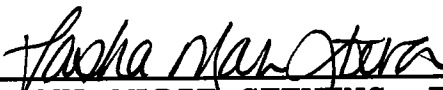


IN THE SUPREME COURT OF THE STATE OF DELAWARE

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 REPLY BRIEF


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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.

Merits of Argument. The Discovery Request at Paragraph 19 requests "statements or other information" that relate to the credibility of the prosecution witness to include inconsistent statements. The word "statement" is not specifically defined by the Discovery Request and its use, in and of itself, presents no ambiguity. It then, should be understood in its usual and ordinary meaning. See generally City Investing Co. Liquidating Trust v. Continental Casual Co., 624 A.2d 1191, 1198 (Del. 1993). Webster's WordNet online dictionary offers the ordinary meaning of "statement": "a message that is stated or declare; a communication (oral or written) setting forth particulars or facts, etc." The meaning consistent therewith is applicable and appropriate.

The trial court's attempt to otherwise define a statement to preclude the communication between the State's testifying witness, Cpl. Couch, and KENTCOM dispatch, which was made contemporaneous with the pursuit of Defendant and which set forth particulars and facts relating to the pursuit is an abuse of discretion. The Court chose to re-define "statement" as used in the discovery request so as to exclude dispatch records because it was concerned with

creating caselaw that would require review of dispatch records for every traffic stop for inconsistent statements. However, Brady already mandates the State disclose exculpatory evidence in its control and/or possession, and honoring that obligation requires, the State to at least inquire into the contents of all of the evidence in its possession, if not to conduct a full review to determine what a Defendant is entitled to under Brady and other applicable caselaw.

Further, Super. Ct. Crim. R. 16(d)(3)(B) requires parties served with Discovery requests either to comply or to specify any objection. The State lodged no such objection to the requests at Paragraphs 19 and 20, and the latent objections presented at trial and raised sua sponte by the Court should be rejected and considered waived, with proper sanctions assessed against the State.

Unlike the Defendant's discovery request itself, Super. Ct. Crim. R. 26.2 does specifically define the term "statement". The KENTCOM Dispatch records fall squarely within that definition. The State relies upon persuasive authority to support its position: the Ninth Circuit's ruling in United States v. Bobadilla-Lopez, 954 F.2d 519 (1992), that radio transmissions were not Jenck's material. However, the Ninth Circuit explained that their holding in Bobadilla-Lopez was a narrow one, and it acknowledged that the recordings may have been discoverable pursuant to Rule 16 discovery. Id. at 523. However in that case, the defense attorney did not

request them until they were destroyed, which he was aware of and which likely for the purpose of preventing the agent that made the recording from testifying. Id. In his Dissent, Circuit Judge Reinhardt, provides a sometimes abrasive, but thorough, practical, and historical basis to reject the Majority's ruling, including with regard to the definition of a statement, an in-depth exercise on statutory interpretation and plain language that aptly supports Kline's position. Id. at 523-34. Further, the State admits that several other jurisdictions have determined that dispatch tapes and 911 calls are discoverable and also may be subject to disclosure under Jencks and Brady. See United States v. Johnson, 2008 WL 474078 (E.D. Mich.) and United States v. Florack, 155 F.R.D. 49, 55 n.2 (W.D. N.Y. 1994).

The State requested and received the KENTCOM dispatch records after the Defendant filed its Opening Brief, and requested Defendant's position on expanding the record. Having not received or reviewed the recording, Counsel opposed. Now the State argues that Defendant did not ever really want "to know the contents of the recording." Defendant wanted to know the contents of the recording at the time when it mattered most—prior to and/or during trial and continued to want to know the contents even thereafter, hence his filing of the appeal.

In Lance v. State, once this Court determined that the State violated Jencks by failing to produce evidence, the matter was

remanded the lower court to conduct harmless error analysis. In so doing, the trial Court was required to consider the importance of the error and the strength of the other evidence presented at trial to determine whether the error may have affected the judgment. Id. at 342 citing Van Arsdall v. State, 424 A.2d 3, 10 (1987).

Should this court undertake review of the evidence at this stage, Defendant submits that he was substantially prejudiced in trial. First, the State's violation of Super Ct. Crim. R. 26.2 required Sgt. Nick Couch's testimony to be stricken. Then, Defendant's cross-examination of both officers was prejudiced. Officer Couch testified that he believed he engaged his siren from the time he left Irene Drive all the way down through Meadowbrooke. Corporal Davis concurred that as they entered the housing development, the siren was activated. However, there were several instances where Sergeant Couch is communicating with dispatch after he indicates that he is on Route 24 and in the Hollywoods Development and no sirens are heard. Additionally, neither does the recording contain a voice yelling "Police, Stop," during the pursuit as Cpl. Davis claimed that he was doing when he testified at trial. Since the State's case rested on the recollection and credibility of the DNREC Officers, the exculpatory nature of this recording was essential to the Defense.

Further, disclosure of the KENTCOM statement that could be use to impeach the testimony of the witnesses was likely mandated by

Brady. See Riley v. Taylor, 271 F.3d 261, 301 (3rd Cir. 2001) citing Kyles v. Whitley, 514 U.S. 419, 445 (1995). And, the State's suppression of such evidence, whether the result of negligence or bad faith, when it deals with the credibility of a witness whose testimony may be determinative of guilt or innocence, requires a new trial. Giglio v. United States, 405 U.S. 150 (1972).

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 and requires reversal of his conviction.