



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

**RONALD LUTTRELL,** )  
 )  
**Defendant-Below,** )  
**Appellant** )  
 )  
**v.** ) **No. 488, 2013**  
 )  
 )  
 )  
**STATE OF DELAWARE** )  
 )  
**Plaintiff-Below,** )  
**Appellee.** )

**APPELLANT'S REPLY BRIEF**

**ON APPEAL FROM THE SUPERIOR COURT IN AND OF KENT  
COUNTY**

**Nicole M. Walker, Esquire [#4012]  
Office of the Public Defender  
Carvel State Building  
820 N. French St.  
Wilmington, Delaware 19801  
(302) 577-5121**

**Attorney for Appellant**

**DATE: February 11, 2014**



**TABLE OF CONTENTS**

TABLE OF CITATIONS ..... ii

ARGUMENT

**I. THE TRIAL COURT DENIED LUTTRELL HIS RIGHTS TO DUE PROCESS AND TO BE FREE FROM DOUBLE JEOPARDY WHEN IT DENIED HIS MOTION FOR A BILL OF PARTICULARS AND SENT THE INDICTMENT TO THE JURY WITHOUT CLARYIFYING WHICH ALLEGED OCCURRENCES WERE BEING CHARGED IN EACH OF THE COUNTS. ....1**

**II. IN THIS CREDIBILITY CASE, A POLICE OFFICER’S TESTIMONY THAT LUTTRELL’S ARREST WAS WARRANTED BASED ON HIS OPINION THAT LUTTRELL’S STATEMENT WAS INCONSISTENT AND THAT LUTTRELL FAILED TO PROVIDE SUFFICIENT PROOF IN SUPPORT OF HIS STATEMENT AMOUNTED TO IMPROPER VOUCHING FOR THE STATE’S CASE AND JEOPARDIZED THE FAIRNESS AND INTEGRITY OF LUTTRELL’S TRIAL.....3**

CONCLUSION..... 5

## TABLE OF CITATIONS

### Cases

<i>Barnett v. State</i> , 893 A.2d 556, 558-59 (Del. 2006).....	2
<i>Hardy v. State</i> , 962 A.2d 244 (Del. 2008).....	4
<i>Hassan-El v. State</i> , 911 A.2d 385 (Del. 2006) .....	3
<i>Kirkley v. State</i> , 41 A.3d 372 (Del. 2012) .....	4
<i>Miles v. State</i> , 2009 WL 4114385 (Del.).....	3
<i>Miller v. State</i> , 893 A.2d 937 (Del. 2006) .....	3
<i>Probst v. State</i> , 547 A.2d 114, 121 (Del. 1988) .....	1
<i>Stevens v. State</i> , 3 A.3d 1070 (Del. 2010) .....	3
<i>United States v. Beros</i> , 833 F.2d 455, 462 (3d Cir. 1987) .....	1
<i>Valentine v. Konteh</i> , 395 F.3d 626 (6th Cir. 2005) .....	2
<i>Waterman v. State</i> , 956 A.2d 1261 (Del. 2008) .....	3

### Rules

<i>D.R.E.</i> 404(b) .....	2
----------------------------	---

**I. THE TRIAL COURT DENIED LUTTRELL HIS RIGHTS TO DUE PROCESS AND TO BE FREE FROM DOUBLE JEOPARDY WHEN IT DENIED HIS MOTION FOR A BILL OF PARTICULARS AND SENT THE INDICTMENT TO THE JURY WITHOUT CLARIFYING WHICH ALLEGED OCCURRENCES WERE BEING CHARGED IN EACH OF THE COUNTS.**

The State ignores the significant prejudice Luttrell suffered as a result of the trial court's denial of his request for a bill of particulars and its failure to provide clarification of the charges for the jury. Not only did the trial court deprive him of his due process right to properly defend himself, it created a genuine possibility of a guilty verdict by a jury that was not unanimous as to the alleged act which supported that verdict.

In addressing prejudice, the State attempts to direct this Court's attention away from the fundamental constitutional principle "that there be a conviction by a jury that is unanimous as to the defendant's specific illegal action." *Probst v. State*, 547 A.2d 114, 121 (Del. 1988) (citing *United States v. Beros*, 833 F.2d 455, 462 (3d Cir. 1987)). Here, each juror could have relied on facts different from those relied upon by other jurors in reaching his individual guilty vote. And, because no specific unanimity instruction was given, the potential for jury confusion was compounded. *Probst*, 547 A.2d at 121-122 (internal quotations omitted).

At the very least, the trial court's refusal to require the State to choose one act for each charge resulted in the same prejudice that results from the improper introduction of uncharged misconduct under *D.R.E.* 404(b). Here, the State presented "direct evidence, through the testimony of the alleged victim, that an attack occurred, [thus,] no evidential purpose is served by proof that the defendant committed other criminal acts of the same type." *Barnett v. State*, 893 A.2d 556, 558-59 (Del. 2006).

Because the State was not required to differentiate, Luttrell "could only successfully defend against some of the charges by effectively defending against all of the charges." *Valentine v. Konteh*, 395 F.3d 626, 634 (6th Cir. 2005). Because the State was not required to file a bill of particulars, there flowed from the trial court's decision a genuine possibility that Luttrell was convicted based on a non-unanimous verdict. Thus, his convictions must be reversed.

**II. IN THIS CREDIBILITY CASE, A POLICE OFFICER'S TESTIMONY THAT LUTTRELL'S ARREST WAS WARRANTED BASED ON HIS OPINION THAT LUTTRELL'S STATEMENT WAS INCONSISTENT AND THAT LUTTRELL FAILED TO PROVIDE SUFFICIENT PROOF IN SUPPORT OF HIS STATEMENT AMOUNTED TO IMPROPER VOUCHING FOR THE STATE'S CASE AND JEOPARDIZED THE FAIRNESS AND INTEGRITY OF LUTTRELL'S TRIAL.**

The State grasps at straws when it uses semantics in an unsuccessful attempt to support a claim that Wright's comments were not improper. The State claims that the comments were not improper vouching because he did not specifically state that the complainant, ("TF"), was telling the truth. Resp.Br. at 19. The bottom line is that the comments were an improper opinion by one witness about the credibility of another witness. It is settled law that such comments are improper.<sup>1</sup> This case was a contest between TF's allegations and Luttrell's denial. Thus, by undermining Luttrell's credibility, Wright necessarily bolstered TF's credibility.

---

<sup>1</sup> See *Stevens v. State*, 3 A.3d 1070 (Del. 2010) (reemphasizing the inadmissibility of the opinion of a police officer as to witness credibility); *Miles v. State*, 2009 WL 4114385\*2(Del.) (finding error to allow officer's statements about credibility to be presented to the jury); *Waterman v. State*, 956 A.2d 1261, 1264 (Del. 2008) ("experts may not usurp the jury's function by opining on a witness's credibility"); *Hassan-El v. State*, 911 A.2d 385 (Del. 2006) (finding error where 3507 statement was replete with officer's opinion as to the witness' truthfulness); *Miller v. State*, 893 A.2d 937 (Del. 2006) (holding that portions of 3507 statement containing police officer suggestions that defendant committed the crime should have been redacted).

The State admits that Wright's testimony was a characterization of Luttrell's statement but attempts to defend it by asserting that the characterization was an "an accurate observation" of Luttrell's statement. Resp.Br. at 19. Accuracy is not the standard as the jury was the only one entitled to draw conclusions based on an observation of the statement.

Contrary to the State's assertion, Wright's improper comments were plain error: credibility was central to the case; the belated allegations were made after TF was caught engaging in sexual misconduct with a 5-year-old girl; the only evidence of Luttrell's alleged misconduct came from TF; there were significant inconsistencies between TF's testimony and his statement; there were several weaknesses in TF's allegations as a whole; the vouching came from an officer who is cloaked in an aura of superiority; the officer arrested Luttrell because he did not believe him; the prosecutor referred to Wright's comments in closing; and no curative instruction was given.

In addition to the improper opinion on credibility, Wright's statement that he arrested Luttrell because he did not believe him "emasculated the constitutionally guaranteed presumption of innocence."<sup>2</sup> Thus, Luttrell's convictions must be reversed.

---

<sup>2</sup> *Kirkley v. State*, 41 A.3d 372, 378 (Del. 2012). See *Hardy v. State*, 962 A.2d 244, 247 (Del. 2008).



## **CONCLUSION**

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Luttrell's convictions should be reversed.

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

DATE: February 11, 2014