

65518-3

65518-3

NO. 65518-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
DWIGHT MILES, JR.,
Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE CHRISTOPHER WASHINGTON

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

It is within the trial court's discretion to allow a party to reopen its case. Such actions will be upheld except upon a showing of manifest abuse of discretion and prejudice to the defense. Here, the trial court allowed the State to reopen after the parties had rested to present certified copies of prior convictions. Where there is no prejudice to the respondent and where any potential prejudice was cured when the trial court provided the Respondent the opportunity to reopen or continue the case to present additional evidence, did the court manifestly abuse its discretion?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Dwight L. Miles, Jr. was charged in the King County Juvenile Court with one count of Unlawful Possession of a Firearm in the First Degree.¹ CP 7.

¹ RCW 9.41.040(1)(a)—Unlawful Possession of Firearms. A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, or has in his possession, or has in his control any firearm after having previously been convicted...of a serious offense.

On May 3, 2010, the matter came before the Honorable Christopher Washington for a bench trial. During the trial, and after both parties had rested, the State sought to reopen the case to introduce certified copies of the Respondent's two prior serious convictions for Attempted Robbery in the Second Degree. RP 65, 68. The State cited State v. Brinkley in arguing that the Respondent would suffer no prejudice by the admission of this evidence, and any claimed prejudice could be cured by giving the Respondent the opportunity to reopen his case. RP 66. The Respondent objected to the admission of the evidence and asked that the court proceed with a charge for Unlawful Possession of a Firearm in the Second Degree. RP 67. The Court allowed the State to reopen its case to admit certified copies of the Respondent's prior convictions, and also gave the Respondent the opportunity to reopen his case, or recess and take additional time, if necessary, to present further evidence. RP 68. The Respondent stated he did not need any more time and restated his objection. RP 68. Following argument by counsel, the Court found the Respondent guilty of Unlawful Possession of a Firearm in the First Degree. RP 91.

At sentencing, the court imposed the standard range sentence of 15 to 36 weeks. RP 101.

2. SUBSTANTIVE FACTS

On December 23, 2009 at approximately 9:25pm, Seattle Police Department Officers Marion and Harris were dispatched to a reported disturbance at the Saars Market located on the 9000 block of Rainier Avenue South. RP 9-10, 41-42. As the officers arrived on scene, they observed a group of young men and women, who appeared to be frustrated or angry with each other and were seen shouting. RP 11, 43. Once the group observed the officers' patrol vehicles, they began to scatter and leave the area. RP 11, 43. As the group dispersed, one individual caught Officer Marion's eye because he seemed to be moving much faster than the rest of the group in his attempt to distance himself from the patrol vehicles. RP 12. While Officer Marion observed the male run down the sidewalk near the Saars Market, the male reached toward the front of his waistband. RP 12-13. The officer believed the male was attempting to conceal something in his waistband. RP 13. The male next fumbled with the concealed object which caused the object to hit the ground in front of him. RP 13. The male bent

forward and immediately picked up the object from the ground at which point Officer Marion recognized the object, by its distinct profile, as a handgun. RP 13-14. Moments after the male picked the handgun up off the ground, he threw it into a nearby garbage can, located a few feet away and proceeded to run away. RP 14. Officer Marion immediately got on his radio and informed Officer Harris that the male had deposited a gun into the garbage can. RP 14-15, 45. Officer Marion then pitched his patrol car in front of the male to block his path and immediately apprehended the male. RP 15. Officer Marion contacted the male 10-15 yards from the garbage can. RP 15. Shortly, thereafter the male was identified as Dwight Miles. RP 18.

Meanwhile, Officer Lloyd Harris, who remained in the Saars Market parking lot, responded to Officer Marion's radio announcement and pulled his patrol vehicle alongside the garbage can. RP 17, 45. As Officer Harris looked in the garbage can he observed a black semi-automatic pistol lying on the top of the garbage. RP 46. The officer removed the weapon and identified it as a Ruger .9-millimeter semi-automatic handgun. RP 47. The handgun had a magazine with 11 live rounds; there were no rounds in the chamber. RP 48.

The above incident was captured on the in-car cameras from both Officer Marion and Officer Harris's patrol vehicles. RP 21-29, 48-55.

C. **ARGUMENT**

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING THE STATE TO REOPEN ITS CASE AFTER BOTH SIDES HAD RESTED BECAUSE THERE WAS NO PREJUDICE SUFFERED BY THE RESPONDENT AND ANY POTENTIAL PREJUDICE WAS CURED WHEN THE TRIAL COURT PROVIDED THE RESPONDENT THE OPPORTUNITY TO REOPEN OR CONTINUE THE CASE TO PRESENT ADDITIONAL EVIDENCE.

The Respondent maintains that the court abused its discretion by allowing the State to reopen its case to admit certified copies of his prior convictions after both parties had rested. This argument should be rejected. The granting of the State's Motion to Reopen was well within the discretion of the court as the Respondent suffered no prejudice and any possible prejudice was cured when the court granted him the opportunity to reopen or continue his case to present additional evidence. Accordingly, the trial court did not abuse its discretion in allowing the State to reopen its case.

The issue of whether to allow a party to reopen its case to present further evidence is a matter within the discretion of the trial court. State v. Sanchez, 60 Wn. App. 687, 696, 806 P.2d 782 (1991). A trial court's actions with regard to reopening a case will be upheld except upon a showing of manifest abuse of discretion and prejudice resulting to the complaining party. Sanchez, 60 Wn. App. at 696, 806 P.2d 782; State v. Vickers, 18 Wn. App. 111, 113, 567 P.2d 675 (1977); Seattle v. Health, 10 Wn. App. 949, 520 P.2d 1392 (1973) (citations omitted). "Abuse of discretion is discretion exercised on untenable grounds for untenable reasons." Sanchez, 60 Wn. App. at 696, 806 P.2d 782 (citing State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

State v. Brinkley further elaborates this standard by finding that abuse of discretion, to some extent, depends on whether the complaining party was unfairly disadvantaged. Brinkley, 66 Wn. App. 844, 850, 837 P.2d 20, 23 (1992). The Court then outlines instructive factors in determining whether a defendant has been unfairly disadvantaged. Id. at 848, 22. These factors include: 1) whether the defendant had excused witnesses who would have been used to rebut new evidence offered; 2) whether the State deliberately withheld the so-called additional evidence until the late

stage; 3) the extent, if any, to which the defendant suffered greater damage than he would have if the evidence had been offered at the proper time; 4) whether the defense had an opportunity for a continuance to interview additional witnesses or put on rebuttal witnesses of its own; 5) whether the State's additional evidence was discovered after it rested and was not highly technical; and 6) the nature of the testimony sought to be introduced and whether the stage of trial might place undue emphasis on the testimony sought to be presented. See Brinkley, at 851, 22 (citing NJ v. Menke, 25 N.J. 66, 135 A.2d 180, 183 (1957) (citations omitted); Lee v. Indiana, 439 N.E.2d 603 (Ind. 1982) (citations omitted); Flynn v. Indiana, 488 N.E.2d 735 (Ind. Ct. App. 1986)).

When analyzing these factors, it is clear that there was no unfair disadvantage suffered by the Respondent. First, the Respondent called no witnesses before resting, thus no witnesses were excused who may have been used to rebut the new evidence offered by the State. RP 65.

Second, there is no indication that the State deliberately withheld the certified copies of Respondent's convictions until the late stage. To the contrary, it was a mere oversight which was

noticed by the State prior to closing arguments and without a defense Motion to Dismiss. RP 65.

Third, the admission of the evidence after the parties had rested did not call for additional testimony as the evidence consisted of self-authenticating certified copies of public records. Thus, there were no witnesses to unfairly highlight the evidence and the Respondent suffered no greater damage than he would have had the evidence been offered during the State's case-in-chief.

Fourth, the trial court gave the Respondent the opportunity to reopen or continue the matter to call additional or rebuttal witnesses. The Respondent declined this invitation, indicating he did not want any more time. RP 68.

Fifth, although the additional evidence was not discovered after the State rested, certified copies of public records are not highly technical as they require no additional testimony. Moreover, it can be presumed that both parties were aware of these public records as they are readily available to both parties and required to satisfy an essential element of the charge.

Sixth, given this was a bench trial there was no undue emphasis placed on the evidence at the time it was sought to be

introduced. Based on the above analysis, the Respondent cannot show he was unfairly disadvantaged due to the trial court's actions in allowing the admission of the certified copies of his convictions after the parties had rested. Additionally, the trial court mitigated any potential prejudice to the Respondent by providing him with the opportunity to reopen or continue his case to present additional witnesses or evidence, which he declined. RP 69; Brinkley, 851, 23. Thus, the trial court did not manifestly abuse its discretion in allowing the State to reopen the case.

The Respondent contends that the trial court abused its discretion in allowing the State to reopen the case because both parties had rested. However, several courts have addressed this issue and allowed the State to reopen its case after both parties have rested.

During a bench trial in State v. Johnson, the court allowed the State to reopen its case, after both parties had rested, to address a specific question of the trial court regarding identification.

Johnson, 1 Wn. App. 602, 464 P.2d 442 (1969). The trial court's actions were upheld on appeal.

Further, in Brinkley, not only did the court allow the State to reopen its case after both parties had rested to address a juror's question, but also expressly discussed the very argument that Respondent attempts to make. In upholding the trial court's reopening of the case, the appellate court refused to find per se abuse of discretion because both parties had rested and instead enumerated the factors discussed above in determining whether the trial court abused its discretion. Brinkley, at 848, 23². In light of the above caselaw and analysis coupled with the greatly diminished possibility of prejudice to a Respondent during a bench trial, the Respondent's argument should fail.

² "We see no logical basis for concluding that it is per se abuse of discretion to allow the State to reopen, after the defense has rested its case."

D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm the Respondent's conviction for one count of Unlawful Possession of a Firearm in the First Degree.

DATED this 14 day of February, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

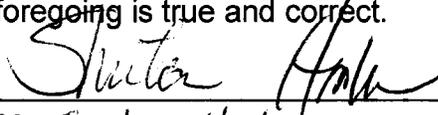
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas M. Kummerow, the attorney for the appellant, at Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101, containing a copy of the Notice of Appearance and Brief of Respondent, in STATE V. DWIGHT L. MILES, Cause No. 65518-3-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name Sherla Henton
Done in Seattle, Washington

2/14/11
Date