



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES MACCOLL, :
 :
 :
 Defendant Below, :
 Appellant. : No. 129, 2023
 :
 v. :
 :
 :
 :
 : ON APPEAL FROM
 STATE OF DELAWARE : THE SUPERIOR COURT OF THE
 : STATE OF DELAWARE
 :
 Plaintiff Below, : I.D. NO. 2103011110
 Appellee. :

APPELLANT'S OPENING BRIEF

FILING ID 70624505

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11 *Del. C.* § 9200(c)(12)10, 11

NATURE OF PROCEEDINGS

On February 2, 2019, then-Senior Corporal James MacColl of the Wilmington Police Department (“WPD”) shot armed carjacking suspect Yahim Harris four times under the belief that Harris pointed a firearm in his direction. An internal investigation was launched by WPD’s Office of Professional Standards (“OPS”). After reviewing the ballistics evidence from the shooting, the Delaware State Police’s toolmark examiner discovered a discrepancy between the casings and projectiles at the scene in relation to the barrel of MacColl’s departmentally-issued firearm. Pursuant to WPD’s internal investigation, MacColl provided two statements to OPS on May 30, 2019 and January 27, 2020. The Delaware Department of Justice (“DDOJ”) ultimately ruled MacColl’s use of deadly force to be reasonable under the circumstances in a memorandum dated November 4, 2019.

On March 22, 2021, MacColl was indicted on charges of Tampering with Physical Evidence, Providing a False Statement to Law Enforcement, and Official Misconduct.¹ The State’s theory of the case was that after the shooting, MacColl switched an unauthorized barrel of his department-issued firearm for another barrel and then dishonestly denied doing so.²

¹ A1 at DI 1.

² A54-55.

On December 28, 2021, MacColl filed a Motion to Dismiss the Indictment and a Motion in Limine to Exclude Evidence. MacColl argued in both motions that his OPS statements should not be used to prosecute him under federal and state law. The trial court denied both motions in a written memorandum dated July 1, 2022.³ It held that 1) MacColl's statements were not protected by the Fifth Amendment and Garrity because they were alleged to be false and 2) MacColl lacked standing to assert the protections of 11 *Del. C.* § 9200, also known as the Law Enforcement Officer's Bill of Rights ("LEOBOR").⁴

Trial began on February 28, 2023 and concluded on March 3, 2023.⁵ The State introduced both OPS statements in its case-in-chief.⁶ The jury found MacColl guilty of Providing a False Statement to Law Enforcement and Official Misconduct.⁷ He was acquitted of Tampering with Physical Evidence.⁸ On March 24, 2023, MacColl was sentenced to three years at Level 5 incarceration suspended for one year of Level 2 probation and 150 hours of community service.⁹

MacColl filed a timely Notice of Appeal.¹⁰ This is his Opening Brief.

³ See Exhibit A.

⁴ *Id.*

⁵ A5 at DI 35.

⁶ A592.

⁷ A586-A587.

⁸ A586.

⁹ A9-10.

¹⁰ A6 at DI43.

SUMMARY OF THE ARGUMENT

I. The trial court erred in denying MacColl's Motion to Dismiss Indictment and his Motion in Limine to Exclude Evidence. Under state and federal law, compelled statements of police officers made during an internal investigation and under the threat of disciplinary action cannot be used in a subsequent criminal proceeding against them. Delaware law further prohibits the dissemination of police officers' internal affairs files because they are confidential. MacColl's OPS confidential compelled statements are protected under *Garrity* and LEOBOR and therefore should not have been used to criminally prosecute him.

STATEMENT OF FACTS

In the early morning hours of February 2, 2019, then-Master Corporal James MacColl of the Wilmington Police Department was on duty when he heard a call over the radio for an armed carjacking in progress in the City of Wilmington.¹¹ As he drove to the call's location, MacColl located a vehicle that matched the description of the stolen vehicle being driven through the city by two young men.¹² He also noticed a second car following closely behind.¹³ The passenger of the second car, carjacking victim Quinette Brown, flagged MacColl down to alert him to her stolen vehicle.¹⁴ MacColl initiated a traffic stop.¹⁵ Shortly after stopping, the driver of the stolen vehicle, Yahim Harris, exited the driver's seat and began running into a nearby alleyway.¹⁶ Under the belief that that object was a firearm, MacColl deployed his departmentally issued firearm and shot at Harris four times, hitting him twice.¹⁷ Harris and his juvenile co-defendant was subsequently arrested and charged for the armed carjacking.¹⁸

¹¹ A75.

¹² A75.

¹³ A312-A313.

¹⁴ A312-A313.

¹⁵ A76.

¹⁶ A76.

¹⁷ A51.

¹⁸ A340, A433.

The WPD Internal Investigation

Pursuant to Delaware law, OPS launched an internal investigation into the on-duty shooting.¹⁹ As part of the investigation, MacColl submitted his firearm to the Evidence Detection Unit (“EDU”) of WPD.²⁰ The firearm, along with the projectiles and casings found at the scene, were submitted for comparison to the Delaware State Police (“DSP”).²¹ DSP’s Senior Toolmark Examiner Stephen Deady discovered a discrepancy between the evidence, concluding that most of the projectiles and casings could not have been fired from the barrel of MacColl’s firearm.²²

MacColl’s Statements to OPS

MacColl was interviewed by OPS two times –May 30, 2019 and January 27, 2020.²³ Before giving these statements, he was given a WPD Rights of Officers Under Investigation Form.²⁴ The form stated that MacColl did not have the right to remain silent and that any refusal to answer questions would be subject to disciplinary action.²⁵ The form also said that any admissions MacColl made would not be used against him in a subsequent criminal proceeding.²⁶ Following the

¹⁹ A492.

²⁰ A116-A117.

²¹ A401.

²² A181-A182.

²³ A293-A294, A490.

²⁴ See Exhibit B.

²⁵ *Id.*

²⁶ *Id.*

shooting investigation, MacColl's use of deadly force was deemed justified by the Delaware Department of Justice ("DDOJ").²⁷

The DDOJ's Criminal Investigation Into MacColl

On February 28, 2020, Deputy Attorney General Timothy Maguire, who was prosecuting the armed carjacking case of Harris, subpoenaed MacColl's OPS statements.²⁸ Maguire filed a Notice of Nolle Prosequi in Harris's case on March 3, 2020, citing the DDOJ's belief that MacColl was not truthful in his statements regarding the barrel of his firearm.²⁹ Maguire or another member of the DDOJ forwarded the OPS statements to their Division of Civil Rights and Public Trust, who then indicted MacColl in this matter.

²⁷ A51.

²⁸ A430.

²⁹ A430, A432.

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING MACCOLL’S MOTION TO DISMISS THE INDICTMENT AND THE MOTION IN LIMINE TO EXCLUDE EVIDENCE.

A. Question Presented

Whether under the Fifth and Fourteenth Amendments of the United States Constitution, Article I § 7 of the Delaware Constitution, *Garrity v. New Jersey*³⁰, and 11 *Del. C.* § 9200(c)(12), the trial court erred in denying MacColl’s Motion to Dismiss the Indictment, or alternatively, in denying the Motion in Limine to Exclude Evidence?³¹

B. Standard and Scope of Review

The standard for reviewing a trial court’s denial of a Motion to Dismiss and a Motion in Limine to Exclude Evidence is abuse of discretion.³² It is considered an abuse of discretion when a court “exceeds the bounds of reason in view of the circumstances or so ignored recognized rules of law or practice” that it produces injustice.³³ If this Court finds error or abuse of discretion, then it must determine whether the errors constituted significant prejudice so as to have denied MacColl a

³⁰ 385 U.S. 493 (1967).

³¹ Issue preserved A2 at DI 10-11.

³² *State v. Hazelton*, 178 A.3d 1145, 1148 (Del. 2018) (quoting *State v. Fell*, 1993 WL 61699 at *1 (Del. Feb. 19, 1993)).

³³ *Id.* (quoting *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994) (quoting *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 571 (Del. 1988))).

fair trial.³⁴ Whether MacColl’s constitutional rights were infringed raises a question of law that this Court reviews *de novo*.³⁵

C. Argument

i. MacColl’s OPS statements were compelled by a threat of disciplinary action and are therefore protected under *Garrity*.

Statements by police officers to their superiors made only as an alternative to being fired are products of coercion.³⁶ Under federal and state law, individuals have the right to admit, deny, or refuse to answer questions by law enforcement.³⁷ “The option to lose [one’s] means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent.”³⁸ As public employees, police officers cannot be placed between the “rock” of self-incrimination and the “whirlpool” of potential job loss.³⁹

The issue is not whether MacColl lied or whether the State alleged that MacColl lied. Even if MacColl had lied, *Garrity* would still apply. In reaching its conclusion, the trial court incorrectly categorized MacColl’s statements as perjury committed during a government investigation.⁴⁰ Police officers being compelled to

³⁴ *Edwards v. State*, 925 A.2d 1281, 1284 (Del. 2007).

³⁵ *McGriff v. State*, 781 A.2d 534, 537 (Del. 2001).

³⁶ *Garrity v. New Jersey*, 385 U.S. 493 (1967).

³⁷ See U.S. Const. amend. V; U.S. Const. amend. XIV; *Garrity*, 385 U.S. at 496 (citing *Lisenba v. California*, 314 U.S. 219 (1941)).

³⁸ *Garrity* at 497.

³⁹ *Id.*

⁴⁰ Exhibit A at 10-11.

provide statements to the internal affairs offices of their department is not the same as witnesses providing sworn testimony during a government investigation. Such instances are not subject to *Garrity*. *Garrity* contemplated the question of “whether the accused was deprived of his ‘free choice to admit, to deny, or to refuse to answer.’”⁴¹ It did not hinge on a fact-finding mission to determine whether an admission or denial was truthful. Nor did it empower prosecutors to make the determination of whether an officer is protected by *Garrity*. Under this rationale, the State is free to use the compelled statements of police officers against them upon a mere allegation of falsity. This causes *Garrity* to be functionally inoperable.

Many of the cases cited by the trial court are distinguishable. Those officers were informed that they could be subject to prosecution for providing a false statement.⁴² Of course WPD was seeking the truth from MacColl. They did not, however, inform MacColl that if they believed he was lying that his statement could be subject to criminal prosecution.

ii. MacColl has standing under LEOBOR.

The trial court held that MacColl did not have standing to assert his rights under LEOBOR due to a lack of redressability. A party must establish standing to

⁴¹ 496 citing *Lisenba*, 314 U.S. at 241.

⁴² See *Fraternal Ord. of Police, Lodge No. 5 v. City of Philadelphia*, 859 F.2d 276, 281 (3d Cir. 1988)

invoke the jurisdiction of a court.⁴³ Standing is proven through an injury in fact, connection between the injury and the challenged action, and the ability for a court to redress the party's injury through the requested action.⁴⁴ Issues of redressability focus on the specific relief being requested by the complaining party.⁴⁵

Delaware law expressly provides that all records produced during a police department's internal investigation, such as MacColl's OPS statements, "shall be and remain confidential."⁴⁶ What LEOBOR lacks, according to the trial court, is a proscribed remedy for attempts by criminal prosecutors to admit and/or utilize confidential information. Here, the specific relief MacColl requested relating to the DDOJ's use and prosecutorial admission of the OPS statements was either dismissal of the indictment or exclusion from evidence at trial. Whether or not the remedies were enumerated into state law, these remedies would redress the injury caused by the State, thus establishing redressability.

iii. Admission of the OPS statements deprived MacColl of a fair trial.

The trial court's decision to allow the prosecution to proceed and admit the OPS statements exceeded the bounds of reason. *Garrity* and LEOBOR are intended to recognize the constitutional rights of police officers, not stifle them. MacColl's

⁴³ *Lujan v. Defenders of Wildlife, et. al.*, 504 U.S. 555 (1992); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See 11 *Del. C.* § 9200(c)(12).

OPS statements were confidential compelled testimony made under the threat of termination. These statements were the central pieces of the State's case.⁴⁷ Therefore, allowing the statements to be played for the jury violated MacColl's constitutional right to a fair trial under the Fifth and Fourteenth Amendments of the United States Constitution and Art. I § 7 of the Delaware Constitution and caused him prejudice.

⁴⁷ A54-56, A516-A517.

CONCLUSION

Based on the facts and legal authorities set forth above, Appellant James MacColl respectfully requests that this Honorable Court reverse his convictions and remand for a new trial.

Respectfully submitted,

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