

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CAMERON NORWOOD,)
) No. 382, 2013
 Defendant-Below,)
 Appellant,)
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff-Below,)
 Appellee.)

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF DELAWARE
IN AND FOR KENT COUNTY
IN FILE NO. IK12-09-0502 through IK12-09-0506
Judge Robert B. Young

OPENING BRIEF OF APPELLANT CAMERON NORWOOD

HOPKINS & WINDETT, LLC

/s/ Adam D. Windett, Esquire
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DATE: September 26, 2013

TABLE OF CONTENTS

TABLE OF CITATIONS 1

NATURE OF THE PROCEEDINGS 2

SUMMARY OF ARGUMENT 4

STATEMENT OF FACTS 5

ARGUMENT 7

Question Presented:

I. Was the exclusion of alternative suspect evidence by the trial court a violation of Appellant’s Due Process right to present a complete defense? A-99-102.

CONCLUSION 17

SENTENCING ORDER

APPENDIX

TABLE OF CITATIONS

Brady v. Maryland

373 U.S. 83 (1963) 14

Cabrera v. State

840 A.2d 1256 (Del. 2004) 9

California v. Trombetta

467 U.S. 479 (U.S. 1984) 10

Lilly v. State

649 A.2d 1055 (Del. 1994) 7

United States v. Valenzuela-Bernal

458 U.S. 858 (1982) 10

Watkins v. State

23 A.3d 151 (Del. 2011) 8, 9

D.R.E. 401 8

D.R.E. 403 8, 9

NATURE OF PROCEEDINGS

On September 4, 2012, Appellant, Cameron Norwood, was arrested and charged with two counts of robbery first degree, one count of possession of a firearm during the commission of a felony, one count of possession of a firearm by a person prohibited, one count of wearing a disguise during the commission of a felony, and one count of conspiracy second degree. A-1.

Appellant was tried in the Kent County Superior Court on April 16, 2013 through April 18, 2013. Prior to the start of trial, an oral motion to sever the count of possession of a firearm by a person prohibited was granted by the trial judge. At the conclusion of the trial, Appellant was found guilty of two counts of robbery first degree, wearing a disguise during the commission of a felony, and conspiracy in the second degree. Appellant was found not guilty of possession of a firearm during the commission of a felony. A-3.

Appellant was sentenced on June 27, 2013 as follows: As to robbery in the first degree, twenty (20) years at Level 5, suspended after eight (8) years followed by one (1) year at Level 4 work release, followed by one (1) years at Level 3 probation, followed by one (1) year at Level 1 restitution only, which would be discharged upon full payment of restitution. As to the second count of robbery in the first degree, Appellant was sentenced to ten (10) years at Level 5, suspended

after the minimum mandatory five (5) years, followed by one (1) year at Level 3. As to wearing a disguise during the commission of a felony, Appellant was sentenced to five (5) years at Level 5, suspended for one (1) year at Level 2; and as to conspiracy second degree, two (2) years at Level 5, suspended for one (1) year at Level 2. A Nolle Prosequi was entered on the count of possession of a firearm by a person prohibited on July 3, 2013.

SUMMARY OF ARGUMENT

The trial court's exclusion of alternative suspect evidence violated Appellant's Due Process rights under the Fourteenth Amendment of the United States Constitution and Article I Section 7 of the Constitution of the State of Delaware. Appellant was not afforded a meaningful opportunity to present a complete defense. The proffered evidence was relevant and its probative value was not substantially outweighed any prejudice where the alternative suspect pled guilty to a robbery that occurred less than three weeks prior to the alleged robbery in the present case, at the same business and location, involving both of the alleged co-conspirators in the present case.

STATEMENT OF FACTS

Appellant was charged by indictment with two counts of robbery first degree, one count of possession of a firearm during the commission of a felony, one count of possession of a firearm by a person prohibited, one count of wearing a disguise during the commission of a felony, and one count of conspiracy second degree. A-1. It was alleged that on September 4, 2012, Appellant, Orlando Ingram, and Khariem Hanzer committed an armed robbery at the Family Dollar on Bay Road in Dover. A-169-175.

Following the robbery, Cpl. Lance Chandler of the Dover Police Department reported to Public Safety Boulevard, adjacent to the St. Jones Greenway Trail, a common foot path between the Capital Park housing development and downtown Dover. Appellant was apprehended on the trail in the vicinity of the Division of Motor Vehicles. A-172. Upon the officer's approach, Hanzer fled into the Capital Park housing development, committed an act of carjacking, and was apprehended after a brief flight. A-173. Ingram fled and was arrested at a later date. A-177-180.

Seventeen days prior to the robbery in this case, on August 18, 2012, the same Family Dollar store on Bay Road in Dover was robbed by three black males matching the description of the suspects in the September 4, 2012 robbery. A-151-

159. Subsequently, on August 27, 2012, there was an attempted robbery at the Family Dollar on Bay Road. In that incident, three black males approach the store after business hours and unsuccessfully attempted to break into the store through the front door. A-160-165. Hanzer, Ingram, and Khalil Dixon were arrested for the August 18, 2012 robbery and the August 27, 2012 attempted robbery. During a post-miranda interview on September 4, 2012, Khareim Hanzer implicated himself, Ingram, and Dixon in the August 18 and August 27 Family Dollar robberies and robberies at Dollar General, US Gas, Dot Discount, and Sally's Beauty Supply in Dover. A-165, 174, 222-223.

On April 17, 2013, Dixon entered a plea in Kent County Superior Court Case Number 1209003138 to one count of Robbery First Degree and three counts of Robbery Second Degree. As part of his plea, Dixon admitted guilt to the August 18, 2012 Family Dollar robbery and three other robberies committed with Hanzer and Ingram. A-141-148.

ARGUMENT

Question Presented

Was the exclusion of alternative suspect evidence by the trial court a violation of Appellant's Due Process right to present a complete defense? A-99-102.

Standard and Scope of Review

The Superior Court's formulation and application of the law is reviewed *de novo*. Cabrera v. State, 840 A.2d 1256 (Del. 2004). Decisions of the trial judge to exclude irrelevant evidence, or evidence that is more prejudicial than probative, are clearly within the discretion accorded to trial judges on evidentiary matters. Lilly v. State, 649 A.2d 1055 (Del. 1994)

Merits of Argument

Exclusion of evidence related to the August 18, 2012 Family Dollar robbery, the August 27, 2012 Family Dollar attempted robbery, and Khalil Dixon's involvement in those crimes denied Appellant the opportunity to present a complete defense and a fair trial. The proffered evidence was relevant pursuant to D.R.E. 401 in that it was material to identification and the guilt of the accused, and probative in that it advanced the probability that Dixon rather than Appellant committed the robbery in the present case.

Evidence must be relevant to be admissible at trial¹. This Court has previously explained that the definition of relevance encompasses materiality and probative value. Evidence is material if the fact it is offered to prove is "of consequence" to the action. Evidence has probative value if it "advances the probability" that the fact is as the party offering the evidence asserts it to be. Watkins v. State, 23 A.3d 151, 155 (Del. 2011).

Norwood's defense at trial was misidentification. The central issue of the trial and ultimate fact necessarily became the identity of the perpetrator. The August 18, 2012 Family Dollar robbery, the August 27, 2012 Family Dollar attempted robbery, and Khalil Dixon's involvement in those crimes would have bolstered Norwood's misidentification defense and was thereby of consequence to the trial.

In addition to the relevance requirements of Rule 401, and an exception to the general rule of admissibility of relevant evidence Under D.R.E. 402, Delaware Rule of Evidence 403 provides:

Although relevant, evidence may be excluded if its

¹ "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. D.R.E. 401

probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.

The Court has previously held that “where a defendant invokes the defense of misidentification, “relevant misidentification evidence is highly probative of a material issue in the case.” Watkins v. State, 23 A.3d 151, 156 (Del. 2011) (quoting Kiser v. State, 769 A. 2d 736, 741 (Del. 2001). Thus, evidence of the August 18, 2012 Family Dollar robbery, August 27, 2012 attempted robbery, and Khalil Dixon’s participation in those robberies was highly probative of a material issue in the case.

Furthermore, the probative value of the proffered evidence was not substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence, if any.

Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. The United States Supreme Court has long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a

complete defense. To safeguard that right, the Court has developed "what might loosely be called the area of constitutionally guaranteed access to evidence."

United States v. Valenzuela-Bernal, 458 U.S. 858, 867 (1982). Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system. California v. Trombetta, 467 U.S. 479, 485 (U.S. 1984).

In this case, exculpatory evidence was disclosed by the State on January 7, 2013. The evidence included police reports and fingerprint analysis related to a series of armed robberies committed by Dixon, Hanzer, and Ingram. Appellant was not permitted to present the relevant exculpatory evidence at trial. The trial court's exclusion of all alternative suspect evidence and evidence of the August 18, 2012 robbery and August 27, 2012 attempted robbery was at a minimum an abuse of discretion. Under the circumstances – misidentification was the core of Appellant's defense and the proffered evidence was highly probative and exculpatory; the trial court's decision amounts to a violation of Appellant's Due Process rights under the Delaware and United States Constitutions.

When defense counsel attempted to question Detective Gott regarding alternative suspect evidence, the August 18, 2012 Family Dollar robbery, and

August 27, 2012 Family Dollar attempted robbery, the trial court repeatedly sustained objections by the State and held that such evidence was of no relevance:

Q: Okay. Now, you also investigated a robbery a week before at the Family Dollar; is that correct?

A: It wasn't my initial investigation. I ended up taking that over.

Q: And Arlando Ingram, a suspect in this robbery on the 4th, was also a suspect in that robbery?

A: Yes.

Q: And he lives in Capitol Park?

A: Yes.

Q: And Khareim Hanzer was also a suspect in that prior robbery at the Family Dollar?

A: It was an attempted –

MS. GRAHAM: Objection

THE COURT: On the basis of?

MS. GRAHAM: Of relevance.

THE COURT: Sustained.

Q: Now, Mr. Norwood wasn't a suspect in that

robbery; is that correct?

MS. GRAHAM: Objection

THE COURT: Sustained on the same basis.

Q: Officer, are you familiar with Khalil Dixon?

A: Yes, I am.

Q: And who is Khalil Dixon?

MS. GRAHAM: Objection, relevance.

THE COURT: I don't see the relevance in this.

MR. WINDETT: Your Honor, can we approach?

THE COURT: All right.

(At sidebar.)

MR. WINDETT: Khalil Dixon is a known associate of Arlando Ingram and Khareim Hanzer. He matches the physical description of the third suspect in this case. He lives in Capitol Park, two blocks –

THE COURT: How do you know he matches the description?

MR. WINDETT: Because he's – I've seen his pedigree information in police reports.

THE COURT: Is that going to come in here?

MR. WINDETT: What's that?

THE COURT: Is that going to come into evidence?

MR. WINDETT: I'm asking if he's familiar and can provide a description of him. That's already been testified about the physical description. He's an alternative suspect.

MS. GRAHAM: He's not an alternative suspect based on a general description of a black male. That's absolutely not correct. Mr. Windett is attempting to put in things because he knows Khalil Dixon is charged with multiple robberies which would not come in. It's not relevant to the robbery before this jury, and it's confusing and misleading.

THE COURT: There's going to be any number of people who match a general description of this defendant.

MR. WINDETT: Who's charged with an attempted robbery at the same place a week before with the same people.

THE COURT: So what.

MR. WINDETT: Well, because it going to his identity and this mistaken identification here.

THE COURT: The State has no obligation to prove the identity. The State's done it by putting in the evidence that it has put in. You're trying to elicit evidence that somebody else, at some other point, may have attempted a robbery at the same place. I don't think it has any meaning. A-99-102.

Quite to the contrary, the proffered evidence was highly relevant, highly exculpatory, and critical to identification, including the Appellant's misidentification defense. Evidence related to an ongoing criminal conspiracy between Dixon, Hanzer, and Ingram to commit armed robberies in Dover, including an attempted robbery and completed robbery at the same Family Dollar within a month of the robbery in the present case was highly exculpatory and subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963). Police reports and latent fingerprint reports related to robberies committed by Dixon, Hanzer, and Ingram were disclosed to the defense by the State on January 7, 2013. A-149. Dixon's involvement in the prior robberies and ongoing conspiracy was

not speculative: he entered a guilty plea acknowledging his involvement in the robberies on April 17, 2013 while Appellant's trial was ongoing. A-144-148.

Furthermore, Dixon matched the physical description of the suspect in the September 4 robbery, alleged by the State to have been the Appellant. During her testimony, victim Martha Lewis testified that the alleged suspect as 5'4 to 5'8, but closer to 5'4. A-17. She described the suspect as thin, with no tattoos, scars, or identifiable marks, wearing a dark-colored short-sleeve t-shirt. A-17-20. The other victim, Rebecca Chillas, testified that she had never seen the Appellant before in her life. A-57. She could not make a positive identification of the Appellant. According to materials provided by the State, Dixon matches the physical description provided by the victim, while Appellant does not. A-170, A-202-203.

The Brady material provided to the defense including police reports and forensic testing related to other robberies committed by Dixon, Hanzer, and Ingram support the defense theory of misidentification. The crimes committed by Dixon, Hanzer, and Ingram were all within a short walking or driving distance from their homes, less than one mile. Ingram and Dixon resided in the Capital Green housing development and Hanzer in the General's Green housing development. A-202-203. Appellant resided in Lewes, Delaware. A-170. The modus operandi of the crimes

was similar. In addition to the repeated robberies and attempts at the same Family Dollar store, Dixon also pled guilty to his role in an August 30, 2012 robbery at the Dollar General in Dover following an attempted robbery at the same store on August 27, 2012. A-144-148.

The trial court's exclusion of alternative suspect evidence denied Appellant the ability to present a substantial portion of his defense, the ability to present exculpatory evidence, the ability to present a complete defense, and a fair trial pursuant to the Due Process requirement of the United States and Delaware Constitutions.

CONCLUSION

For the foregoing reasons, the conviction of the Appellant should be reversed and the case remanded to the Superior Court for further proceedings.

Respectfully submitted,

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Attorney for Appellant Cameron Norwood

DATED: September 26, 2013

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE

VS.

CAMERON NORWOOD

Alias: No Aliases

DOB: 09/28/1989

SBI: 00494584

CASE NUMBER:
1209003131A

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY

BY: Glenda Long

DATE: 7-17-13

CRIMINAL ACTION NUMBER:

IK12-09-0502
ROBBERY 1ST(F)
IK12-09-0503
ROBBERY 1ST(F)
IK12-09-0506
DISGUISE (F)
IK12-09-0507
CONSP 2ND (F)

COMMITMENT

SEE NOTES FOR FURTHER COURT ORDER-TERMS/CONDITIONS

SENTENCE ORDER

NOW THIS 27TH DAY OF JUNE, 2013, IT IS THE ORDER OF THE
COURT THAT:

The defendant is adjudged guilty of the offense(s) charged.
The defendant is to pay the costs of prosecution and all
statutory surcharges.

AS TO IK12-09-0502- : TIS
ROBBERY 1ST

The defendant shall pay his/her restitution as follows:
\$1951.11 TO FAMILY DOLLAR

Effective September 4, 2012 the defendant is sentenced
as follows:

- The defendant is placed in the custody of the Department
of Correction for 20 year(s) at supervision level 5

- Suspended after 8 year(s) at supervision level 5

- Followed by 1 year(s) at supervision level 4 WORK
RELEASE

- Followed by 1 year(s) at supervision level 3

APPROVED ORDER 1 July 17, 2013 13:07

STATE OF DELAWARE
VS.
CAMERON NORWOOD
DOB: 09/28/1989
SBI: 00494584

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY

BY: Glenda Long

DATE: 7-17-13

- Followed by 1 year(s) at supervision level 1
RESTITUTION ONLY

- Hold at supervision level 5
- For supervision level 4 WORK RELEASE

The first 5 years of this sentence is a mandatory term of incarceration pursuant to DE11083200A3FB .

Probation is concurrent to any probation now serving.

AS TO IK12-09-0503- : TIS
ROBBERY 1ST

- The defendant is placed in the custody of the Department of Correction for 10 year(s) at supervision level 5
- Suspended after 5 year(s) at supervision level 5
- Followed by 1 year(s) at supervision level 3

The first 5 years of this sentence is a mandatory term of incarceration pursuant to DE11083200A3FB .

Probation is concurrent to criminal action number IK12-09-0502 .

AS TO IK12-09-0506- : TIS
DISGUISE

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5
- Suspended for 1 year(s) at supervision level 2

Probation is concurrent to criminal action number IK12-09-0502 .

AS TO IK12-09-0507- : TIS
CONSP 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5
- Suspended for 1 year(s) at supervision level 2

Probation is concurrent to criminal action number

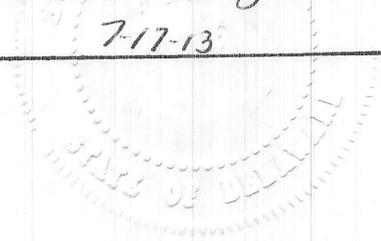
STATE OF DELAWARE
VS.
CAMERON NORWOOD
DOB: 09/28/1989
SBI: 00494584

IK12-09-0502 .

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY

BY: *Annette D. Ashley*

DATE: 7-17-13



APPROVED ORDER

3

July 17, 2013 13:07

CERTIFIED
SPECIAL CONDITIONS BY ORDER TRUE COPY

ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY

STATE OF DELAWARE
VS.
CAMERON NORWOOD
DOB: 09/28/1989
SBI: 00494584

BY: g. hanna log
DATE: 7-17-13

CASE NUMBER:
1209003131A

The Defendant is to pay all financial obligations pursuant to a schedule established by probation officer.

Pursuant to 29 Del.C. 4713(b)(2), the defendant having been convicted of a Title 11 felony, it is a condition of the defendant's probation that the defendant shall provide a DNA sample at the time of the first meeting with the defendant's probation officer. See statute.

Have no contact with FAMILY DOLLAR

Have no contact with the victim(s) REBECCA CHILLAS , the victim's family or residence.

Have no contact with the victim(s) MARTHA LEWIS , the victim's family or residence.

Have no contact with CODEF KHAREIM HANZER

Have no contact with CODEF ORLANDO INGRAM

Defendant shall receive mental health evaluation and comply with all recommendations for counseling and treatment deemed appropriate.

Defendant shall be evaluated for substance abuse and follow recommendation for treatment, counseling and screening.

Have no contact with Kalihil Dixon

Have no contact with Deborah Bush

STATE OF DELAWARE
VS.
CAMERON NORWOOD
DOB: 09/28/1989
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Have no contact with William Cason

Obtain and remain gainfully employed.

Pursuant to 29 Del.C. 4713(b)(2), the defendant having been convicted of a Title 11 felony, it is a condition of the defendant's probation that the defendant shall provide a DNA sample at the time of the first meeting with the defendant's probation officer. See statute.

NOTES

ADDITIONAL CONDITIONS

Should the codefendant, Arlando Ingram be convicted as the codefendant in this case, restiution will be modified to reflect joint and several.

The Department of Correction shall notify this court if any aspect of thie sentence can not be fulfilled.

The defendant must obtain full time employment within 30 days once on level 3 probation.

After 3 years 6 months the defendant may move the court for a modification of sentence on 12-09-0502 Robbery conviction to the minimum 5 years, IF the defendant demonstrates exemplary completion of at least 3 courses, totalling at least 12 months, beneficial to productive citizenship in the community.

JUDGE ROBERT B YOUNG

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY

BY: *J. Handley*
DATE: 7-17-13

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
CAMERON NORWOOD
DOB: 09/28/1989
SBI: 00494584

CASE NUMBER:
1209003131A

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	1951.11
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	450.00
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	100.00
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	4.00
DELJIS FEE ORDERED	4.00
SECURITY FEE ORDERED	40.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	60.00
SENIOR TRUST FUND FEE	
<hr/>	
TOTAL	2,709.11

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY

BY: *Shonda L...*
DATE: 7-17-13

APPROVED ORDER

6

July 17, 2013 13:07

AGGRAVATING-MITIGATING

STATE OF DELAWARE
VS.
CAMERON NORWOOD
DOB: 09/28/1989
SBI: 00494584

CASE NUMBER:
1209003131A

AGGRAVATING

PRIOR VIOLENT CRIM. ACTIVITY
UNDUE DEPRECIATION OF OFFENSE
LACK OF REMORSE
VULNERABILITY OF VICTIM
STATUTORY AGGRAVATION

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY

BY: G. Harold King

DATE: 7-17-13