

Love brief a case



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v. Sands Supreme Court of Ohio, 2008 Legal History: The appellant appealed against his conviction and sentence in the Lake County Court of Common Pleas for engaging in corrupt activities, attempted murder and aggravated arson targeting public officers.

Facts: In April 2006, Jason Green, a friend of the appellant reported to a police detective that the appellant and his girlfriend were planning to kill four public officers. On the facts, Green and the appellant had suffered several encounters with local police and the Mayor and were of the opinion that they were deliberately targeting and harassed by the police. The duo purchased recording equipment and recorded conversations with officials with a view to proving harassment and spoke of filing a law suit. It was the constant encounters with the authorities that ultimately gave way to a plan to kill certain officials. After Green informed the detective of his suspicions, he agreed to wear recording equipment in conversations with the appellant. Thereafter, Green turned over a recorded conversation he had with the appellant in which the plans were discussed. The threat was deemed serious and the FBI were brought in. Thereafter the appellant and his girlfriend were under surveillance. Identified victims were informed and some relocated out of fear. Subsequent conversations between Green and the appellant were recorded and the appellant and his girlfriend began purchasing equipment and making plans in furtherance of the plan. As the appellant and his girlfriend at a store purchasing the last of the equipment they were arrested. The appellant gave his consent to a search of his home and shop in which equipment for making a bomb was discovered. Other equipment was discovered at the appellant's shop. Although the appellant's Miranda rights were read to him, he waived the right to remain silent and offered various

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explanations for the equipment found in his possession.

Legal Issues: The appellant raised several issues on appeal. The evidential grounds related to a complaint that there was not enough evidence to convict him on the RICO charge. The appellant also argued that prior bad acts were improperly admitted into evidence and that allowing victim impact evidence deprived him of his right to a fair trial.

Holding: The conviction and sentencing were affirmed and the appeal denied.

Legal Reasoning: The Supreme Court of Ohio reasoned that victim impact evidence was properly admitted by the trial judge because it demonstrated the seriousness of the offences. The court also reasoned that the appellant's claim of insufficient evidence on the RICO count was without merit because the argument rested on the fact that the appellant was only charged with having been involved in one conspiracy. The rule of law expressed in *State v Schlee* (Dec. 23, 1994) 11th Dist. No. 93, Ohio App is that the evidence for conspiracy, the prosecution only need present credible evidence in order to be sufficient for a conviction. Although the appellant was charged with one conspiracy it involved several offences. As to the admission of prior bad acts, the court reasoned that trial judges have wide discretion to admit prior bad acts and an appellate court will only intervene if there is evidence of an abuse of that discretion (*State v Rootes* (March 23, 2001) 11th Dist. No. 20000 p. 0003). Abuse of discretion is not substantiated by mere error in judgment or law. There must be arbitrary reasoning or unreasonable attitudes or conduct that is "unconscionable" (*State v Sands*, 2008).

People v Beavers

NY Appellate Division, 1987

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Legal History: The defendant was convicted of manslaughter in the first degree for a shooting which occurred on December 21, 1983. He appealed against his conviction.

Facts: At his trial the defendant called two alibi witnesses. The first of the alibi witnesses was the defendant's mother who testified at the time of the shooting the defendant was with her at her apartment. The second witness was a man who lived with the defendant's mother and he essentially corroborated the mother's testimony. A prosecution police witnesses contradicted the alibi evidence by testifying that he had telephoned the defendant's mother after the shooting while investigating another matter and had asked her for the defendant. The mother replied that she had not seen the defendant since Thanksgiving and that he was living in Memphis with a woman.

Legal Issues: The issue on appeal was whether or not the trial judge erred in allowing the prosecution to impeach the defendant's witnesses by offering rebuttal evidence of collateral issues.

Holding: The defendant's conviction was affirmed and the appeal dismissed accordingly.

Legal Reasoning: The court reasoned that rebuttal evidence intended to impeach a witness is permissible in specific circumstance. Generally, a when cross-examining a witness, the examiner may not bring in collateral issues either by documentary evidence or by other witnesses, " for the purpose of impeaching that witness' credibility" (People v Pavao 59 NY 2d 282, pp. 288-289). The purpose of the general rule is to ensure that the defendant is not taken by surprise and that the jury is not confused about the relevant issues (People v Schwartzman 24 NY 2d. 241, p. 245). However, evidence is not

regarded as collateral when it is necessary for proving some fact that is not related to the credibility and is intended to disprove facts offered by a witness for rebutting evidence given in direct testimony (People v Wise 45 NY 2d 321). In fact, the trial judge instructed the jury that:

A rebuttal witness is [one] who is called in order to rebut testimony that has been introduced by the defense and for that purpose only (People v Beavers, 1987).

It was also reasoned that in People v Schwartzman the court ruled that the general rule is intended to avoid confusion but is not applicable when the evidence introduced is relevant for proving any fact “ other than contradiction”. Moreover, it is entirely unreasonable to place obstacles to one party’s ability to bring out mistakes in testimony when that mistake is an important issue at trial. In any event, all parties should be fully prepared to rebut all material issues at a trial and to expect that the other side will inevitably rebut issues raised. The court went further to state that although it is difficult to distinguish between collateral issues and issues that are not collateral, it is certainly clear that bias, interest and hostility on the part of witnesses are not collateral issues and may be offered in evidence. In addition, evidence is not collateral when it is used to impeach the credibility of a witness in the context of the issues that jurors are required to sort out. More importantly, the prosecution was at liberty to offer evidence rebutting the defence.