



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARRELL COLEMAN,)
)
 Defendant-Below,)
 Appellant,)
)
 v.) No. 120, 2015
)
 STATE OF DELAWARE,)
)
 Plaintiff-Below,)
 Appellee.)

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

APPELLANT'S REPLY BRIEF

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DATE: November 13, 2015

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I. THE SUPERIOR COURT COMMITTED REVERSIBLE ERROR BY PERMITTING THE STATE TO RELY UPON 11 DEL.C. § 3507 TO INTRODUCE THE PRIOR OUT-OF-COURT STATEMENT FROM ITS CENTRAL WITNESS EVEN THOUGH THE STATE FAILED TO LAY THE PROPER FOUNDATION.

JR initially testified (1) that he spoke to the CAC about the last time he saw his dad; (2) and that he remembered playing soccer and getting ice cream with his dad and brother on the day at issue. (A-85-87). The State admits that when the prosecutor was given an opportunity to develop the foundation further, JR thereafter testified that (1) the last time he saw his dad was the day he played soccer; (2) he was driven to a gas station by his dad's friends; (3) he went back to his mom's house in his mom's car. (A-95-97). The Superior Court initially made the correct ruling in sustaining defense counsel's objection that the State failed to lay an appropriate foundation as JR's in court testimony did not sufficiently touch and concern the core substance from his out-of-court statements. (A-92-93). However, given that the materiality of JR's testimony did not change, it is mystifying that the Superior Court changed its earlier position and permitted the statement to come in.

The trial court's finding has several flaws. For one, it failed to appreciate the similitude between JR's testimony before and after the State was provided an opportunity to develop the foundation. Secondly, the trial court erroneously placed

great weight on JR remembering being at his mother's house on the evening in question. The additional testimony of being in his mother's car and sleeping in his mother's house has no relevance to the actual shooting JR perceived at 26th and Claymont on the night in question and the core substance of the CAC interview. In sum, nothing changed insofar as touching upon the events perceived, i.e. the shooting, that warranted admission of the out-of-court statements.

The State argues that it is "axiomatic that JR did not have to testify that he saw Coleman shoot his father to allow his CAC statement to that effect to be admitted pursuant to section 3507." Ans. Br. at 11. This contention is misplaced. This would be a much closer case had JR's testimony at the very least touched on the shooting he perceived. However, his testimony failed to come anywhere close to touching and concerning the core substance of his out-of-court statement which directly implicated Coleman. Instead, during direct examination, his testimony focused almost exclusively on portions of the interview that were used in an effort to make him feel comfortable in the CAC setting.

Even more troubling is that the State fails to accept the fact that for nearly Forty years this Court has held time and again that prior to the introduction of 3507 statements, the witness **must testify on direct examination as to the underlying events.**¹ This Court has been unequivocal in its holdings. Yet, in its answering

1 *Ray v. State*, 587 A.2d 439, 444 (Del. 1991); *Keys v. State*, 337 A.2d 18, 24 (Del. 1975).

brief, the State attempts to disavowal this requirement by citing prior decisions upholding the admission of 3507 statements by this Court where witnesses had limited recall due to amnesia. Ans. Br. at 13. See *Burke v. State*, 484 A.2d 490 (Del. 1984). The record does not present that situation here.

Finally, the State's case, as evidenced by its enumerated list, was primarily circumstantial as there was no physical evidence implicating Coleman. The out-of-court statement of its only witness to the shooting admitted through 11 *Del.C.* § 3507 linked Coleman to the charged crime. Its rather dubious of the State to argue that the error complained of is harmless beyond a reasonable doubt when the CAC interview was the only evidence in the record that puts the gun in Coleman's hand. *Blake v. State*, 3 A.3d 1077, 1083 (Del. 2010). Thus, the trial court's refusal to exclude the statements was reversible error.

CONCLUSION

Based on the reasons and authorities set forth herein, Coleman's convictions should be reversed.

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