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# Recent Developments: State v. Booze: Trial Court Abused Its Discretion by Allowing State to Reopen Its Case at Rebuttal Stage to Present Cumulative and Corroborative Witness Testimony Which Impaired Defendants' Fair Trial Rights

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*State v. Booze:*

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TRIAL RIGHTS.**

In *State v. Booze*, 334 Md. 64, 637 A.2d 1214 (1994), the Court of Appeals of Maryland unanimously held that a prosecutor's mistaken belief that eyewitness testimony was appropriate rebuttal evidence was not good cause for reopening the State's case-in-chief. In so holding, the court determined that the trial court abused its discretion when it allowed the State to reopen its case at the rebuttal stage to present cumulative and corroborative eyewitness testimony which impaired defendants' right to a fair trial.

Respondents Donald Eugene Booze, Jr. and Allen Shelton Snead were charged with the murders of Antonio Brandon Henderson and Isaac Durant. In the Circuit Court for Baltimore City, witnesses for the State testified to seeing Respondents fire guns and to hearing gunshots. Another State witness, Officer Constantine, testified that he had encountered Snead fleeing from the area of the shooting and had heard gun shots coming from the direction from which Snead was running. After the State rested, Snead presented a defense theory supportive of Officer Constantine's testimony, namely, that respondents were fleeing from a gun battle in which they were not involved.

The State then presented a rebuttal witness, Perry S. Knight. When it became apparent that Knight was also an eyewitness to the murders, Respon-

dents objected, stating that the rebuttal was improper. The State argued that Knight's testimony, which accounted for the gunshots fired while respondents fled the scene, directly rebutted Snead's defense theory.

Upon discovering that the State learned of Knight prior to closing its case, the trial court ruled that his testimony was proper rebuttal to the extent that it explained the source of the gunfire from which Respondents fled. However, the court expressed concern about the rest of Knight's testimony. As to that portion of Knight's testimony, the court determined that it reflected an eyewitness account of what occurred and was not rebuttal at all. Rather, it amounted to "direct" evidence which should have been presented in the State's case-in-chief. Despite this determination, the trial court granted the State's motion to reopen its case-in-chief, stating that the jury should not be deprived of relevant evidence. Further, the court stated that neither the State nor the defense should be punished for the State's failure to present evidence when it should have.

On appeal, the State argued that the trial court implicitly and explicitly made the requisite findings to sustain its exercise of discretion. The Court of Special Appeals of Maryland reversed the decision of the circuit court. The Court of Appeals of Maryland granted certiorari to resolve the question of whether the trial court abused

its discretion in allowing the State to reopen its case at the rebuttal stage of the trial and affirmed the court of special appeals.

The court of appeals began its analysis by acknowledging that trial courts are vested with broad discretion in the conduct of trials. *Id.*, at 68, 637 A.2d at 1216 (citations omitted). The court stated that in the usual case, what constitutes rebuttal testimony rests within the sound discretion of the trial court. *Id.* (citations omitted). The court then proceeded to a discussion of the discretion a trial court exercises in determining what evidence is rebuttal and that which it exercises in determining whether to vary the order of proof. *Id.* at 69, 637 A.2d at 1216 (citing *Hepple v. State*, 31 Md. App. 525, 534, 358 A.2d 283, 290 (1976), *aff'd*, *State v. Hepple*, 279 Md. 265, 368 A.2d 445 (1977)). The court stated that the judge must consider whether the State deliberately withheld the evidence proffered in order to gain an unfair advantage by its impact on the trier of facts. *Id.* To this end, the court noted that the judge must discern whether the proposed evidence is merely cumulative to, or corroborative of, that already offered in chief or whether it is important or essential to a conviction. *Id.* at 69, 637 A.2d at 1216-17. Finally, the court noted that regardless of how much discretion it may have to vary the order of proof or to admit rebuttal evidence, a court may not

exercise either discretion interchangeably with the other. *Id.*, at 70, 637 A.2d at 1217 (citations omitted).

The court addressed the issue of whether reopening the State's case impaired Respondents' ability to answer or otherwise receive a fair trial. *Id.* at 76, 637 A.2d at 1220. The court stated that while good faith, or at least a reasonable basis for withholding the evidence must be considered, the trial court's conclusion in that regard varied and was therefore unclear. *Id.* What was clear to the court was that the trial court determined that the State was aware of the importance of Knight's testimony before it closed its case, and the subsequent failure to call Knight in its case-in-chief was intentional, rather than inadvertent. *Id.* at 77, 637 A.2d at 1220. The court of appeals acknowledged that the trial court's determination may not have been made in bad faith. *Id.* Nevertheless, misconceiving the nature of the evidence and the stage of the proceedings at which it was admissible was not necessarily acting in good faith, and in this case did not constitute good cause for reopening the State's case. *Id.*

The court then focused on Respondents' defense, which used an ambiguity in the State's case to create reasonable doubt in the minds of the jurors. The court emphasized that such use of an ambiguity does not license the State to use direct evidence, of which it was aware before

closing its case, to explain away the ambiguity. *Id.* at 78, 637 A.2d at 1221. Moreover, because it was rather dramatic testimony presented after the Respondents' defense, such evidence was quite likely to be given undue emphasis by the trier of fact. *Id.* The court of appeals explained that the trial court failed to consider the prejudicial impact, or probable prejudicial impact, of Knight's testimony on the trier of fact. *Id.* Thus, the trial court did not directly address the likelihood that his testimony would render a fair trial impossible for both Respondents. *Id.*

The court rejected the State's argument that the trial court made the requisite findings to sustain its exercise of discretion: that the State did not act in bad faith and that the improper rebuttal did not substantially prejudice the respondents. *Id.* at 79, 637 A.2d at 1222. The court of appeals pointed out that although the trial court's findings supported the conclusion that the prosecutor did not act in bad faith, the determination was undermined by the trial court's characterization of the prosecutor's reasons for withholding Knight as a rebuttal witness as "phony." *Id.*

Recognizing that neither the intent nor motive prong is dispositive, the State argued that the trial court explicitly found that reopening the State's case would not be prejudicial to Respondents. *Id.* at 80, 637 A.2d at 1222. The State bolstered its theory by underscor-

ing the trial court's determination that Knight's testimony occurred just two hours and two witnesses after the State rested. It further maintained that this sequence of events suggested that the trial court found that the defense had not been prejudiced by the late presentation of Knight's testimony. *Id.* The court of appeals flatly rejected this argument, stating that while the length of the defense and the interval between when testimony should have been given and when it was given were factors to be considered in determining whether the defense was prejudiced, such factors were not dispositive nor the most important factors to be considered. *Id.*

In applying its analysis to the case at bar, the court of appeals stated that the prosecutor elected not to offer Knight's testimony because she erroneously believed it to be proper rebuttal evidence. *Id.* However, the bulk of Knight's testimony was improper rebuttal as it neither explained, replied to, nor contradicted new matters presented by the Respondent. *Id.* at 76, 637 A.2d at 1220 n.4 (citing *Thomas v. State*, 301 Md. 294, 309, 483 A.2d 6, 14 (1984), *cert. denied*, 470 U.S. 1088 (1985)). By failing to offer such evidence in its case-in-chief, the State allowed an ambiguity to exist, of which the defense sought to take advantage. *Id.* at 80, 637 A.2d at 1222. The court held that when a defendant presents evidence at the close of the State's case,

the State may not reopen its case simply to have the last word. *Id.* The court further asserted in the instant case that once the trial court determined Knight's testimony was improper rebuttal, it could not then allow the State to reopen its case-in-chief, as that would result in unfairly permitting the State to piecemeal its case. *Id.* The court of appeals concluded that allowing the State to offer such clarifying evidence was prejudicial as a matter of law. *Id.* at 81, 637 A.2d at 1222.

*State v. Booze* is significant because it emphasizes the importance of judicial economy and the desirability of maintain-

ing a fair and orderly trial. In exercising discretion to allow the State to reopen its case, a trial judge must consider the nature of the testimony and its relationship to testimony already presented. To allow a party to introduce rebuttal evidence of which it was fully aware at the beginning of trial would place a premium on ignorance and lack of preparedness rather than on diligence and preparation. Finally, courts will more likely consider whether the prejudicial impact of the admission of challenged testimony undermines a defendant's right to a fair trial.

- Kimberly C. Foreman

