



IN THE SUPREME COURT OF THE STATE OF DELAWARE

AHMIR BAILEY,)
)
Defendant Below-)
Appellant,) No. 46, 2021
) ON APPEAL FROM
) THE SUPERIOR COURT OF THE
v.) STATE OF DELAWARE
) ID No. 1805009348A&B
STATE OF DELAWARE,)
)
Plaintiff Below-)
Appellee.)

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
DELAWARE IN AND FOR KENT COUNTY

REPLY BRIEF

COLLINS & ASSOCIATES

Patrick J. Collins, ID No. 4692
8 East 13th Street
Wilmington, DE 19801
(302) 655-4600

Attorney for Appellant

Dated: September 15, 2021

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Appellant Ahmir Bailey, through the undersigned counsel, replies to the State's Answering Brief as follows:

ARGUMENT

I. MR. BAILEY'S RIGHT TO CONFRONTATION WAS DENIED WHEN THE TRIAL COURT ERRONEOUSLY EXCLUDED EVIDENCE OF DOMINIC HURLEY'S JUVENILE ADJUDICATION FOR A WEAPONS CHARGE.

The State argues that this claim must be reviewed for plain error because "Bailey did not raise the Confrontation Clause claim below."¹ He did. Trial counsel argued the purpose of the evidence was to attack Dominic Hurley's credibility, specifically Hurley's statement that he did not possess a gun on the night of the shooting.² Trial counsel specifically stated that he wanted the jury to know that Hurley had the adjudication for CCDW and was in fact on probation for that charge.³ He also argued that Hurley's probation status and adjudication was relevant not only for a credibility determination but also to advance Mr. Bailey's claim of self-defense.⁴ The reason the defense sought admissibility of the prior adjudication and probation status was specifically to confront Hurley about his prior statements that he did not have a gun the night of the shooting, and also to

¹ Answering Br. at 15.

² A713.

³ A714.

⁴ A715.

challenge the reason Hurley claimed for leaving the scene and driving around with his injured friend for an hour instead of going straight to the hospital.

There is no specific requirement that counsel state the exact words “confrontation clause” to preserve a claim under the confrontation clause, and the State does not point this Court to any such authority. The record establishes clearly that the proposed purpose of the evidence was to confront the witness. As such, this claim was preserved and should be reviewed *de novo*.

The State concedes that Mr. Bailey’s lawyers argued that the adjudication and probationary status were relevant to show specific bias.⁵ Nevertheless, the State argues the impeachment evidence was not necessary to a fair determination of the case because there was no evidence Hurley had a gun.⁶ To the contrary, Hurley himself testified that Mr. Vann-Robinson reached into the driver’s side of the car to get something.⁷ Hurley also told police that he believed there was a revolver at the crime scene and that revolvers do not discharge shell casings.⁸ So, there was ample basis to confront Hurley with his specific bias in this case: Hurley specifically avoided the police and drove around for an hour because he did not

⁵ Answering Br. at 15.

⁶ Answering Br. at 16.

⁷ A854.

⁸ A851.

want to get violated for his CCDW probation – very much like the juvenile in *Davis v. Alaska*.⁹

The State cites to *Rash v. State* for the proposition that a judge may limit cross-examination when the jury was exposed to facts sufficient to determine credibility and defense counsel has enough of a record to argue that the witness is biased.¹⁰ That legal authority is not particularly relevant to this case. The issue in *Rash* was whether defense counsel could make a sufficient record that the witness was biased because the State had dropped certain charges prior to his testimony.¹¹

The relevant authority here, as discussed in the Opening Brief, is *Reid v. State*, which specifically held that the judge's role in determining the admissibility of juvenile adjudications is to determine whether the evidence is:

- (1) offered to show bias (i.e., the motive to lie in the specific case), and
- (2) important to the assertion of that bias.¹²

The State agrees that this is the relevant analysis.¹³ But the trial judge did not apply this analytic framework. The judge found that the request should have been made

⁹ 415 U.S. 308 (1974).

¹⁰ *Rash v. State*, 1992 WL 219202 at *2 (Del. July 20, 1992); Answering Br. at 17.

¹¹ *Rash* at *3.

¹² *Reid v. State*, 2005 WL 3272134 at *4 (Del. Nov. 30, 2005).

¹³ Answering Br. at 17.

sooner, that the adjudication was not necessary for a fair determination of guilt, and the defense had “other means in which the defense can establish its defense.”¹⁴

As to the defense application to impeach Hurley with his probationary status at the time of the incident, the judge only held,

Given the fact that both parties seem to be ignoring the scheduling order, which is an order of this Court, and this should have been filed by...May 13th of this year, I find that the evidence that he is on probation is not pertinent, doesn't seem to be relevant to the issue, nor does it support, in my view, your theory.¹⁵

Finally, the State contends that it was not error to exclude the evidence because the defense's justification defense was weak.¹⁶ However, the State has cited to no authority that requires the judge to consider the merits of particular defenses when deciding whether to admit impeachment evidence of a witness. The relevant inquiry is whether the evidence is to show the witness's motive to lie in the case at bar, and the importance of the evidence to show that bias. Whether or not Mr. Bailey could establish a self-defense claim is beside the point. The issue is that Mr. Bailey was deprived of his right to confront a crucial State witness to establish the witness's clear motive to lie.

¹⁴ A719.

¹⁵ A720. Defense counsel then noted that a pretrial motion was not filed because he considered the evidence to be admissible until the State lodged an objection. A721.

¹⁶ Answering Br. at 19-20.

CONCLUSION

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

COLLINS & ASSOCIATES

/s/ Patrick J. Collins

Patrick J. Collins, ID No. 4692

8 East 13th Street

Wilmington, DE 19801

(302) 655-4600

Attorney for Appellant

Dated: September 15, 2021