



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER CLAY,)
)
Defendant Below-)
Appellant,) No. 1, 2019
) ON APPEAL FROM
) THE SUPERIOR COURT OF THE
v.) STATE OF DELAWARE
) ID No. 1408007714A
STATE OF DELAWARE,)
)
Plaintiff Below-)
Appellee.)

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

COLLINS & ASSOCIATES

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Dated: March 28, 2019

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ARGUMENT

I. THE SUPERIOR COURT ERRED IN DENYING MR. CLAY’S POSTCONVICTION CLAIMS REGARDING THE CODEFENDANT’S INTRODUCTION OF EVIDENCE REGARDING SIMILAR DOLLAR GENERAL ROBBERIES IN BALTIMORE.¹

The pretrial hearing about the authenticity of the video led to the revelation that codefendant Maurice Land’s counsel was going to introduce evidence of Dollar General robberies in Baltimore committed by similarly-attired robbers.² The loss prevention manager noted the same black shirt with SECURITY on it and mused, “was this the same guy hitting my Baltimore stores[?]”³ Even Land’s counsel thought the gambit to introduce the Baltimore evidence was quite a long shot, and the Court agreed.⁴

Mr. Clay’s counsel should have renewed the motion to sever, because at that point the defenses became antagonistic. This was a development not contemplated by the Superior Court when it denied the original severance motion. The new development of a defendant introducing prior bad act and *modus operandi* evidence should have immediately prompted a renewal of the denied severance motion.

¹ This Argument addresses Claims I and II to match the format of the Appellee’s Answering Brief.

² A229.

³ A192.

⁴ A229-233.

The State argues that Woody’s statements about Baltimore robberies did not implicate Clay, so the Superior Court did not err in denying postconviction relief.⁵ But in a case where Mr. Clay was charged as an accomplice, any evidence tending to incriminate a codefendant is obviously prejudicial. The purpose of severance is to avoid such unfair prejudice as arises when codefendants are tried together.⁶

At trial, Land’s counsel persisted with his theory that other individuals similarly attired committed the Baltimore robberies – presumably to make the point that those same individuals committed the Georgetown robbery and not his client. The State argues that Woody “unequivocally” testified that different people robbed the Baltimore store.⁷ But it was not unequivocal. For whatever reason, Woody changed his story from the hearing to the trial. He claimed that he did not recall his prior testimony, even when shown the transcript.⁸ Then he read more of the transcript and professed not to recall.⁹

If anything, this back-and-forth between Land’s lawyer and the recalcitrant Woody served only to highlight the Baltimore evidence for the jury. Whether in the form of questions asked by the attorney, or denials and explanations by the witness, the jury heard testimony that there were robberies at Dollar General stores

⁵ Answering Brief (Ans. Br.) at 13.

⁶ *Lampkins v. State*, 465 A.2d 785, 794 (Del. 1983).

⁷ Ans. Br. at 14.

⁸ A479-480.

⁹ A482.

in Baltimore conducted by “guys,” one of whom had on a black security shirt as did Land.

Mr. Clay’s counsel failed to take any action about this development at trial; he failed to seek a mistrial or even a curative instruction. The Court did not give an instruction *sua sponte*, even though the Court’s decision on postconviction characterizes Woody’s testimony as “irrelevant.”¹⁰ As such, the jury was provided prejudicial evidence not related to the indicted charges with no guidance or instruction as to how to use that evidence. This amounted to prejudice to Mr. Clay, especially in a case where the judge granted the codefendant Martin’s motion for judgment of acquittal.

¹⁰ *State v. Clay*, 2018 WL 6434798 at *5 (Del. Super. Dec. 7, 2018).

II. THE SUPERIOR COURT ERRED IN FINDING MR. CLAY'S COUNSEL NOT INEFFECTIVE FOR FAILING TO FILE A MOTION FOR A NEW TRIAL WHEN THE CODEFENDANT SWORE BY AFFIDAVIT THAT MR. CLAY WAS NOT INVOLVED IN THE ROBBERY.¹¹

After trial but before sentencing, Maurice Land swore out an affidavit:

And state the facts in writing this affidavit of what I've been accused of or convicted of, that these Men Booker Martin and Christopher Clay had nothing to do with it and I never seen these Men before until that night. I never gave Mr. Martin any money or given Mr. Clay a gun. The night of the Robbery of the Dollar General Store. I am very sorry for leting this go as far as it did So I ask that all charges against them be drop. This is my own choice because it is the right thing to do.¹²

Both the Superior Court and the State take the position that the Land affidavit lacks credibility because Land did not admit to the robberies.¹³ However, in the affidavit, Land does not deny committing the robberies either.

Although the Court found Land's affidavit lacks credibility,¹⁴ there has never been an explanation as to why Land wrote the affidavit. It can be taken at face value: Martin and Clay were not involved, and Land is sorry for letting matters get this far and wanted to do the right thing. That does not mean that Land had to give up his appeal rights by admitting guilt before his appeal even started.

¹¹ This was Claim III in the Opening Brief and is renumbered here to respond to the State's Answering Brief in the same way it was organized.

¹² A1054.

¹³ Ans. Br. at 19; *Clay* at *6.

¹⁴ *Id.*

As noted in the Opening Brief, the Superior Court created a false nexus between Land exonerating his codefendants and Land admitting he committed the robbery.

The Superior Court's rulings in this case were inconsistent. There has been no explanation why if "Martin ended up with the gun and most of the money,"¹⁵ the Court granted Martin's motion for judgment of acquittal but would not even consider a motion for a new trial by Mr. Clay if it were filed.¹⁶ This Court found on direct appeal, "viewing this evidence in the light most favorable to the State, a rational juror could find that Clay intended to facilitate the commission of the robbery by being Land's "lookout" while he was in the back of the store, and that Clay knew that Land was armed."¹⁷ However, that standard would not be applicable to a motion for a new trial, and the fact of Land's affidavit was not part of the record on appeal.

A motion for a new trial may be granted if required in the interests of justice.¹⁸ Trial counsel was ineffective for seeking a new trial for Mr. Clay, and the Superior Court erred in holding that the motion would not have been granted if filed. This case featured overwhelming evidence against Land, and minimal evidence against Martin and Clay. Martin is now acquitted due to the Superior

¹⁵ *Clay* at *6.

¹⁶ *Id.*

¹⁷ *Clay v. State*, 164 A.3d 907, 914 (Del. 2017).

¹⁸ Super. Ct. Crim. R. 33.

Court's grant of a posttrial motion; Mr. Clay should have been afforded the same opportunity in light of the straightforward sworn affidavit by Land.

CONCLUSION

For the foregoing reasons as well as those stated in the Opening Brief, Appellant Christopher Clay respectfully requests that this Court reverse the judgment of the Superior Court.

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