

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMOTT STEVENSON,	§
	§ No. 203, 2013
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr. ID No. 1201020817A
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: December 11, 2013

Decided: December 20, 2013

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

This 20th day of December 2013, it appears to the Court that:

1) The defendant-appellant, Lamott Stevenson (“Stevenson”), appeals from a jury conviction in the Superior Court of two counts of Robbery in the First Degree, one count of Assault in the Second Degree, three counts of Possession of a Deadly Weapon During the Commission of a Felony, two counts of Possession of a Firearm During the Commission of a Felony, one count of Conspiracy in the Second Degree, and one count of Wearing a Disguise During the Commission of a Felony (“WDDCF”).

2) Stevenson raises three claims of error in this direct appeal. First, he contends that the prosecutor made improper remarks during closing argument; second, he argues that the trial court abused its discretion when it

admitted the medical records evidence of Bryant Brown (“Brown”); and, third, he submits that the trial court erred when it denied Stevenson’s Motion for Judgment of Acquittal for the charge of WDDCF.

3) On December 15, 2011, Michael Gallagher (“Michael”) and his wife Kathleen Gallagher (“Kathleen”) were attacked by three individuals wearing ski masks and hoods. Michael was hit over the head with a crowbar, rendering him unconscious. When Michael awoke, he saw two of the intruders descend the stairs. Using a gun he kept on top of the refrigerator, Michael fired four shots at the two intruders.

4) While Michael was unconscious, one of the intruders attacked Kathleen on the back deck with a gun. The intruder demanded that she give over her jewelry. This persisted until Michael’s shots were heard from in the house, causing the Kathleen’s attacker to flee.

5) The intruders left behind a recently-purchased crowbar, a ski mask, and a jewelry box with bullet holes in it. Police traced the crowbar to a sale that occurred at 3:02 PM on December 15th at the Ace Hardware store in Elton Park, Maryland. Based on the surveillance video from the Ace Hardware store, police discovered that the same person who made the 3:02 PM purchase also purchased a mini-sledge hammer on December 9th. In addition, police found that the customer traveled in a dark Crown Victoria

registered to Brown and Johnmika Daniels (“Daniels”) of New Castle, Delaware. Officers learned that Stevenson was listed as living at the same address as Brown and Daniels.

6) In the early morning of December 16th, a patient claiming to be Brown was admitted to the Crozer-Chester Hospital in Pennsylvania for gunshot wounds. Based on the hospital’s surveillance video, police determined that the individual treated was Stevenson and not Brown. The video also showed Daniels picking up Stevenson after he was discharged. Back at the Gallaghers’ home, police found blood stains in the street that matched Stevenson’s DNA.

7) Stevenson was indicted on two counts of Robbery in the First Degree, one count of Assault in the Second Degree, three counts of Possession of a Deadly Weapon During the Commission of a Felony, two counts of Possession of a Firearm During the Commission of a Felony, one count of Conspiracy in the Second Degree, and one count of WDDCF.

8) At trial, the State argued that Stevenson was the patient “Bryant Brown,” and had robbed and attacked the Gallaghers in conjunction with two unknown assailants. To prove that Stevenson was one of the assailants, the State presented surveillance footage, photo comparisons of Brown and

Stevenson, and Brown’s medical records from Crozer Hospital (the “Medical Records”).

9) The jury found Stevenson guilty on all charges. The Superior Court sentenced Stevenson as a habitual offender to 192 years of incarceration at Level V.

10) Stevenson argues, first, that the prosecutor made improper remarks during closing argument. Under our plain error review for prosecutorial misconduct, we begin by examining the record *de novo* to determine whether prosecutorial misconduct occurred.¹ If we find that there was no misconduct, then our analysis ends.² But where we determine that misconduct did occur, we then apply the *Wainwright v. State* plain error standard.³ Plain error requires that the misconduct complained of “must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”⁴

11) This Court has consistently recognized that, “the prosecutor is allowed to argue all legitimate inferences of the defendant’s guilt that follow

¹ *Whittle v. State*, 77 A.3d 239, 243 (Del. 2013), *as corrected* (Oct. 8, 2013) (citing *Baker v. State*, 906 A.2d 139, 150 (Del. 2006)).

² *Id.*

³ *Id.*

⁴ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

from the evidence.”⁵ But all inferences “must flow from the evidence presented.”⁶ In this case, the prosecutor explained in his closing rebuttal:

The patient is a 24-year-old black male who sustained multiple gunshot wounds. He had significant injury to the right hand. *You saw the photograph at State’s Exhibit 200 of the Defendant Lamott Stevenson when he’s taken into custody still with bandages on his right hand.*

Bryant Brown is not the person who was treated at Cozer Hospital that night. Bryant Brown is the name that was given. The defendant knows who Bryant Brown is because he lived with him.

12) The record reflects that the prosecutor sought to rebut the argument that Stevenson was not the patient Brown at Crozer Hospital. Stevenson argues that this statement amounts to prosecutorial misconduct because of the trial judge’s earlier evidentiary ruling. During the discussion surrounding the admission of photographs depicting Stevenson shortly after the burglary, the trial court explained to the prosecutor:

The problem is the purpose for which [the photographs] attempting to be introduced is to say to the jury this is the guy, and this is the guy because these are the bullet wounds that Mr. Gallagher inflicted upon him. And I don’t know that they are that. I mean, I can see that they’re wounds. I don’t know what they are, and I don’t know if they’re consistent with the person that you’re trying to connect to the crime, which is the person

⁵ *Kirkley v. State*, 41 A.3d 372, 377 (Del. 2012) (citing *Daniels v. State*, 859 A.2d 1008, 1011 (Del. 2004)); *see, e.g., Boatson v. State*, 457 A.2d 738, 742 (Del. 1983) (“A prosecutor is allowed and expected to explain all the legitimate inferences of the defendant’s guilt that follow from the evidence.”).

⁶ *Kirkley v. State*, 41 A.3d at 377.

who was at Crozer Hospital. So I think if you're able to make a connection between the two, and granted, it would be difficult. But it would then provide some relevance.

If you want to introduce State's Exhibit 200, which is a picture of Mr. Stevenson when he was arrested, I'll let you do that so that the jury will know in close proximity to when the event occurred this is what he looked like. But I'll leave that up to you. But the rest of the photographs, without some medical connection or relevant connection for identification purposes, I don't think quite makes it yet.

13) This ruling precluded the prosecution from using State's Exhibit 200 or other photographs to show that Mr. Gallagher had caused the bullet wounds to Stevenson or that Stevenson had sustained any bullet wounds without making the specified connections. The ruling, however, did not prohibit the prosecutor from mentioning the photographs in relation to the hospital stay. It merely prohibited any connection between the photographs of Stevenson's wounds and the shot fired by Mr. Gallagher.

14) The record reflects that the prosecutor's statements in Stevenson's case did not violate the trial judge's evidentiary ruling. The prosecutor did not mention any gunshot wounds. Instead, he referred to the injury to Stevenson's hand at the time of his arrest. The statements argued a legitimate inference that Stevenson fit the description of the person who received treatment at Crozer Hospital. Because the statements do not violate

the trial court's evidentiary ruling and there is no other asserted basis at law suggesting misconduct, Stevenson's first claim of error is without merit.

15) Stevenson next argues that there was no evidence to support the State's claim that Stevenson was the patient described in Brown's Medical Records. Although he does not explicitly make such a claim, Stevenson appears to argue that the medical records were not relevant and not properly authenticated. Under the Delaware Rules of Evidence, relevant evidence is "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."⁷ Further, "[a]ll relevant evidence is admissible, except as otherwise provided."⁸ "Evidence which is not relevant is not admissible."⁹ Authentication under the Rules requires sufficient evidence "to support a finding that the matter in question is what its proponent claims."¹⁰

16) Despite Stevenson's arguments to the contrary, the record reflects that the Medical Records were relevant and properly admissible. The State presented evidence that Stevenson had resided with Brown and used his car. The State also introduced surveillance footage showing

⁷ D.R.E. 401.

⁸ D.R.E. 402.

⁹ *Id.*

¹⁰ D.R.E. 901(a).

Stevenson—not Brown—at the hospital on the dates of admission and discharge from the Crozer Hospital. Further, the State offered comparison photographs of Brown and Stevenson to show the jury that the person treated as “Bryant Brown” was actually Stevenson. Based on this evidence, the Medical Records would have some tendency to show that Stevenson was shot shortly after the December 15th burglary.

17) The record also reflects that the Medical Records were properly authenticated. The State provided witness testimony of the officer who obtained the Medical Records. This testimony also explained why the State believed the person who received treatment was suspected to be Stevenson and not Brown.

18) Because the identity of the patient was a central question of fact to be determined by the jury, we cannot conclude that trial court exceeded the bounds of reason or ignored the rules of law to cause an injustice in Stevenson’s trial. Therefore, the trial court did not abuse its discretion in admitting the Medical Records into evidence.

19) Stevenson’s final claim of error is that the trial court improperly denied his Motion for Judgment of Acquittal because the State failed to meet its burden of proof on the WDDCF charge. The Delaware Code provides: “A person who wears a hood, mask or other disguise during the commission

of any felony is guilty of wearing a disguise during the commission of a felony.”¹¹

20) Although the State at one point suggested that Stevenson could be found guilty of WDDCF on the basis of accomplice liability, the record demonstrates that a rational trier of fact could have found that Stevenson wore a hood or mask during the burglary. The facts viewed in the light most favorable to the State show that at one point all three assailants wore clothing to disguise their identity during the commission of the burglary.

21) Michael testified that he saw three people in his house wearing ski masks. Kathleen also testified that she was attacked by a person who, although unmasked, was wearing a dark hood. Kathleen also found a mask left in the house. Taken together, this evidence establishes that a reasonable juror could find that all participating assailants wore some sort of disguise at some point during the burglary. Therefore, Stevenson’s third claim of error is not supported by the record.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹¹ Del. Code Ann. tit. 11, § 1239.