
**IN THE SUPERIOR COURT, APPELLATE DIVISION
OF THE STATE OF NEW JERSEY**

THE STATE OF NEW JERSEY,

Essex County

Indictment # 12-09-02358

-against-

ALTARIQ COURSEY,

Appellate Division

Docket # A-2624-13 (T1)

Defendant-Appellant.

REPLY BRIEF FOR DEFENDANT-APPELLANT

SAT BELOW: (Essex County Superior Court)

Hon. Michael L. Ravin, J.S.C. (at trial and sentence)

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PRELIMINARY STATEMENT

Defendant-Appellant respectfully submits this Reply Brief in support of his appeal to this Court, and respectfully relies upon the Preliminary Statement set forth in his initial Brief. Defendant-Appellant only responds to the arguments made against Points I and III of his initial Brief, and relies upon the arguments contained in his initial Brief with respect to Points II, IV, and V.

PROCEDURAL HISTORY

Defendant-Appellant respectfully relies upon the procedural history of this case as set forth in his initial Brief.

STATEMENT OF FACTS

Defendant-Appellant has no additional facts to add in this Reply Brief, and respectfully relies upon the facts set forth in his initial Brief.

ARGUMENT

POINT I - DEFENDANT-APPELLANT DID NOT OPEN THE DOOR TO A CHANGE IN THE THEORY OF PROSECUTION (Raised Below)

The State argues that "it was defendant who opened the door to the possibility that it was someone else other than he who had access to apartment..." (Sb8). This argument is misplaced. The "opening the door" doctrine applies to evidence - not changes in theory of prosecution. That is the critical difference.

A defendant has a fundamental Sixth Amendment right to offer evidence that someone else committed the offense for which he is being tried. See Chambers v. Mississippi, 410 U.S. 284 (1973).

Defendant-Appellant's theory at trial was that someone else was responsible for possessing the drugs in question. That theory was supported by other evidence in the case, coming from not just defense witnesses but by State witnesses, who testified that Khalid Coursey was taken into custody by police at the house where the contraband was found. In introducing this evidence, and presenting his theory of defense, Defendant-Appellant in no way put forth the theory that he jointly possessed the drugs in question with Khalid Coursey. Had he put forth such an absurd theory of his own guilt, the State would perhaps have been justified in changing the theory of prosecution. However, this was not what happened.

Recognizing that the State's own evidence supported the theory of defense, the trial court then permitted the jury to consider a new theory of prosecution - joint possession. This permitted the jury to make a finding that even if the drugs did belong to Khalid Coursey, Defendant-Appellant's access to the house in question was sufficient to find him guilty of possession of drugs. This was error.

Because the State and the trial court unfairly changed the theory of prosecution and constructively amended the Indictment, this Court should reverse. Defendant-Appellant respectfully

relies upon the remainder of his arguments made in his initial Brief.

POINT III - DEFENDANT-APPELLANT'S CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL ARE PROPERLY RAISED ON DIRECT APPEAL BECAUSE THE RECORD IS SUFFICIENT FOR REVIEW

The State claims that Defendant-Appellant's claims of ineffective assistance of counsel are premature, and unripe for this Court's review. However, the State cites no authority for the proposition that ineffectiveness claims must be reviewed on collateral review and cannot be reviewed on direct appeal. In fact, there is no categorical rule that precludes direct appellate review of ineffective assistance of counsel claims. Rather, the general rule is that claims not raised on direct appeal may not be raised on collateral review unless the petitioner shows cause and prejudice. Massaro v. United States, 538 U.S. 500, 504 (2003).

Contrary to the State's position, the law is clear that claims of ineffective assistance of counsel may be properly raised on direct appeal. As the United States Supreme Court has conclusively held:

We do not hold that ineffective-assistance claims must be reserved for collateral review. There may be cases in which trial counsel's ineffectiveness is so apparent from the record that appellate counsel will consider it advisable to raise the issue on direct appeal. There may be instances, too, when obvious deficiencies in representation will be addressed by an appellate court sua sponte.

Massaro v. United States, supra at 508.

The State fails to adequately address the merits of Defendant-Appellant's ineffectiveness arguments, instead positing that Defendant-Appellant's claims are unripe because trial counsel has not had an opportunity to explain the reasoning for his actions and no evidence in the record exists by which to determine the rationale for trial counsel's actions. (Sb18-19).

This position is legally flawed. It is not for trial counsel to decide whether his or her actions did or did not constitute effective assistance, nor may a court simply rubber-stamp counsel's self-serving explanations for why he or she took or failed to take certain action. This Court decides whether counsel's actions were objectively reasonable, rather than rely upon the subjective belief of trial counsel or counsel for the Government. Strickland v. Washington, 466 U.S. 668 (1984).

The Government's position is factually flawed as well. The State makes no attempt to defend the actions of trial counsel because no defense can be made. Instead, the State attempts to minimize the devastating impact of trial counsel's failure to prepare his own witness and inspect evidence, forgetting that the Assistant Prosecutor who tried the case spent a considerable amount of time on summation arguing to the jury that the defense witnesses were incredible based upon this blunder. That Defendant-Appellant was acquitted of two charges is of no moment for this Court's

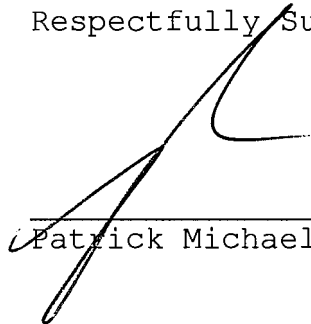
calculus. The question for this Court to consider is whether Defendant-Appellant was prejudiced. The record clearly demonstrates that trial counsel failed to prepare a defense - actions that are objectively unreasonable - and that failure had negative consequences.

CONCLUSION

Based upon the foregoing reasons and the reasons set forth in Defendant-Appellant's initial Brief, Defendant-Appellant urges this Court to reverse his convictions and grant him a new trial.

Dated: June 4, 2014

Respectfully Submitted,




Patrick Michael Megaro, Esq.

CERTIFICATE OF SERVICE

I hereby certify that 2 copies of the foregoing Reply Brief were served upon the following parties on June 4, 2014, 2014, via United States Postal Service:

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