

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STANLEY YELARDY,	§	
	§	No. 57, 2005
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0303008652A
Appellee.	§	

Submitted: November 9, 2007

Decided: February 20, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 20th day of February 2008, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) On March 12, 2003, at approximately 10:30 a.m., a man brandishing a handgun robbed the Delaware National Bank at 281 E. Main Street in Newark. Within minutes of the robbery, the appellant, Stanley Yelardy, was taken into custody.

(2) Yelardy was indicted in the Superior Court on multiple counts of Robbery in the First Degree and Possession of a Firearm During the

Commission of a Felony.¹ Prior to his four-day jury trial, Yelardy elected to discharge his counsel and proceed *pro se*.²

(3) The jury convicted Yelardy as charged. After a presentence investigation, Yelardy was declared a habitual offender and was sentenced to a total of one hundred and sixty years in prison.³ This is Yelardy's direct appeal.

(4) Prior to the deadline for filing the opening brief, Yelardy filed a motion requesting the appointment of counsel on appeal. The Court remanded the matter to the Superior Court for a hearing on Yelardy's motion. The Superior Court appointed Yelardy's former counsel to represent him on appeal.

(5) After the case was returned from remand, Yelardy filed a motion requesting the appointment of a different counsel or, in the alternative, to proceed *pro se* on appeal. Once again the Court remanded the matter to the Superior Court for a hearing on Yelardy's motion. Upon return of the case from remand, the Court granted Yelardy's request to proceed *pro se* on appeal.

¹ Yelardy was also convicted of Wearing a Disguise During the Commission of a Felony, Receiving Stolen Property and Reckless Endangering in the Second Degree.

² Yelardy's counsel, an assistant public defender, was directed to serve as stand-by counsel during the trial.

³ See Del. Code Ann. tit. 11, § 4214(a) (2007) (providing that any person three times convicted of specified felonies is, upon a fourth conviction or subsequent conviction, subject to a sentence of up to life imprisonment).

(6) Yelardy's *pro se* opening brief raises numerous issues for the Court's consideration. To the extent the brief raises issues that Yelardy could have raised in the Superior Court but did not, the Court will review those issues for plain error.⁴

(7) The Court has considered Yelardy's claim that his right to counsel was violated when the Superior Court granted his request to proceed *pro se* at trial. Yelardy's claim is not supported by the record. The transcript of the *Watson* colloquy⁵ reflects that the Superior Court thoroughly advised Yelardy of the risks associated with proceeding *pro se* and then properly determined that Yelardy made a knowing and intelligent waiver of his right to counsel.⁶

(8) The Court has considered Yelardy's claim that there was a lack of probable cause for his arrest. Yelardy's claim is not supported by the record. Yelardy fit the description of the robbery suspect and was found

⁴ "Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process." *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

⁵ *See Watson v. State*, 564 A.2d 1107 (Del. 1989) (providing that the trial judge should conduct an evidentiary hearing on defendant's request to discharge his attorney and proceed *pro se* on appeal so that defendant might demonstrate that his request is knowing and voluntary). Trial Tr. at 6-26 (Sept. 25, 2003).

⁶ *See Thomas v. State*, 2002 WL 243375 (Del. Supr.) (citing *Briscoe v. State*, 606 A.2d 103, 107-08 (Del. 1992)).

with a handgun and in the vicinity where the suspect was last seen. The police had ample probable cause to take Yelardy into custody.⁷

(9) Yelardy contends, as he did in the Superior Court, that there was insufficient evidence to support the jury verdicts. “The applicable standard of appellate review is whether, considering the evidence in the light most favorable to the prosecution, including all reasonable inferences to be drawn therefrom, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”⁸

(10) The evidence adduced at trial reflects what took place during and immediately after the bank robbery. Bank employee witnesses testified that a black man wearing gloves, a stocking mask and dark clothing entered the bank, pointed a gun at them and demanded that they put money into a dark colored bag. One of the employees testified that she slipped a dye pack into the money bag before giving the bag back to the robber.⁹ The robber then left the bank.

⁷ “[T]he sufficiency of probable cause for a warrantless arrest is determined according to a ‘totality of the circumstances’ test.” *Coleman v. State*, 562 A.2d 1171, 1177 (Del. 1989) (quoting *Thompson v. State*, 539 A.2d 1052, 1055 (Del. 1988)).

⁸ *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997) (citing *Morrissey v. State*, 620 A.2d 207, 213 (Del. 1993)).

⁹ The witness explained that a dye pack, also known as “bait money,” is “a sensor to the bank that as soon as [it] passes the sensor to the door, after a few minutes [it] explodes.” Trial Tr. at 11 (Aug. 18, 2004).

(11) Witnesses Jeffrey Gates, an off-duty University of Delaware police officer, and Ridge Amos, a tobacco sales representative, separately testified that they were near the bank at the time of the robbery. Gates, who was on foot, testified that he observed “an orange mist of smoke” coming from the windows of a car that was exiting the bank parking lot.¹⁰ Amos, who was driving a work van, testified that he observed a car “filled with red smoke . . . flying out of the [bank] parking lot.”¹¹ Gates and Amos both testified that they observed the smoke-filled car crash into another vehicle. Both men also testified that after the collision they observed a black man wearing dark clothing exit the smoke-filled car and flee on foot. Gates testified that the man was carrying a black bag. Gates also testified that he pursued the man east on Main Street until the man darted between two houses.

(12) At about the same time as the robbery, Antoine Stevenson was caring for his seven month old grandson in a car parked at a doctor’s office located next to the bank. Stevenson testified that he observed a black man wearing dark clothing running through the parking lot with a police officer

¹⁰ *Id.* at 19.

¹¹ *Id.* at 47.

“trailing him, right behind the guy.”¹² According to Stevenson, the man ran past his car, jumped a fence and ran off, leaving a black bag on the ground.

(13) Minutes later, Newark police officers searching the area for the robbery suspect came upon Yelardy who was sitting on the top step of an insurance business located at 319 East Main Street. It appeared to the police that Yelardy fit the description of the suspect and was in the possession of a handgun. The police took Yelardy into custody and transported him to the Newark Police Department. At the police department, Yelardy confessed to the robbery.

(14) It is clear that there was sufficient evidence, both direct and circumstantial, to support Yelardy’s conviction on multiple counts of Robbery in the First Degree and Possession of a Firearm During the Commission of a felony.¹³ Yelardy’s claim to the contrary is without merit.

(15) The Court has considered Yelardy’s claim that the Newark police detective who took his confession failed to give him *Miranda* warnings and thereby violated his Fifth Amendment rights.¹⁴ Yelardy’s

¹² *Id.* at 66.

¹³ See Del. Code Ann. tit. 11, § 832 (1974) (governing Robbery in the First Degree); Del. Code Ann. tit. 11, § 1447A (1974) (governing Possession of a Deadly Weapon During Commission of a Felony).

¹⁴ See *Miranda v. Arizona*, 384 U.S. 436 (1966) (holding that statements obtained during custodial interrogation are inadmissible absent a prior warning advising a suspect of rights under Fifth Amendment).

claim is without merit. Under *Miranda*, a discussion between the police and a suspect amounts to actual interrogation when it encompasses actions or words by the officer that the officer should have known would elicit an incriminating response.¹⁵ In this case, notwithstanding Yelardy's claim to the contrary, it appears that neither the brief exchange between Yelardy and the detective in the holding cell¹⁶ nor the detective's request for biographical data¹⁷ was the functional equivalent of an interrogation.¹⁸ Rather, the record reflects that the detective interrogated Yelardy only after timely informing him of his *Miranda* rights, and that Yelardy chose to waive those rights.

(16) Yelardy claims that Jeffrey Gates' in-court identification was tainted by an unnecessarily suggestive out-of-court "show up" identification procedure. Yelardy's claim is without merit. Having carefully considered Gates' trial testimony, including his testimony regarding the "show up" identification,¹⁹ it appears that Gates had ample opportunity to view Yelardy

¹⁵ *Tolson v. State*, 900 A.2d 639, 644 (Del. 2006) (citing *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)).

¹⁶ The record reflects that the detective approached Yelardy in a holding cell and asked him if he wanted to talk. Yelardy responded that he would talk but that he didn't want to incriminate himself.

¹⁷ Following the brief exchange in the holding cell, the detective transferred Yelardy to an interview room where he asked him several pedigree questions, *e.g.*, name, address and age.

¹⁸ See *Herring v. State*, 2006 WL 3062899 (Del. Supr.) (recognizing an exception to *Miranda* for booking inquiries).

¹⁹ Gates testified that at the scene of the crime he "confirmed verification" with "several police officers" that [Yelardy] was the "gentleman that [he] had seen leaving the accident" and the same man that he had chased. Trial Tr. at 30-32 (Aug. 18, 2004).

and that his subsequent identification of Yelardy in court was without a substantial likelihood of misidentification.²⁰

(17) Yelardy raises several allegations of prosecutorial misconduct. Specifically, Yelardy claims that the prosecutor asked leading questions, knowingly solicited false testimony, and attempted to “sabotage the defense” when calling two defense witnesses in the State’s case-in-chief.²¹ Moreover, Yelardy alleges that the prosecutor committed a *Brady* violation when he chose not to call a police officer witness.²² Finally, Yelardy alleges that the prosecutor made two “highly prejudicial statement[s]” to the jury during closing argument.²³

(18) The record does not reflect that Yelardy objected to either of the prosecutor’s challenged statements. The Court has reviewed the trial

²⁰ See *Talbert v. State*, 1989 WL 88644 (Del. Supr.) (citing *Watson v. State*, 349 A.2d 738 (1975)).

²¹ It appears from the record that Yelardy agreed that the prosecutor could call a defense witness out of order to accommodate that witness’ schedule. After that witness testified, Yelardy remained silent when the prosecutor proceeded to call two more defense witnesses. When Yelardy objected to the prosecutor’s statement to the jury alluding to the change in the order of witnesses, the Superior Court offered to “instruct the jury that sometimes we move witnesses . . . to accommodate the schedule of some witnesses.” Trial Tr. at 77 (Aug. 19, 2004). Yelardy, however, declined the Superior Court’s offer to instruct the jury.

²² *Brady v. Maryland*, 373 U.S. 83 (1963). A *Brady* violation occurs when a prosecutor fails to disclose favorable evidence that is material to either the guilt or punishment of the defendant.

²³ The prosecutor’s first statement was: “Dorothy Sutton, this lady now lives in fear.” Trial Tr. at 14 (Aug. 20, 2004). Ms. Sutton did not testify at Yelardy’s trial. The prosecutor’s second statement was: “I mean, if he’s just zapped down there to that porch by a Martian out of North Carolina.” *Id.* at 34.

transcript and cannot conclude that Yelardy's right to a fair trial was prejudiced by any question or statement posed by the prosecutor.

(19) Yelardy does not provide a basis for his claim that the prosecutor knowingly solicited false testimony, and he does not articulate how the order of witnesses prejudiced his right to a fair trial. Yelardy also does not articulate how the absence of a police officer's testimony prejudiced his trial rights given that other witnesses testified as to the same events.

(20) To the extent Yelardy's allegations of prosecutorial misconduct attack the credibility of the witnesses, the Court has determined that the claims are without merit. It is well-settled Delaware law that the jury is responsible for determining witness credibility, resolving any conflicts in the testimony, and for drawing any inferences from the evidence presented.²⁴

(21) Yelardy claims that the Superior Court trial judge had a "contemptuous" attitude toward him for not testifying. Yelardy also contends that the signature of the grand jury foreman was forged. Yelardy fails to provide a basis for either of those allegations.

(22) Yelardy contends that the Superior Court erred when ruling that a 1976 conviction was admissible for use as impeachment evidence. This

²⁴ *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

Court has held, however, that “a defendant challenging a trial court’s ruling on the admissibility of a prior conviction for impeachment purposes must first testify and then challenge that ruling on appeal.”²⁵ In this case, Yelardy did not testify. By not testifying, Yelardy precluded any meaningful review of the Superior Court’s ruling on appeal.

(23) Yelardy claims that the Superior Court erred when denying his request for funds to hire an expert witness.²⁶ Under the controlling standard of review and in the absence of demonstrated prejudice, it does not appear that the Superior Court abused its discretion when denying funds to Yelardy.²⁷

(24) Yelardy claims that the jury selection process systematically excluded minorities from the jury. We concur with the Superior Court’s rejection of the same claim that was raised by Yelardy during trial. Yelardy has not made a prima facie showing that the jury’s composition resulted

²⁵ *Walker v. State*, 790 A.2d 1214, 1218 (Del. 2002) (citing *Fennell v. State*, 691 A.2d 624, 625 (Del. 1997)).

²⁶ Yelardy wanted to hire an expert witness to determine whether he was competent when he gave his confession and whether the confession was truthful.

²⁷ See Del. Super. Ct. Crim. R. 44(e) (providing for disbursements of funds to pay for expenses necessary for adequate representation, including funds for expert witness services). The grant or denial of funds is “within the sound discretion of the court.” *Walls v. State*, 1990 WL 17759 (Del. Supr.) (quoting *Van Arsdall v. State*, 486 A.2d 1, 14 (Del. 1984), *rev’d on other grounds*, *Delaware v. Van Arsdall*, 475 U.S. 673 (1986)).

from a systematic exclusion of minority members for racially motivated purposes.²⁸

(25) Yelardy claims that his ability to advance arguments on appeal was compromised because of incomplete and/or inaccurate transcripts.²⁹ The Court has carefully considered Yelardy's claims and has concluded that the transcripts germane to any issue raised by Yelardy on appeal were transcribed, and that the relevant transcripts or portions thereof were provided to Yelardy. To the extent he argues otherwise, Yelardy has not provided specific references to any alleged transcript errors or omissions from which he can demonstrate specific prejudice.³⁰

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

²⁸ *Riley v. State*, 496 A.2d 997, 1009 (Del. 1985).

²⁹ Yelardy's allegations were the subject of a hearing in the Superior Court on September 12, 2005. A transcript of that hearing was provided to Yelardy and filed with the Court. By letter dated September 27, 2005, the Superior Court advised Yelardy that his motion questioning the accuracy of the transcripts was denied subject to this Court's review of the claims on appeal.

³⁰ *Bass v. State*, 720 A.2d 540, 541 (Del. 1984).