



IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM S. SELLS, III,)
) No. 429, 2013
 Defendant-Below,)
 Appellant,)
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff-Below,)
 Appellee.)

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF DELAWARE
IN AND FOR KENT COUNTY
IN FILE NO. IK11-10-0177 through IK11-10-0190, IK11-10-0260, PK11-10-0198
through PK11-10-0204, and PK11-10-0262, and ID Number 1108023648
Judge Robert B. Young

REPLY BRIEF OF APPELLANT WILLIAM S. SELLS, III

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DATE: January 21, 2014

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ARGUMENT

I. The Trial Judge's denial of Appellant's motion to sever was an abuse of discretion.

In its Answering Brief, the State takes the position that Appellant has waived the issue of the trial judge's abuse of discretion in denying Appellant's motion to sever by failing to brief the issue. This issue is briefed in detail in Appellant's Opening Brief. Appellant's argument and the resulting prejudice arising from denial of the motion are both clear. The trial judge was similarly clear in his decision on Appellant's motion to sever. Applying the factors adopted by the courts in U.S. v. Butler, 611 F.2d 1066 (5th Cir. 1980) and State v. Harris, 1989 Del. Super. LEXIS 237 (Del. Super. Ct. May 11, 1989), the trial court found that the Appellant had established each of the factors. (A-15). Nonetheless, Appellant's motion was denied based on an assumption that co-defendant Grimes would testify. At the time of his decision, the trial judge had to consider both Grime's signing of an exhibit stating he did not intend to testify at the scheduled joint trial, and his in court statement "I understand now that I would have to testify, so it that's what it is, then that's what it will be." (A-54). The court's abuse of discretion lies in the assumption that Grimes would testify despite the evidence otherwise and the substantial prejudice to the Appellant should Grime's not testify;

an outcome that should have been anticipated.

The result of the trial court's denial of Appellant's motion to sever resulted in substantial injustice. The error cannot be categorized as harmless. In its Answering Brief, the State argues that "there was other incriminating evidence that Sells was in possession of money recently stolen in the bank robbery, and Sells told two people he had committed a bank robbery." (State's Answering Brief at 21). This argument only further illustrates the substantial injustice resulting from the denial of Appellant's motion and his ability to present exculpatory evidence. The State's evidence against the Appellant was evidence of possession of the stolen money, which could have been acquired from a third-party, and hearsay. Grimes testimony would have cast substantial doubt on the State's case-in-chief. Grimes would have testified that he purchased the vehicle involved in the robbery from Sells; exculpatory evidence that would tend to show that Sells was not in possession of the vehicle at the time of the robbery. (A-13-14). Furthermore, Grimes would have completely exculpated Appellant by testifying that he was not present in the area or the vehicle at the time of the robbery. He would have identified an alternate suspect and offered unequivocal testimony that Sells could not have been involved in the robbery. Grimes would have placed himself in the driver's seat of the getaway vehicle and another man, not Sells, in the passenger

seat. Id. The substantial injustice resulting from the trial court's denial of Appellant's motion to sever was the resulting denial of his ability to present highly exculpatory evidence. The fact that the State relies on possession of the fruits of a crime and hearsay in light of the absence of physical evidence in arguing against substantial injustice only further illustrates the Appellant's legitimate need for the trial testimony of Grimes and the resulting substantial injustice when he was unable to do so.

II. The trial judge's ruling that Appellant's use of a preemptory challenge was in violation of Batson v. Kentucky was in error.

The trial judge's ruling with regard to Appellant's use of preemptory challenges under Batson cannot be characterized as "inconsequential." (State's Answering Brief at 26). Had Appellant been permitted to exercise preemptory challenges unimpeded by the trial court's erroneous ruling, a different juror would have been sitting in seat number 8. In light of the claim of error that has been made, a change to the character of the sitting jury cannot be deemed inconsequential.

In its Answering Brief, the State cannot even point to facts on the record to support a prima facie showing that preemptory challenges were exercised by the defense on the basis of race. As a preliminary matter, Appellant cannot be said to belong to an identifiable racial group. Whether he removed an African-American juror or a Caucasian juror, he was removing a juror of his race. With regard to the lack of a prima facie showing under Batson, there was no evidence of a pattern of racial discrimination, and no actual pattern of discrimination was noted by the trial judge. The trial court erroneously found a pattern by considering strikes exercised by Grimes as strikes exercised by the Appellant. (A-23).

CONCLUSION

For the foregoing reasons, the conviction of the Appellant should be reversed and the case remanded to the Superior Court for further proceedings.

Respectfully submitted,

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