANTIAL TRIAL RIGHTS.3

Conclusion5

TABLE OF CITATIONS

<u>Cases</u>	<u>Page(s)</u>
<i>Allen v. State</i> , 878 A.2d 447 (Del. 2005).	4
<i>Boyle v. United States</i> , 556 U.S. 938 (2009).	1, 2
<i>McDonnell v. United States</i> , 136 S.Ct. 2355 (2016).	2
<i>State v. Phillips</i> , 2015 WL 5168151 (Del. Super. Ct. Sept. 2, 2015).	3

ARGUMENT

I. THE GIVEN JURY INSTRUCTION IS DEFICIENT UNDER THE CONTROLLING LAW.

Even with the broader definition of enterprise set out under *Boyle*, the trial court's jury instruction as to Racketeering was deficient as it failed to adequately define enterprise. Under the given jury instruction, the trial judge simply defined a racketeering enterprise as a group of persons associated together in fact. Conspicuously absent from the instruction is any mention that an enterprise under §1503 requires some sort of framework for decision-making and execution of its objectives and that the members of the enterprise function as a continuing unit to achieve a common purpose.¹ The given instruction merely stated that to convict Lloyd on the Racketeering charge, the State must prove beyond a reasonable doubt that:

“One, defendant was associated with an enterprise; and two, defendant conducted the enterprise through a pattern of racketeering activity or defendant participated in the enterprise's affairs through a pattern of racketeering activity; and three, defendant's conduct or participation in the pattern [of] racketeering activity was intentional.

Under the law an enterprise includes a group of people associated in fact for a common purpose.”

¹ *Boyle v. United States*, 556 U.S. 938, 942 (2009).

These instructions substantially inhibit the jury from accurately and intelligently discharging its duty in assessing the sufficiency of evidence to convict as the instructions given would not only include the associations sought to be restricted by §1503, but also any other loose association of individuals who agree to engage in criminal activity. There is no guidance to inform the jury that the enterprise must have a structure of some sort in addition to longevity and continuity of purpose.² The structure and continuity elements of enterprise exist to avoid giving § 1503 excessive reach.³ Under the given jury instruction, any group of persons associated in fact is sufficient to fulfill the enterprise requirement § 1503.

Because the given instruction was defective, Lloyd respectfully requests that this Honorable Court reverse his convictions and remand the case to the Superior Court.

² *Id.*

³ See, e.g. *McDonnell v. United States*, 136 S.Ct. 2355, 2370 (2016).

II. THE STATE’S DIRECT EXAMINATION QUESTIONS OF WITNESSES INQUIRING AS TO THE TRUTHFULNESS OF THEIR TESTIMONY WERE PREJUDICIAL TO LLOYD’S SUBSTANTIAL TRIAL RIGHTS.

The State’s reliance upon *State v. Phillips* is misplaced as that case is distinguishable.⁴ In *Phillips*, the State sought to admit only the certified convictions of codefendants who *were not* present to give live testimony before the jury.⁵ In Lloyd’s case, the State elicited direct examination testimony from witnesses who appeared as to whether they had testified truthfully. Demetrius Brown testified on direct to having accepted a guilty plea for the purpose of avoiding mandatory incarceration.⁶ Though his testimony touched upon his knowledge of Lloyd’s drug dealing activities, the testimony pertaining to the requirement that he testify at codefendants’ trials was elicited during direct examination prior to his being impeached on cross-examination.

Similarly, during Jarrell Brown’s direct testimony he was asked “as part of your plea agreement, did you agree that you were going to tell the truth?”⁷ This question was answered in the affirmative, and again was asked on direct

⁴ 2015 WL 5168151 (Del. Super. Ct. Sept. 2, 2015).

⁵ *Id.*

⁶ A194-A195.

⁷ A373.

prior to his credibility being impeached on cross examination. The State also proceeded through the testimony of Lakenya Howard⁸ and Yasmeena Brown⁹ in the same fashion. In its answering brief, the State ignores inquiring into the truthfulness of a witness's testimony prior to their being impeached on cross-examination serves to impermissibly bolster the witness' credibility.

Though a prosecutor may introduce a testifying codefendant's plea agreement into evidence for limited purposes, the prosecutor may not bolster that witness's testimony.¹⁰ While the State may have initially offered Lloyd's codefendants' pleas into evidence for proper purposes, the prosecutors conducting direct examination of these witnesses went beyond the permissible purposes when they asked whether these witnesses had testified truthfully in conformance with their plea agreements. Bolstering the witnesses' testimony in this manner cannot be tolerated as it substantially inhibits the jury's ability to judge the credibility of the witnesses before them. Questioning the witnesses as to whether they had testified truthfully in compliance with their pleas goes far beyond giving insight into how a witness has firsthand knowledge of the defendant's activities or to appease any concerns of

⁸ A474-A492

⁹ A582-A611

¹⁰ *Allen v. State*, 878 A.2d 447, 450 (Del. 2005).

selective prosecution. It asks the jury to take all of the testimony as true because the witness agreed to testify truthfully as part of a plea deal and implies that the State has special knowledge as to whether the witness is testifying truthfully.

For the foregoing reasons, the record supports a finding of unfair prejudice resulting from the State's mishandling of the questioning of codefendant witnesses. In light of the record, Lloyd respectfully requests that his racketeering conviction be vacated.

CONCLUSION

For the foregoing reasons and the arguments set forth in his Opening Brief, Lloyd respectfully requests this Honorable Court vacate his racketeering and drug convictions and remand the matter for a new trial.

/s/Peter W. Veith, Esquire
Peter W. Veith, Esquire, P.A.
Delaware I.D. # 3548
1523 Delaware Avenue
First Floor
Wilmington, DE 19806
(302)426-0900

Dated: August 4, 2016