



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN TUCKER,)
)
 Defendant Below,)
 Appellant,)
)
 v.) No. 390, 2017
)
 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 ANSWERING BRIEF
TO STATE'S CROSS-APPEAL**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
NATURE AND STAGE OF THE PROCEEDINGS	1
SUMMARY OF THE ARGUMENT	2
STATEMENT OF FACTS	3
ARGUMENT	
I. THE SUPERIOR COURT CORRECTLY ALLOWED TESTIMONY THAT EXPLAINED AND GAVE CONTEXT TO DEFENDANT’S INCRIMINATORY STATEMENTS UNDER D.R.E 106, 402 AND 403	6
Conclusion	8

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<i>Baumann v. State</i> , 891 A.2d 146, 149-150, (Del. 2005).....	7
<i>Ellerbe v. State</i> , 2017 Del. LEXIS 191, (2017).....	7
<i>Kelly v. State</i> , 981 A.2d 547 (Del. 2009).....	6
<i>Milton v. State</i> , 2013 Del. LEXIS 292, 16, (2013).	7

Statutes and Rules

<i>11 Del. C. § 643</i>	2
D.R.E. 106.....	7
D.R.E. 402.....	6,7
D..R.E 403.....	7

NATURE AND STAGE OF THE PROCEEDINGS

The defendant was arrested on September 10, 2016 and later indicted for the offenses of assault in the first degree, possession of a firearm during the commission of a felony, as well as conspiracy second degree. (A-1, D.I. 4, A-9, 10). As part of his case, defendant requested to have an officer recite a portion of his statements at his preliminary hearing. (A-150) After a jury trial, defendant was convicted of assault in the first degree, possession of a firearm during the commission of a felony, as well as conspiracy second degree. (A-6 D.I. 25-32. 5/16-24/17).

The defendant was sentenced to, *inter alia*, (20) twenty years imprisonment at Level 5 suspended after (10) ten years, for (6) six months at Level 4 and (18) eighteen months at Level 3 on the count of assault in the first degree; (5) five years imprisonment at Level 5 on the count of possession of a firearm during the commission of a felony; and (2) two years at Level 5 suspended for 1 year at Level 2 for the count of conspiracy second degree. Exhibit A attached to Opening Brief.

A notice of appeal was docketed for the Defendant. On January 13, 2018, the State answered and filed a cross-appeal. This is the Defendant's answering brief to the cross-appeal.

SUMMARY OF THE ARGUMENTS

The State's cross-appeal is denied. The Superior Court was within its discretion when it permitted limited testimony that explained and provided necessary context to defendant's statements against interest under D.R.E. 804(b)(3). The issue of whether such defendant's inculpatory statements were admissible not before this Court and should be deemed waived for appellate purposes. The State's only objection relates to the Court's expansion of the testimony for the limited purpose of giving context to the inculpatory statements. Such objection is within the Court's discretion under D.R.E 402 and 403.

STATEMENT OF FACTS

Following his arrest, defendant was transported to the Court of Common Pleas to conduct a preliminary hearing. At the conclusion of the hearing, the defendant became upset, yelled at the Court and made a series of unsolicited and inappropriate incriminating statements and/or explanations relating to his charges. The Court ordered that a copy of such statements attached to the file in Superior Court. (D.I. 2)

At trial various officers testified that Wilmington police officers were dispatched to East 31st Street in Wilmington, Delaware to investigate a report of an altercation and an individual lying unconscious in an alley. (A-23) The police arrived to find Joshua Moore semi-conscious. (A-24) The police located two witnesses who observed the altercation between two individuals and a third person. (A-17, A-73) Witness Belinda Moody testified that she heard arguing coming from the alley. When she looked out her window, she saw a person and two individuals standing over him. One of the two individuals was hitting the person on the ground. (A-17) Ms. Moody did not see anyone hitting another person with an object. (A-19)

Witnesses Alana Jones stated that one of the two individuals appeared to be using an object to strike the third person. (A-73) That same witness is the only individual to identify John Tucker as one of the two individuals involved in the

altercation with the third person. (A-74)

Officer Saunders, after receiving a call, stopped three individuals who were seen leaving the alley prior to police arriving. (A-31) Mr. Tucker was one of the three individuals stopped a few blocks from the scene. Upon seizing one of the three individuals, Officer Saunders recovered a cloth belt that the defendant was holding. Officer Saunders brought the defendant back to the scene for a “show up” prior to having any witnesses pick him out of a line-up. (A-32) Furthermore, no one can account for the location of the belt from the time it was seized to the time it was finally collected by Corporal Houck. (A-56)

Corporal Houck received the canvas belt approximately three hours after it was seized by the police. Prior to taking custody of the canvas belt, Corporal Houck is unaware and cannot account for the chain of custody. (A-56) Corporal Houck, upon an in-court inspection of the canvas belt, could not locate the blood stain he says he saw on the belt. (A-56) Furthermore, Corporal Houck did not take any pictures of the canvas belt. (A-58)

Immediately following the testimony of Corporal Houck, the State called Detective Novell to introduce his cellphone photo of a blood stained belt that was purported to have been taken upon receipt of such from Officer Saunders. (A-63) The defense timely objected and the Court excluded the belt based on a violation of Rule 16. (A-63) In excluding the photo, the Court failed to give any curative

instruction as requested by the defense. (A-68-69)

Mr. Moore was unable to remember any of the events that led to his injuries. (A-125) Neither Mr. Moore nor his mother could explain how or why Mr. Moore would appear or need to be in the alley at the home of John Tucker on that night. (A-119, A-125)

The defense called Kanisha Poole and Shaquan Guilford, each were riding together in Ms. Poole's vehicle. (A-145, A-153) Both witnesses listened to a phone call from Mr. Tucker that was received within minutes of the conclusion of the altercation. Each remembered the defendant excitedly uttering that Ms. Poole's boyfriend, Mr. Moore, had suddenly and without provocation, tried to attack the defendant in the alley to the entrance of his house. (A-147, A-154)

John Tucker testified that he was attempting to enter his home, which is access via the alley on E. 31st Street, when he was attacked by an unknown individual. He was able to fend off his attacker with the help of a cousin, who heard the commotion from the altercation. Mr. Tucker later learned that his attacker was Joshua Moore and left him in the alley. He did not report the attack. (A-156-165)

THE SUPERIOR COURT CORRECTLY ALLOWED TESTIMONY THAT EXPLAINED AND GAVE CONTEXT TO DEFENDANT’S INCRIMINATORY STATEMENTS UNDER D.R.E 106, 402 AND 403.

Question Presented

The question presented is whether the Superior Court was within its discretion by allowing limited expanded testimony that provided context to his statements under D.R.E 402 and 403. The question was preserved within the Court Ruling.

Standard and Scope of Review

The trial court’s evidentiary rulings are reviewed for an abuse of discretion.¹

Argument

As part of the Defendant’s case, the defendant had Detective Nowell read to the Jury certain parts of defendant’s statements against interest at his preliminary hearing. Prior to the reading, the trial court ruled that certain portions of defendant’s statements may be read to the jury. Those portions include his incriminatory statements and any statements before and after such statements that gave context to the statements²

Under D.R.E 402, “all relevant evidence is admissible, except as otherwise provided by statute or by these rules or by other rules applicable in the courts of

1 *Kelly v. State*, 981 A.2d 547, 549 (Del. 2009).

2 A-150

this State."³ Furthermore, D.R.E. 403 requires the Court to determine if the probative value of the evidence outweighs its prejudicial effect.⁴ This Court has repeatedly held that “Judicial discretion 'is the exercise of judgment directed by conscience and reason, and when a court has not exceeded the bounds of reason in view of the circumstances and has not so ignored recognized rules of law or practice so as to produce injustice, its legal discretion has not been abused.'”⁵

Under the facts in this case, the trial court considered and weighed the evidence sought to be admitted. The State, during trial and on appeal, only objected to the admission of defendant’s statements that were admitted for the limited purpose of adding context to the statements the State agreed were admissible. The State’s agreement that the defendant’s inculpatory, statements against interest, were admissible, required the Court to exercise its discretion and give proper perspective “to prevent misleading impressions which often result from taking matters out of context”.⁶

3 D.R.E. 402; *Baumann v. State*, 891 A.2d 146, 149-150, (Del. 2005).

4 D.R.E. 403; *Ellerbe v. State*, 2017 Del. LEXIS 191, (2017).

5 *Milton v. State*, 2013 Del. LEXIS 292, 16, (2013).

6 D.R.E. 106; *Flamer v. State*, 953 A.2d 130, 135 (Del. 2008).

CONCLUSION

For the reasons and upon the authorities cited herein, the State's Cross-Appeal should be denied.

Respectfully submitted,

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DATED: February 14, 2018