



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN A. 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

**STATE'S REPLY BRIEF
ON CROSS-APPEAL**

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Dated: February 26, 2018

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I. THE SUPERIOR COURT ERRED IN NOT LIMITING TUCKER’S STATEMENTS TO COMPLY WITH D.R.E. 804(b)(3).

Argument

Tucker contends that D.R.E. 106, 402, and 403 permitted the Superior Court to admit into evidence the non-inculpatory portion of Tucker’s preliminary hearing testimony after the State agreed that his inculpatory part was admissible under D.R.E. 804(b)(3).¹ Tucker is incorrect.

D.R.E. 804(b)(3) requires that any statement offered into evidence be truly self-inculpatory.² D.R.E. 106 does not create an exception. “D.R.E. 106 does not make otherwise inadmissible evidence admissible.”³ Here, the only admissible portion of Tucker’s preliminary hearing testimony included the statement that he beat Moore.⁴ D.R.E 106 did not transform Tucker’s non-inculpatory statements into admissible evidence.⁵

¹ Ans. Brf. at 6-7.

² *Smith v. State*, 647 A.2d 1083, 1086 (Del. 1994); *Barrow v. State*, 749 A.2d 1230, 1244 (Del. 2000).

³ *Banther v. State*, 823 A.2d 467, 487 (Del. 2003).

⁴ A-151.

⁵ Tucker’s non-inculpatory statements included his claim to also be a victim, that there were no cameras where he lived, that Moore “ran down” on him, and Tucker’s belief that Moore carried a gun. A-151.

D.R.E. 402 and 403 did not allow Tucker’s non-inculpatory statements to be admitted into evidence. As a preliminary matter, Tucker did not fairly present this argument to the Superior Court and has therefore waived it on appeal.⁶ In any event, D.R.E. 402 and 403 do not assist Tucker. Under D.R.E. 402, “[a]ll relevant evidence is admissible, *except as otherwise provided by . . . th[e] [R]ules [of Evidence].*”⁷ Here, D.R.E. 804(b)(3) foreclosed admission of the non-inculpatory portions of Tucker’s statement under D.R.E. 402. While D.R.E. 804(b)(3) permitted admitting Tucker’s self-inculpatory statement as inherently reliable and trustworthy,⁸ conversely, the rule excluded Tucker’s non-inculpatory statements as missing these “equal guarantees of trustworthiness.”⁹ As such, D.R.E. 403 is likewise inapplicable.¹⁰ Consequently, the Superior Court erred by not excluding Tucker’s non-inculpatory statements under D.R.E. 804(b)(3).

⁶ Supr. Ct. R. 8.

⁷ D.R.E. 402 (emphasis added).

⁸ *See Smith*, 647 A.2d at 1086.

⁹ *See id.* at 1087.

¹⁰ Under this rule, “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.” D.R.E. 403.

CONCLUSION

Based upon the foregoing, the State requests that this Court affirm the judgment below, but find that the Superior Court abused its discretion by admitting the non-inculpatory portions of Tucker's preliminary hearing testimony under D.R.E. 804(b)(3).

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1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2016.
2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 411 words, which were counted by Microsoft Word 2016.

Dated: February 26, 2018

/s/ Brian L. Arban