



IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRETT SCOTT,)
)
Defendant Below-)
Appellant,) No. 523, 2018
) ON APPEAL FROM
) THE SUPERIOR COURT OF THE
v.) STATE OF DELAWARE
) ID No. 1706021079
STATE OF DELAWARE,)
)
Plaintiff Below-)
Appellee.)

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

COLLINS & ASSOCIATES

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Dated: January 18, 2019

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I. THE TRIAL JUDGE ERRED IN DENYING MR. SCOTT'S MOTION FOR JUDGMENT OF ACQUITTAL.

The Opening Brief on appeal argued that the judge erred in denying Mr. Scott's motion for judgment of acquittal when there was no evidence that Mr. Scott participated in a theft, much less a robbery. This theft was conceived and executed by Raymond Ward, who enlisted Lisa Wagaman to lure the victim to Pine Ridge Apartments. Ward also used Gregory Sellers as his driver.

In denying the motion, the judge supplied facts not in evidence and were even contradicted by the evidence. The trial judge held that there was an "accumulation of individuals" and that their "coordinated movement towards confronting the alleged victim" was a substantial step in a robbery attempt.¹ The judge further held that Mr. Scott confronted the victim directly rather than sneaking up on him.² These facts, according to the Court, were sufficient for a juror to infer that a reasonable person in Mr. Scott's circumstances would have had the requisite state of mind;³ in this case, that would have needed to be intent to commit a robbery.

¹ A497.

² *Id.*

³ *Id.*

The uncontroverted testimony at trial was that Mr. Scott was with Ward at Pine Ridge; he approached Wagaman and asked her for a cigarette. She refused and began to leave. Mr. Scott then approached Mr. Dukes and asked him for a cigarette. Dukes shot Mr. Scott and Mr. Scott fired back.

The State now argues that when Wagaman left the car, “the criminal activity transformed from an attempted theft to an attempted robbery.”⁴ The State asserts that Mr. Scott “confronted the target victim with the intent to steal Dukes’ money and drugs by the use or threat of deadly force.”⁵ The State postulates that once Wagaman left, that removed the “front seat diversion” which would have enabled Ward to snatch the bag and flee.

Essentially, the State on appeal is inventing a scenario about which there is no record evidence. Even the State concedes that Sellers testified that there was no discussion on the way to Pine Ridge about what was going to happen.⁶ According to the State, “it is obvious that Ward was enlisting an additional armed confederate (Scott), who would be available to take Dequan Dukes’ money and contraband drugs by the use or display of a deadly weapon if necessary.”⁷ That passage has no

⁴ Answering Brief (AB) at 2.

⁵ *Id.*

⁶ AB at 4.

⁷ AB at 12.

citation to the record because there is absolutely no evidence that it occurred. As did the judge, the State is adding facts that are not in the record.

The State's own witness, Lisa Wagaman, testified that all Mr. Scott did was approach Mr. Dukes and ask for a cigarette. There was smoke coming from the car because Dukes was smoking marijuana at the time. Wagaman's testimony completely contradicts the extra-evidentiary leaps made by the judge at trial and by the State on this appeal.

Gregory Sellers was watching the interaction through the windows of a parked SUV. He was very clear that Dukes shot first. Although he testified that Mr. Scott reached for his waistband, that fact is of little value because Mr. Scott's back was to Sellers, who was watching through two car windows. Moreover, the judge in considering the motion was to follow the same instructions imposed upon the jury: Sellers' testimony should have been considered with caution absent corroboration because Sellers was a codefendant testifying to get a plea deal.

Without any basis, the State argues, "The threatening and confrontational actions of Brett Scott are evidence that the attempted theft had now transformed into an attempted first degree robbery."⁸ But there was no evidence at trial that Mr. Scott threatened or confronted Mr. Dukes; rather, there was evidence he asked him for a cigarette.

⁸ AB at 13.

Both the Court and the State have engrafted facts onto this case that were simply not in the record. Given the dearth of evidence against Mr. Scott, it was error for the trial judge to deny Mr. Scott's motion for judgment of acquittal.

CONCLUSION

For the foregoing reasons as well as those stated in the Opening Brief, Appellant Brett Scott respectfully requests that this Court reverse the judgment of the Superior Court.

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