



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALLEXEA BLACKWELL,)
)
 Defendant Below,)
 Appellant,)
) No. 182, 2023
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

APPELLANT’S OPENING BRIEF

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

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DATE: October 23, 2023

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NATURE AND STAGE OF THE PROCEEDINGS

Allexea Blackwell (“Blackwell”) was charged as part of an 8 count indictment which included the following charges: two counts of State tax fraud, two counts of tampering with public records first degree, two counts of offering a false instrument for filing, one count of theft and one count of attempted theft. (A7).

A two-day jury trial commenced on May 23, 2023. Defense counsel made a motion in limine to dismiss the two counts of tampering with public records arguing that tax returns did not fall within the statute used to charge Blackwell. Counsel also made a motion in limine to exclude the State's introduction of evidence relating to Blackwell's 2018 tax return as the auditor involved did not testify at trial. Both motions were denied on the record. (*See* attached as Ex. A & B).

Blackwell was convicted on all counts. D.I.#49. Blackwell was sentenced to 6 years at Level 5 suspended for various levels of probation (*See* Sentence Order, attached as Ex. C).

Blackwell filed a timely notice of appeal. This is her opening brief in support of that appeal.

SUMMARY OF THE ARGUMENT

1. The trial court erred in denying Blackwell's Motion to Dismiss counts 3 and 4 of the indictment, tampering with public records. The court should have dismissed both counts of tampering with public records first degree because personal tax returns are not public records within the meaning of 11 *Del.C.* § 876. Therefore, Blackwell respectfully submits that the convictions for tampering with public records should be reversed.

2. The trial court erred in denying Blackwell's Motion in Limine to Exclude Evidence. The Trial Court improperly admitted into evidence, over defense counsel's objection, the documents exchanged between Blackwell and her auditor used to establish the charges linked to her 2018 tax return. By admitting the documents and statements between Blackwell and the 2018 auditor, a non-testifying witness, this violated Blackwell's Constitutional rights under the Confrontation Clause. Reversal is now required.

STATEMENT OF FACTS

In early February 2020, Allexea Blackwell, submitted her 2019 Delaware tax return. (A95). Blackwell's tax return was flagged because her itemized deductions, in the form of charitable contributions, exceeded fifty percent of her income. As a result the assigned auditor dispatched a letter requesting additional information pertaining to her charitable contributions. (A74). In response, Blackwell replied and submitted her M&T bank statements and a separate letter signed by a Brittney Santiago which detailed itemized donations with their corresponding check numbers, totalling approximately \$40,000. (A77-79).

Due to irregularities in the M&T bank statements that lead the auditor to believe the statements were false or fictitious. (A81). The auditor referred the matter to the special investigator in the Division of Revenue. (A84). During the auditing process, Blackwell cooperated and attempted to communicate with the auditor on numerous occasions.(A87-88). The investigator assigned to Blackwell's case subpoenaed her bank records from M&T bank. (A136).

Upon review of those records the investigator expanded his investigation to Blackwell's 2018 tax return. (A143). As a result, a subpoena was again sent to M&T bank to obtain copies of checks that were supplied to the auditor assigned to the 2019 tax return. (A147-A148). The investigator

reviewed check numbers and corresponding written checks that were sent to the auditor at the time Blackwell's 2018 tax return was reviewed. Although the auditor associated with this return failed to testify at Blackwell's trial, the documents were still made part of the record. (A152). Consequently, as a result of the investigation, Blackwell was arrested on September 16, 2021. (A67).

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING BLACKWELL'S MOTION TO DISMISS THE CHARGES OF TAMPERING WITH PUBLIC RECORDS.

Question Presented

Whether 11 *Del.C.* § 876, tampering with public records first degree, applies to personal tax returns? This question was preserved by a motion to dismiss. (A19).

Standard and Scope of Review

The standard and scope of review is for an abuse of discretion. *State v. Hazelton*, 178 A.3d 1145, 1148 (Del. 2018).

Argument

On the first day of trial, defense counsel moved to dismiss counts 3 and 4 of the indictment; tampering with public records first degree. Blackwell argued that in this instance, 11 *Del.C.* § 876 applies to internal records of the Division of Revenue and that tax returns do not fall within that classification. (A19). In response, the State advanced an overly broad reading of the statute to encompass essentially anyone who makes a false entry in or falsely alters any record or other written instrument filed. The State argued that as part of Blackwell's 2018 and 2019 tax return audits, she submitted records that were alleged to be false and altered, and these ultimately became part of the record of the Division of Revenue. (A21). The Court denied Blackwell's motion to dismiss. (A22).

The court should have dismissed both counts of tampering with public records first degree because personal tax returns are not public records within the meaning of 11 *Del.C.* § 876. See *Ochsner v. N.C. Dep't of Revenue*, 835 S.E.2d 491, 498 (N.C. 2019)(stating an individual taxpayer may request his own records under North Carolina General Statute § 105-259, but an individual's state income tax records are not "public records"[.]); *Goodale v. Bray*, 546 N.W.2d 212, 215 (Iowa 1996)(" [I]ndividual income tax returns are not public records"); *Wiggins v. McDevitt*, 473 A.2d 420, 424 (Me. 1984)(finding that only "portions of defendant's tax returns which reflect income resulting from the performance of his official duties in serving civil process" constitute public records).

The intent behind 11 *Del.C.* § 876 is to penalize criminal activity with respect to falsification of public records due to the great public importance of having official records free from error or destruction. The spirit of the offense is aimed at internal records in an effort to maintain accurate records in the public interest. An individual's tax return does not fall within that intention. An income tax return is not filed for the purpose for the Division Of Revenue's records but rather for the purpose of determining how much tax an individual owes or is owed to them.

Therefore, Blackwell respectfully submits that the convictions for tampering with public records should be reversed.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING BLACKWELL'S MOTION IN LIMINE TO EXCLUDE EVIDENCE.

Question Presented

Whether, the Trial Court improperly admitted into evidence documents related to Blackwell's 2018 income tax return audit, that were sent by and received by the auditor who was not available at trial for cross-examination or for authentication of the documents? This question was preserved by a motion in limine to exclude evidence. (A22).

Standard and Scope of Review

The standard and scope of review for a trial court's evidentiary ruling is abuse of discretion. *State v. Hazelton*, 178 A.3d at 1148. A claimed infringement of constitutional rights is reviewed *de novo*. *Flonnory v. State*, 893 A.2d 507, 515 (Del. 2006).

Argument

The Superior Court committed reversible error when, over the Defendant's strong objections, it allowed the admission of crucial evidence relating to Blackwell's charges from her 2018 income tax return.

Prior to the start of trial, Blackwell moved to exclude documents sent by and received by the auditor involved in her 2018 tax return, given that the auditor was not available for trial. (A22). Blackwell argued that without the testimony from the

auditor who personally handled the matter for the Division of Revenue, the documents could not be authenticated as no one would be able to testify when and how they were received and/or who sent them. Moreover, Blackwell made a confrontation clause challenge on the basis that the documents were hearsay and the auditor was not available to confront her and subject to cross examination. (A23). Instead, the State presented auditors from the Division of Revenue who were involved in Blackwell's 2019 tax return. The court denied Blackwell's motion to exclude the evidence. (A28).

During the State's case in chief, it called David Smith, an investigator from the Delaware Division of Revenue. (A127). Smith testified that as part of his investigation into Blackwell's 2019 tax return, he also reviewed Blackwell's 2018 return. (A143). The State sought to introduce the documents, including canceled checks, reviewed by Smith that were submitted by Blackwell to the original auditor, Patricia Thomas. (A160). Thomas was no longer employed by the Division Of Revenue and did not testify at trial. During Smith's testimony, the State moved to introduce a series of five checks submitted by Blackwell relating to her 2018 return audit. Defense counsel renewed the previous objection to these checks being admitted for the same reasons expressed during the pre-trial challenge, specifically that Thomas, the auditor who requested and who received

them, was not present to testify or subject to cross-examination. (A152). The court still allowed the evidence to come in. (A154).

The trial court erred in allowing the State to admit into evidence, over defense counsel's objection, the documents exchanged between Blackwell and her auditor used to establish the charges linked to her 2018 tax return. "Delaware Rule of Evidence 801(c) defines hearsay as a 'statement, other than one made by the declarant while testifying at the trial or hearing, offered for the truth of the matter asserted.'" *Sanabria v. State*, 974 A.2d 107,112 (Del. 2009). There is no hearsay exception that allows for the admission of these documents and correspondence. This hearsay, prejudicial statement should never have been allowed to be published to the jury.

The Court by admitting the documents and statements between Blackwell and Patricia Thomas, the 2018 auditor, a non-testifying witness, violates Blackwell's Constitutional rights under the Confrontation Clause. "In *Crawford v. Washington*, the United States Supreme Court held that in a criminal trial, the admission of hearsay evidence (i.e., an out-of-court statement offered to prove the truth of the matter asserted and not offered for some other permissible purpose) implicates the Confrontation Clause because the defendant does not have an opportunity to confront the out-of-court declarant. *Sanabria*, 974 A.2d at 117 citing *Crawford v. Washington*, 541 U.S. 36, 68 (2004). To permit other agents of the Division of Revenue who were not involved with Blackwell's 2018 audit to "spread before [the jury] damning

information that is not subject to cross-examination” abrogates both the rule against hearsay and Blackwell's Sixth Amendment right under the Confrontation Clause.” *Id.* at 120. The Confrontation Clause will be satisfied if the statements fall within a “firmly rooted” hearsay exception.” *Forest v. State*, 721 A.2d 1271, 1276 (Del. 1999) citing *Williamson v. State*, 707 A.2d 350, 354 (Del. 1998). There is no hearsay exception that allows testimony of a witness, not available because the prosecution failed to subpoena them for trial, where the Defendant has had no opportunity to cross examine them.

Since the evidence admitted was the only direct evidence related to Blackwell's 2018 income tax return charges, its contents cannot be considered harmless beyond a reasonable doubt. Thus, Blackwell respectfully submits that the convictions at bar should be reversed.

CONCLUSION

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

\s\ Santino Ceccotti
Santino Ceccotti, Esquire

DATE: October 23, 2023