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ARGUMENT

Contrary to the position taken by the State in its Answering Brief, evidence related to Khalil Dixon's participation in a multi-robbery conspiracy with Khareim Hanzer and Orlando Ingram, including a prior robbery and attempted robbery at the same location as the robbery for which Appellant was convicted, was both probative and material to Appellant's defense at trial. The proffered evidence would constitute relevant evidence of identity under Rule 404(b).

Despite the State's contentions regarding alleged victim Martha Lewis's identification of Appellant, the record reflects that Norwood was not identified by either victim. (Answering Brief at 4-5). One victim, Rebecca Chillas, testified that she was only able to view two of the three suspects, and could not identify the suspect alleged to be Norwood by the State. (A-55-57). The other victim, Martha Lewis testified:

Well, they had an individual in custody, Mr. Cameron, and they brought him back to the store in the police car and I was sitting in the police car. And he showed me the mask, and he asked me was this what one of the suspects was wearing. And I said, yes, that was one of the masks that he was wearing. And from the top up -- I

could see his clothing up top and the clothing were the same as what the suspect was wearing. (A-14).

At the most, Lewis identified a mask and clothing. However, her identification of clothing was highly inconsistent, and in conjunction with the lack of identification evidence, demonstrates the materiality and relevance of alternative suspect evidence. Lewis testified that the suspect was wearing a dark colored short-sleeve T-shirt. (A-19-20). She also testified that Norwood was wearing a dark colored T-shirt when he was taken to the store after his apprehension. (A-21). As noted by the State, at the time of his apprehension and thereafter, Norwood was wearing a white tank top. (Answering Brief at 4, B-4). Lewis could not provide a reliable identification of clothing or Norwood.

The proffered alternative suspect evidence was not simply “evidence that Dixon committed other similar crimes.” (Answering Brief at 14). Khalil Dixon was a co-conspirator with Khareim Hanzer and Orlando Ingram in a series of robberies, including a robbery and attempted robbery at the same location as the robbery in this case. (A-141-239). Khalil Dixon matched the physical description of the masked suspect. (A-170, A-202-203). Corporal Chandler testified that he pursued three individuals on a foot path between the Family Dollar and the Capital Park neighborhood, but conceded that there could have been a fourth person in the

area. (B-6). The factual circumstances present in this case are distinguishable from those in the cases cited by the State in its Answering Brief. The prior Family Dollar robbery and attempted robbery, and alternative suspect evidence were not merely similar or tangentially connected to the robbery for which Appellant was convicted. Each crime involved the same suspects at the same location. Those suspects; Hanzer, Ingram, and Dixon, conspired to commit several robberies throughout Dover, while Appellant, who lived in Lewes, was not suspected of any other robberies or association with the suspects. (A-141-239, 170).

Given the lack of credible or reliable identification evidence, and the similarity between the crimes, evidence of the prior Family Dollar robberies was both probative and material. The Court's holding in Watkins v. State, 23 A.3d 151 (Del. 2011), is no less applicable because of the factual circumstances under which Appellant was apprehended. The State points to the proximity of Norwood's apprehension to the crime, his alleged flight, and possession of a ski mask as facts distinguishing this case from Watkins. The State also notes that "Norwood may have changed his shirt shortly after the September 4 robbery since a balled up black t-shirt was found near where the police officer had observed Norwood" to explain why Norwood's appearance did not match the description of the suspect. (Answering Brief at 14-15). Under the State's logic, if Norwood had committed

the crime, changed his shirt and discarded it, in an attempt to change his appearance, it would not make sense to retain the mask. It is equally likely that Norwood, a pedestrian on the path, picked up the mask, ran when he saw a police officer pursuing him, and quickly submitted to an arrest.

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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DATED: November 23, 2013