



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAYMOND BLAKE, )  
 )  
 Defendant-Below, )  
 Appellant )  
 ) NO. 282, 2012  
 v. )  
 )  
 )  
 STATE OF DELAWARE )  
 )  
 Plaintiff-Below, )  
 Appellee. )

APPELLANT'S REPLY BRIEF

ON APPEAL FROM THE SUPERIOR COURT IN AND OF NEW CASTLE  
COUNTY

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DATE: October 10, 2012



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I. **BLAKE'S CONVICTIONS OF TRAFFICKING IN COCAINE AND TRAFFICKING IN HEROIN VIOLATED THE DOCTRINE OF THE DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES AND DELAWARE CONSTITUTIONS AS HE HAD ALREADY BEEN CONVICTED OF TWO COUNTS OF THE LESSER INCLUDED OFFENSE OF POSSESSION BASED ON THE SAME CONDUCT.**

The State concedes that Blake's sentences for both of the possessions and traffickings violate the principles of double jeopardy. Resp.Br. at 11-12. Yet, it offers the erroneous remedy that the sentences for his possession convictions should be vacated and that his trafficking convictions that were obtained at a subsequent trial should stand. Resp.Br. at 11-12. This proposed remedy is erroneous because the protection of double jeopardy not only forbids cumulative punishment it **forbids successive prosecution** "for a greater and lesser included offense." *Brown v. Ohio*, 432 U.S. 161, 169 (1977). "Where the judge is forbidden to impose cumulative punishment for two crimes at the end of a single proceeding, the prosecutor is forbidden to strive for the same result in successive proceedings." *Brown*, 432 U.S. at 166. Thus, once Blake was convicted of the two lesser included offenses of possession at one proceeding, the State was forbidden from seeking a conviction of the two trafficking offenses at a subsequent trial. The State should not be permitted to obtain a conviction on a lesser offense then hope for a conviction

on the greater offense at a subsequent trial then have the lesser offenses vacated due to a double jeopardy violation.

While, the State concedes in the end that there was a double jeopardy violation, it first attempts to make a distinction between the possession and trafficking charges by claiming that the "possession convictions came about from charges of possession with the intent to deliver." Resp.Br. at 7-8. However, this Court has been clear that a defendant's "dual convictions of Trafficking in Cocaine and Possession of Cocaine subject[s] him to double jeopardy." *McRae v. State*, 2001 WL 1175349 \*4. In fact, in *McRae*, this Court found that the defendant's conviction of possession as a lesser included offense of PWITD along with the conviction of trafficking amounted to double jeopardy. *Id.*

Additionally, the State's reliance on *Blueford v. Arkansas*, is misplaced. 132 S. Ct. 2044, 2049, 182 L. Ed. 2d 937 (2012). At the first trial in that case, the jury was "hung." The foreman reported that it concluded that the State failed to prove the greater offense but that it could not reach a decision on the lesser offenses. This report did not amount to an actual verdict. Thus, retrial on the greater offense was proper. Here, however, the jury

did return an actual verdict on the lesser included offense of possession. Thus, *Blueford* does not apply.

The State's argument regarding collateral estoppel completely ignores Delaware's statute on the matter. The language of the statute is clear that prosecution of an offense is barred when "the defendant could have been convicted on the first prosecution." 11 *Del.C.* § 208 (1) (a). See *Banther v. State*, 884 A.2d 487, 492 (Del. 2005). It also prohibits prosecution when there has been a conviction of a crime that is "capable of supporting a judgment or a plea of guilty or *nolo contendere* accepted by the court." *Id.* Here, the convictions of possession would have supported a judgment or a plea of guilty or *nolo contendere* accepted by the court.

Because the subsequent prosecution in this case violated the principles of double jeopardy and Blake's two trafficking convictions and sentences must be vacated.

**CONCLUSION**

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that each of Blake's trafficking convictions must be reversed.

\s\ Nicole M. Walker  
Nicole M. Walker, Esquire

DATE: October 10, 2012