



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAX TURNER,)
)
 Defendant Below,)
 Appellant,)
)
 v.) No. 669, 2014
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

APPELLANT'S REPLY BRIEF

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DATED: September 15, 2015

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I. A 9 MM. SEMI-AUTOMATIC FIREARM FOUND BY POLICE IN THE POSSESSION OF ANOTHER PERSON AND AT ANOTHER LOCATION SHOULD NOT HAVE BEEN ADMITTED INTO EVIDENCE AT THE DEFENDANT’S TRIAL BECAUSE IT COULD NOT BE SUFFICIENTLY TIED INTO THE SHOOTING AND WAS THEREFORE IRRELEVANT AND UNFAIRLY PREJUDICIAL.

In its Answering Brief, the State argues that the 9 mm. firearm found in the possession of Iban Rice hours after and blocks away from the shooting in question, is sufficiently linked to the crime in order to permit it being admitted into evidence at the Defendant’s trial. Ans. Br. at 15-17. At best, however, the evidence at trial permitted speculation that the Defendant had a gun available to him merely because a gun was found on Iban Rice hours after and blocks away from the shooting and because the State drew an association between the Defendant and Iban Rice. What is required, however, is that the State “establish a nexus between the particular gun seized and the shooting. It is not sufficient that the defendant have a ‘hand gun’ available to him.” *Farmer v. State*, 698 A.2d 946, 948-949 (Del. 1996). In this case, the State failed to establish a nexus between the “particular gun” seized and the shooting. The “nexus” that the State relies on is not much more than if the State charged a particular defendant with a shooting, could not tie a particular weapon to the shooting, but found a

Facebook friend of the defendant who possessed a weapon of the same caliber used in the shooting. Indeed, the State admits as much when it tellingly acknowledges that “[p]olice never located either a 9 mm or a .45 cal. gun that could be tied to the crime scene.” Ans. Br. at 13.

That the firearm later found by police “could not be tied to the crime scene” is also most effectively illustrated by the State’s repeated contention that, based on the forensic firearm examination conducted the State, the 9 mm. shell casing found at the shooting scene “could not be excluded” as having been fired from the gun later found in Iban Rice’s possession. Ans. Br. at 14, 15, 17. Here the State, as the proponent of evidence, has shifted its evidentiary burden by arguing, in effect, that the Defendant can’t prove that there was no nexus between the gun and the shell casing and so therefore the State has proved that there was. The State’s argument actually demonstrates that “the State could [not] establish a nexus between the particular gun seized and the shooting,” not that it did. *Farmer*, 698 A.2d at 948-49.¹ In this case, the State failed to establish a nexus between the “particular gun” admitted into evidence and the shooting itself. The gun admitted into evidence was not sufficiently “tied” to the

¹ Similarly, the State contends that Indi Islam told Detective Stoddard that Iban Rice was next to the Defendant at the shooting scene, but fails to account for her sworn court testimony that she was uncertain that she saw him or anyone else with a gun when the shooting occurred. (A64-65). She also testified that she “came to the conclusion” that the Defendant had shot Archie and Hodges. (A66).

shooting itself and should not have been admitted into evidence. *Farmer*, 698 A.2d, at 949. Its admission impermissibly permitted “the risk that the jury may associate mere [association with] a firearm with a disposition to use it. *Id.* This evidence that the Defendant associated with an individual who carried a firearm could have tipped the scale in favor of guilt. Such an inference “subjects the defendant to the same risk that impermissible character or bad act evidence may pose -- equating disposition with guilt.” *Id.*

Respectfully submitted,

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