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Court of Appeals
Division II
State of Washington
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NO. 53566-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JOHNNY ROACH,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable J. Andrew Toynbee, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENTS IN REPLY¹

1. BECAUSE THE PROSECUTION’S DID NOT RELY ON ROACH’S WAIVER IN A MANNER THAT PREJUDICE ITS ABILITY TO PROSECUTE ROACH, IT FAILED TO SHOW DETRIMENTAL RELIANCE.

The State argues the trial court correctly denied Roach’s request to revoke his prior waiver of spousal privilege under RCW 5.60.060(1) based on “detrimental reliance.” The State claims this is so because it relied on Roach’s waiver to negotiate a plea deal with another prisoner, Seirah Daniels, in a separate matter. Brief of Respondent (BOR) at 29-30. The State is wrong because any detrimental reliance claimed must pertain to the State’s ability to prosecute Roach, not another defendant in another matter. This Court should therefore reverse and remand for a new trial.

As noted in the Brief of Appellant (BOA), although there are no cases directly on point, the concept of “detrimental reliance” has been applied in criminal proceedings in the context of plea offers and agreements. BOA at 22 (citing State v. Budge, 125 Wn. App. 341, 345, 104 P.3d 714 (2005) (“detrimental reliance” by a criminal defendant, if proved, can preclude the prosecution from withdrawing a plea offer). In Budge, this Court held that to establish ‘detrimental reliance,’ Budge had to show “he

¹ This brief replies to the State’s responsive argument with the regard to the ‘spousal privilege’ issue. Roach rests on the briefing already submitted for the other issues raised.

detrimentally relied on the State's proposal in such a manner that a fair trial is no longer possible.” Id. at 347 (citing Division Three’s decision in State v. Bogart, 57 Wn. App. 353, 357, 788 P.2d 14 (1990)). In other words, the adverse impact of any reliance must pertain to the controversy between the parties rather than a collateral matter. Applying Budge here shows the trial court erred in refusing to allow Roach to revoke the prior waiver.

Here, the prosecution did not assert it relied on the waiver in a manner that prejudiced its ability to prosecute Roach. Instead the State asserted only that it relied on Roach’s waiver to reach a plea agreement with another defendant in a separate case. RP 314-15. The State makes the same argument on appeal. BOR at 29.

Relying on a criminal defendant’s waiver of a right in one case to negotiate a resolution in another case against a different defendant does not establish detrimental reliance under Budge. Allowing Roach to revoke his prior waiver simply put the parties back in the positions they held prior to the waiver. Although Roach’s waiver may have motivated the prosecution to negotiate a plea deal with Daniels, Roach is not responsible for how the prosecution chooses to proceed in another matter.

The States fails to address Budge whatsoever. Instead it relies almost exclusively on Bogart for its ‘detrimental reliance’ argument. BOR at 27-29. The State’s reliance on Bogart is misplaced.

Bogart is a Division Three decision issued 15 years before this Court's decision in Budge. Roach urges this Court to follow its decision in Budge instead Bogart.

And unlike Budge, Bogart fails to explain what constitutes 'detrimental reliance' and how it applies. Although the decision uses the phrase "detrimental reliance" seven times, it never explains what it actually is and how and when it may apply. 57 Wn. App. at 356-57. To the extent it is instructive on the issue here, it is to makes clear the burden to show "detrimental reliance" is on the party attempting to assert it. 57 Wn. App. at 357. But it does not otherwise illuminate what constitutes 'detrimental reliance' for purposes of this matter.

The record here shows the prosecution failed to carry its burden to prove allowing Roach to revoke his waiver of spousal privilege would unfairly prejudice its ability to prosecute Roach. Instead it proved only that it used Roach's initial waiver to "gamble at cutting a deal" with another defendant in a separate criminal matter. BOR at 32. That is insufficient under to show "detrimental reliance." The trial court erred in concluding otherwise.

2. ROACH WAS PREJUDICED BY THE TRIAL COURT'S REFUSAL TO ALLOW HIM TO REVOKE HIS PRIOR WAIVER OF SPOUSAL PRIVILEGE.

The State claims that even if the trial court erred in refusing to allow Roach to revoke his waiver of spousal privilege, he was not prejudiced. BOR at 30-33. This is patently absurd.

As discussed in his opening brief, there were only three alleged eyewitnesses to the events that led to the charge, Roach, Daniels and K.M.U. CP 4-6. Roach exercised his right to remain silent and attempted to exercise his right for Daniels to remain silent at his trial. But for the trial court's erroneous decision to allow Daniels to testify, the only testifying eyewitness would have been the complaining witness, KMU. The prosecution's case would have been far weaker without Daniels' testimony. There was no physical evidence to support KMU's claim, as the forensic evidence was inconclusive at best. RP 292, 296-97.

Daniels' testimony, however, was devastating to Roach's defense because it was allegedly eyewitness testimony that directly corroborated KMU's misconduct claims against Roach. RP 362-63, 366, 380, 389. As discussed during voir dire, jurors may be more reluctant to convict based solely on the uncorroborated testimony of the complaining witness. RP 107-117. Although KMU and Daniels versions of what occurred were not identical, they were corroborative and therefore provided a much stronger

basis for jurors to convict than had only KMU testified, and almost certainly contributed to Roach's conviction. Because the trial court erred in refusing Roach's demand to exercise his rights to prevent Daniels from testifying, and because that error prejudiced Roach's defense, this Court should reverse.

B. CONCLUSION

For the reasons stated here and in the Brief of Appellant, this Court should reverse and remand.

DATED this 17th day of April, 2020.

Respectfully submitted,

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