

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|--------------------------------|
| PHILLIP A. DYE, | § |
| | § |
| Defendant Below- | § No. 458, 2002 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for New Castle County |
| | § Cr.A. Nos. IN01-11-1221 thru |
| Plaintiff Below- | § IN01-11-1225 |
| Appellee. | § |

Submitted: October 25, 2002
Decided: December 18, 2002

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 18th day of December 2002, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Phillip A. Dye, filed an appeal from his conviction by a Superior Court jury of two counts of Attempt to Evade or Defeat Tax¹ and three counts of Failure to File Return, Supply Information or Pay Tax.² Dye's sentence included a total of 7 years imprisonment at Level V,

¹DEL. CODE ANN. tit. 30, § 571 (1997).

²DEL. CODE ANN. tit. 30, § 573 (1997).

to be suspended immediately for Level II probation and the payment of restitution and fines to the State of Delaware. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Dye's opening brief that the appeal is without merit.³ We agree and AFFIRM.

(2) In this appeal, Dye claims that the Superior Court a) did not have jurisdiction to try him for violating the tax laws; b) erred in granting the State's motion in limine barring him from testifying about the validity or constitutionality of the tax laws; c) erred in excluding certain documentary evidence he sought to have admitted;⁴ and d) erred in quashing a number of subpoenas he sought to have served.⁵

(3) The evidence at trial established that Dye was employed by E.I. DuPont de Nemours & Company and the Delaware National Guard during the period 1995-2000. For tax years 1995 and 1996, Dye's annual earnings were

³SUPR. CT. R. 25(a).

⁴Dye sought to have 19 documents admitted into evidence, including legal provisions and legal argument supporting his position that the Delaware tax laws are unconstitutional and the State has no right to prosecute him for violating the tax laws.

⁵Dye sought to have a total of 14 subpoenas served on, among others, the Governor, the Attorney General, the Director of the Division of Revenue, members of the New Castle County Tax Assessment Board, employees of the Division of Revenue, and members of the grand jury that indicted him.

approximately \$45,000, yet he failed to report any income. For tax years 1998, 1999, and 2000, Dye's annual earnings exceeded \$45,000, yet he failed to file any state income tax returns.

(4) Dye's claims are without merit. Pursuant to statute, the Superior Court of the State of Delaware in and for New Castle County had original jurisdiction to try Dye for violating the tax law, since Dye was a resident of New Castle County and his state tax returns were to be filed in that county.⁶ Moreover, the Superior Court clearly was within its discretion, first, to grant the State's motion in limine to bar Dye from testifying about the validity or constitutionality of the tax laws⁷ and, second, to refuse to admit documents containing such arguments into evidence.⁸ Finally, there clearly was no abuse of discretion on the part of the Superior Court in quashing the subpoenas that Dye sought to have served since they were "unreasonable" and "oppressive" on their face.⁹

⁶DEL. CODE ANN. tit. 30, § 575 (1997).

⁷DEL. UNIF. R. EVID. 401 and 403; *Donovan v. State*, Del. Supr., No. 134, 1987, Walsh, J. (Aug. 17, 1987).

⁸*Id.*

⁹SUPER. CT. CRIM. R. 17(c).

(5) It is manifest on the face of Dye's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice