



IN THE SUPREME COURT OF THE STATE OF DELAWARE

KLINE VALENTIN,	:
Defendant Below,	: No. 489, 2012
Appellant,	:
	: COURT BELOW
	: The Superior Court
v.	: of the State Of Delaware,
	: in and for Sussex County
STATE OF DELAWARE	: Case # 1202002945
Plaintiff Below,	:
Appellee.	:

APPELLANT' S OPENING BRIEF


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NATURE OF PROCEEDINGS

On February 3, 2012, Kline Valentin was arrested on fourteen charges: a felony, Disregarding a Police Officer Signal; eight (8) misdemeanors: Possession of Drug Paraphernalia (2 counts), Possession of Marijuana, Endangering the Welfare of a Child, Resisting Arrest, Reckless Driving, Failure to have Insurance, and Enter After Hours on Division Lands, and five (5) motor vehicle violations: Failure to Signal (2), Failure to Stop at a Stop Sign, Failure to Remain Stopped, and Speeding. Defense counsel filed a Motion in Limine on August 9th, 2012 and prior to trial, the three drug charges were dismissed along with a Resisting Arrest.

Trial was held. After the presentation of the evidence, the Court dismissed the Endangering the Welfare of a Child charge, and the State nolle prossed the Failure to Have Insurance and a Failure to Remain Stopped. Seven charges remained for submission to the jury: Failure to Stop at the Command of a Police Officer, Reckless Driving, Speeding, Failure to Signal (2 counts), Failure to Stop at a Stop Sign, and Enter After Hours on Division Lands. The jury convicted Valentin of all of the charges except Failure to Signal. Valentin timely filed a Notice of Appeal on September 5, 2012.

SUMMARY OF ARGUMENT

- I. THE TRIAL COURT'S DETERMINATION THAT DEFENDANT WAS NOT ENTITLED TO THE PRIOR RECORDED STATEMENTS OF THE TESTIFYING OFFICER IN RESPONSE TO HIS REQUEST FOR DISCOVERY AND IN A REQUEST AT TRIAL AFTER THE OFFICER'S TESTIMONY WAS A VIOLATION OF THE DISCOVERY RULES AND THE JENCKS RULE THAT PREJUDICED THE DEFENDANT'S SUBSTANTIAL TRIAL RIGHTS.

STATEMENT OF FACTS

On February 3rd, 2012, Kline Valentin was charged with fourteen(14) offenses relating to his encounter with a nonmarked police vehicle operated by Division of Natural Resources and Environmental Control (DNREC) officers: a felony, Disregarding a Police Officer Signal; eight (8) misdemeanors: Possession of Drug Paraphernalia (2 counts), Possession of Marijuana, Endangering the Welfare of a Child, Resisting Arrest, Reckless Driving, Failure to have Insurance, and Enter After Hours on Division Lands, and five (5) motor vehicle violations: Failure to Signal (2), Failure to Stop at a Stop Sign, Failure to Remain Stopped, and Speeding.

On March 13th, 2012, Defense counsel filed a Request for Discovery; the State responded on June 4, 2012. (Ai Entry 2)

On August 10th, Counsel filed a Motion in Limine to exclude evidence of the drug charges because the State had failed to provide any toxicology results and failure to properly identify an expert witness with regard to the charges. (Aii Entry 15) At hearing immediately prior to trial, the Motion was resolved in Valentin's favor; the drug charges were dismissed and any mention of them excluded. The State also dismissed the Resisting Arrest charge. (Aii Entry 17)

The State first called Sgt. Nicholas Couch in its case-in-chief. (A1-A89) He testified that during essentially his entire approach and pursuit of Valentin, he was speaking with KENTCOM

dispatch and advising them of what was going on. (A16; A19 11.20-23; A20 11.1-7; A32 11.21-23; A38 11.23 - A40 11.1-4) Those statements would have been recorded by KENTCOM. (A45 11.7-15) After Cpl. Couch testified, Counsel requested those statements from the DAG, who advised that he did not have them. Counsel cross-examined Couch, and brought her request and the absence of the documentation of the prior statements to the Court's attention. (A47- A50) The State advised that it did not request KENTCOM records because Defense did not specifically ask for them prior to trial. (A49 11.6 -17) Defense counsel showed the Court the discovery requests for disclosure of statements, interviews, reports or other information relating to the credibility of any prosecution witness and for statements pursuant to Jencks v. U.S. and Superior Court Rule 26.2 at Request Numbers 19 and 20. In its written response, the State asserted that any such records would be provided when received. The Court ruled that the Defense was not entitled to the statement because it was not covered under Jencks and was not a statement within the meaning of the discovery request. (A55 -A58)

The State also presented the testimony of Sgt. Gavin Davis. (A59 -A85) Valentin's testified in his own defense. (A86- A116) At the conclusion of the trial, the jury convicted Valentin of Failure to Stop at the Command of a Police Officer, Reckless Driving, Speeding, Failure to Stop at a Stop Sign, and Enter After Hours on Division Lands. (Aii Entry 21)

ARGUMENT

THE TRIAL COURT'S DETERMINATION THAT DEFENDANT WAS NOT ENTITLED TO THE PRIOR RECORDED STATEMENTS OF THE TESTIFYING OFFICER IN RESPONSE TO HIS REQUEST FOR DISCOVERY AND IN A REQUEST AT TRIAL AFTER THE OFFICER'S TESTIMONY WAS A VIOLATION OF THE DISCOVERY RULES AND THE JENCKS RULE THAT PREJUDICED THE DEFENDANT'S SUBSTANTIAL TRIAL RIGHTS.

Question Presented. Whether the Defendant was entitled to the prior recorded statements of testifying DNREC Officer Nick Couch, and the State's failure to provide the statements at or prior to trial prejudiced the Defendant's trial rights? This issue was raised in a timely manner before the Court during the trial when counsel requested the prior statement of the officer after his testimony. (A47 -A50)

Scope of Review. This Court reviews a trial judge's application of the discovery rules for an abuse of discretion and will only reverse where the substantial rights of an accused are prejudicially affected. Fuller v. State, 922 A.2d 415 (Del. 2007) citing Hopkins v. State, 893 A.2d 922, 926 (Del. 2006) quoting Secrest v. State, 679 A.2d 58, 63 (Del. 1996). Additionally, violations of the Jenck's Rule are reviewed for harmless error. Lance v. State, 600 A.2d 337, 342 (Del. 1991).

Merits of Argument. The State's account of the encounter and pursuit of the Defendant, Kline Valentin, are based solely on testimonial evidence of two (2) DNREC officers. So, the credibility of those officers was essential to the jury's determination of the facts, and the Defendant's best opportunity to defend the charges was to challenge the officers veracity and recollection in cross-examination of those officers.

In this case, DNREC officer Cpl. Nick Couch testified first for the State. He recounted his version of the events of the night of February 3, 2012, when he and Sgt. Gavin Davis encountered and pursued Valentin's vehicle from Horsey Pond into a neighboring housing development. During his testimony, Cpl. Couch revealed that he was orally giving statements to KENTCOM Dispatch, during almost the entire encounter. He understood those statements to be recorded and maintained by KENTCOM. His play-by-play conversation with dispatch was not mentioned in the State's response to the Defense's Request for Discovery prior to trial. Nor, was it provided to the Defense at trial, when requested.

When the State's failure to provide these statements prior to trial and at trial was brought to the trial court's attention, the Court first undertook an analysis of whether the Defense was entitled to the statements. The Defense asserted that Valentin is immediately entitled to the statements, which are maintained by the State, pursuant to Jencks, but also was entitled prior thereto in

response to discovery request numbers 19 and 20:

19. Disclosure of statements, interviews, reports or other information relating to the credibility of any prosecution witness, including but not limited to inconsistent statements, reports or prior testimony; and

20. An opportunity pursuant to Jencks v. U.S. 353 U.S. 657 (1957) and Superior Court C[riminal] Rule 26.2 to review reports and statements, whether oral, written or recorded, made by persons who will testify at trial, regardless of whether the individual used the statements or report to prepare for examination.

The State responded to both requests the same: Any such records will be provided when received. Then, at trial and contrary to its written response, it argued that it did not request the dispatch transmissions and that the Defense could have subpoenaed them or requested that the State do so.

After analyzing the applicable requests and contrasting them with a request that pertained to DUI cases, the Court found that the requests were not specific enough to put the state on notice that the KENTCOM recordings were sought and further ruled that the KENTCOM recordings were not statements within the meaning of the discovery request. With regard to the Jencks request, the Court ruled that the Jencks Rule would not include such recordings.

An abuse of discretion occurs "a court has exceeded the bounds of reason in view of the circumstance or so ignored recognized rules of practice to produce injustice." Harper v. State, 970 A.2d 199, 201 (Del. 2009). The Delaware Supreme Court in Hooks v. State, 416 A.2d 189, 200 (Del. 1980) expressly approved and adopted the

Jencks Rule, now embodied in Super. Court Crim. Rule 26.2, which requires the production of certain statements and reports of a witness including:

- (1) a written statement made by said witness and signed or otherwise adopted or approved by him;
- (2) a stenographic, mechanical, electrical or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or
- (3) a statement, however taken or recorded, or a transcription therefor, if any, made by said witness to a grand jury.

The KENTCOM statement is expressly described within Rule 26.2 in the second definition of a statement; it was a recording of an oral statement that was made contemporaneous with the making of the statement. Further it was maintained by the State's dispatch system. Defense counsel made the request for the statement in discovery and in trial from the State after the officer testified on direct pursuant to Jencks. Upon being informed that the State did not have the statement, Defense counsel brought the request to the attention of the Court.

The trial court's summary analysis that the State was not required to produce the statement is contrary to the explicit language and intent of the Jencks Rule. And, from that decision flowed prejudice to the Defendant. First and foremost, the Defendant was denied a fair trial, where he could use the live narration of the incident that he was entitled to and cross-examine

and possibly impeach and contradict the testimony of both Cpl. Couch and Sgt. Davis. Secondly, Superior Court Criminal Rule 26.2 imposes sanctions on the party that fails to produce required statements: to declare a mistrial if justice so requires or to strike the witness' testimony and proceed with trial. The court's ruling as to Defendant's entitlement to the KENTCOM statement made remedial measures during the trial unavailable. Defendant could not move to strike Officer Couch's testimony or move for a mistrial. Instead, as a result of the violation of the Jencks and Discovery Rules at Super. Ct. Crim. R. 16 and 26.2, Cpl. Couch's testimony was regarded and considered by the jury as evidence against Valentin.

In this case, the State cannot argue that the allowance of the officer's testimony was harmless error because in performing such analysis, a reviewing court must consider both the importance of the error and strength of other evidence at trial. Van Arsdall v. State, 524 A.2d 3, 10 (Del. 1987). A review of the statement itself is necessary to conduct this analysis. Lance v. State, supra. However, the statement was not produced by the State so not reviewed by the trial Court. So, just as in Lance, this Court can not speculate on how the unknown, non-disclosed statement could have been used by Defense counsel at trial in order to complete the required analysis. Id.

CONCLUSION

Based on the foregoing argument, Defendant request this Honorable Court find that he was entitled to KENTCOM statements and that the State's failure to provide them in response to discovery or at trial was a violation of the Jencks Rule that substantially prejudiced his rights at trial.