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NATURE AND STAGE OF PROCEEDINGS

This is Appellant's Reply Brief in response to the State's Answering Brief filed on June 15, 2018.

SUMMARY OF THE ARGUMENT

The admission of Arto Harrison's statement was improper where the state failed to establish that his absence was due to the actions of Appellant.

The fact that Harrison later appeared and testified did not cure the prejudice caused by the admission of the evidence and the explanation given to the jury as to why it was admissible.

STATEMENT OF FACTS

Appellant relies on the statement of facts provided in its opening brief and supplemented by the State in its answering brief.

ARGUMENT

I. GRANTING STATE'S MOTION IN LIMINE BASED UPON FORFEITURE BY WRONG DOING WAS AN ABUSE OF DISCRETION

QUESTION PRESENTED

Was the admission of Arto Harrison's out of court statement an abuse of discretion when admission was based on unsupported allegations that he was unavailable because of Appellant's wrong doing? (A92 - A 119)

Standard and Scope of Review

The decision to admit evidence in this manner is reviewed as an abuse of discretion. Charbonneau v. State, 904 A.2d 295 (Del. 2006)

MERITS OF ARGUMENT

The State in its Answering brief alleges Appellant's Argument is wrong and cites Phillips v. State, 154 A.3d 1130 (Del. 2017). Appellant would argue Phillips supports Appellant. In Phillips testimony was presented suggesting Phillips told his accomplice that Curry must die for telling on him, additional testimony was that witnesses were present at the prior shooting an identified Phillips as the shooter. Phillips at 1142, 1143. No such evidence to corroborate the State's contention was offered.

The State further argues Appellant cannot show prejudice. The fact Harrison later testified for defense and defense admits his prior statement would have been admissible under 11Del.C. §3507 does not wave the prejudice to Appellant. The Jury Instruction read to prior to the admission of Harrison's statement is in itself a condemnation of Appellant. (B32) How is that not Prejudicial ?

CONCLUSION

The introduction of Harrison's statement as an unavailable witness was prejudicial to Appellant. The statement was introduced based upon interpretation by the State favorable to the state and not corroborate by independent witnesses. Witnesses who allegedly were tampered with were available to support state contention yet were not utilized by the state. The only witnesses who testified regarding the issue of tampering denied the state's allegation.

Appellant is entitled to a New Trial.

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