IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRYAN L. DAWKINS,	§	
	§	No. 299, 2004
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. IN02-10-1889; 1890;
	§	2165
Plaintiff Below-Appellee.	§	
	§	

Submitted: July 29, 2005
Decided: September 15, 2005

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

O R D E R

This 15th day of September 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Bryan L. Dawkins, was found guilty by a Superior Court jury of Murder in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, and Endangering the Welfare of a Child. On the murder conviction, Dawkins was sentenced to life imprisonment. On the weapon conviction, he was sentenced to 20 years at Level V, to be suspended after 4 years. On the conviction of endangering

the welfare of a child, he was sentenced to 1 year at Level V. This is Dawkins' direct appeal.[1]

(2) Dawkins raises six issues for this Court's consideration. He claims that: a) the indictment was fraudulent; b) the indictment subjected him to double jeopardy; c) there was insufficient evidence presented at trial to support his convictions; d) the jury instructions were improper; e) the arrest warrant was fraudulent; and f) certain witness testimony should have been excluded. Because all of these claims were raised for the first time in this appeal, they will be reviewed for plain error.[2]

(3) The evidence adduced at trial was as follows. The incident leading up to the charges against Dawkins began on October 21, 2002, when Dawkins' ex-wife, Stacey, picked up her son, Myles, at the Boys and Girls Club in Wilmington, Delaware, where he attended an after-school program. Stacey and Dawkins had lived separately since June of 2002. Dawkins was not Myles' biological father, but had legally adopted him in 1998 when he and Stacey were married. The Family Court had issued a protection from

[1] On March 16, 2005, following an evidentiary hearing in the Superior Court, this Court granted Dawkins' request for leave to proceed pro se in his direct appeal. Supr. Ct. R. 26(d) (iii).

[2] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (an error is "plain" when it is so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process).

abuse ("PFA") order, which, among other things, enjoined Dawkins from going to Myles' after-school program at the Boys and Girls Club.

(4) In violation of the PFA order, Dawkins parked his car close to the Boys and Girls Club and, when Stacey went inside to get Myles, hid inside the trunk of her car. As Stacey drove towards North Wilmington, Myles heard Dawkins in the trunk. Stacey stopped to let Dawkins out of the trunk and he got into the car on the front passenger side. Stacey continued driving and, by the time they reached northbound U.S. Route 202, she and Dawkins were involved in a heated argument. Other drivers on the road observed that the car was driving erratically, as Dawkins attempted to take control of the steering wheel. The car finally ended up in a grass median between the north and southbound lanes of Route 202.

(5) The argument between Dawkins and Stacey then turned even more violent. Dawkins punched Stacey in the face and she ran out of the car, screaming for help. Rush hour traffic on Route 202 came to a halt. As Dawkins caught up with Stacey, he stabbed her with a knife at least six times. Most of the wounds were in her chest, but she also sustained cuts to her hands and skull. One driver who stopped to help returned to his vehicle when Dawkins displayed a silver object, which the driver assumed to be a weapon. Another driver who witnessed the incident identified the weapon

as a knife. An off-duty Wilmington police officer chased Dawkins to a wooded area in the vicinity of Augustine Cut-Off, an area close to Route 202, where Dawkins managed to escape. Stacey struggled back to the car and collapsed. She later died of multiple stab wounds. Her son, Myles, who remained in the car, witnessed the incident. Drivers who came to his rescue testified that he was screaming hysterically.

(6) Dawkins' first claim that the indictment is fraudulent appears to be based upon his assertion that there is no transcript in the record of the required number of grand jurors in support of the indictment.[3] Because Dawkins failed to raise his challenge to the indictment prior to trial, he has waived it for purposes of this appeal.[4] Even if the claim were not waived, it is without merit. The purpose of an indictment is to place the defendant on notice of the crimes with which he has been charged and to preclude a subsequent prosecution for the same offense.[5] Dawkins has provided no evidence that the indictment failed to place him on notice of the crimes with which he was charged. In fact, the record clearly suggests otherwise, since Dawkins' attorney successfully moved to sever the assault charge from the indictment on the ground that the incident underlying that charge occurred

[3] Super. Ct. Crim. R. 6(f); Del. Code Ann. tit. 10, § 4505.
[4] Super. Ct. Crim. R. 12(b) (1) and (2); Super. Ct. Crim. R. 12(f).
[5] *Malloy v. State*, 462 A.2d 1088, 1092 (Del. 1983).

three weeks prior to the murder and would be highly prejudicial to Dawkins' case. We find no error, plain or otherwise, with respect to Dawkins' first claim.

(7) Dawkins' second claim that the indictment subjected him to double jeopardy is based upon his assertion that the grand jury issued two separate indictments on the same charges. However, the two documents Dawkins has included in his appendix in support of this argument do not represent two separate indictments. Rather, they are two versions of the same indictment. The first one appears to have been made before, and the second one after, the Prothonotary assigned criminal action numbers to the charges. There is, thus, no factual basis for Dawkins' second claim and we find no error, plain or otherwise, with respect to that claim.

(8) Dawkins' third claim is that there was insufficient evidence presented at trial to support his convictions. In reviewing a claim of insufficiency of the evidence, this Court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[6] In so doing, we make no distinction between direct and

[6] *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997).

circumstantial evidence.[7] Moreover, it is for the jury to weigh the relative credibility of the witnesses and reconcile any conflicting testimony.[8]

(9) The testimony of Stacey's son, Myles, who witnessed his mother being beaten and stabbed by Dawkins, as well as the testimony of the other drivers on the road where Stacey was beaten and stabbed, was more than sufficient to support Dawkins' convictions of first degree murder,[9] possession of a deadly weapon during the commission of a felony[10] and endangering the welfare of a child.[11] There is no merit to Dawkins' argument that the jury should have accepted the testimony of his expert, who supported his defense of extreme emotional distress, rather than the testimony of the prosecution's expert, who did not. It was for the jury to assign the appropriate weight to the expert testimony that was offered in support of Dawkins' defense and there is no evidence that they did not carry out their duty in this respect. We, thus, find no error, plain or otherwise, with respect to Dawkins' third claim.

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[7] *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).
[8] *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).
[9] Del. Code Ann. tit. 11, § 636(a) (1) (2001) ("A person is guilty of murder in the first degree when . . . [t]he person intentionally causes the death of another person . . . .")
[10] Del. Code Ann. tit. 11, § 1447 (a) (2001) ("A person who is in possession of a deadly weapon during the commission of a felony is guilty of possession of a deadly weapon during the commission of a felony.")
[11] Del. Code Ann. tit. 11, § 1102(a) (4) (2001) ("A person is guilty of endangering the welfare of a child when . . . [t]he person commits any violent felony . . . knowing that such felony . . . was witnessed by a child less than 18 years of age who is a member of . . . the victim's family.")

(10) Dawkins' fourth claim is that the instructions given to the jury were improper. He contends that it was erroneous for the trial judge to instruct the jury that extreme emotional distress is an affirmative defense as to which the defendant bears the burden of proof, because this relieved the prosecution of having to prove each element of the crimes beyond a reasonable doubt. Delaware statutory law provides that the defense of extreme emotional distress "must be proved by a preponderance of the evidence. The accused must further prove by a preponderance of the evidence that there is a reasonable explanation or excuse for the existence of the extreme emotional distress."[12] We have carefully reviewed the trial transcript and it reflects that the judge properly stated the burden of proof under Delaware law in instructing the jury. We, thus, find no error, plain or otherwise, with respect to Dawkins' fourth claim.

(11) Dawkins' fifth claim is that the warrant supporting his arrest was fraudulent. Dawkins rests this claim upon the fact that the copy of the warrant he apparently obtained from the State for purposes of his *pro se* appeal does not contain either the signature of the arresting officer or the signature of the magistrate. However, the Superior Court record in this case reflects that both the arresting officer and the magistrate signed the original

[12] Del. Code Ann. tit. 11, § 641 (2001); *Henry v. State*, 805 A.2d 860, 863, n. 7 (Del. 2002).

arrest warrant. In the absence of a factual basis for Dawkins' fifth claim, we find no error, plain or otherwise, with respect to it.

(12) Dawkins' sixth, and final, claim is that the judge should have excluded certain trial testimony. Specifically, he contends that Myles' trial testimony that Dawkins had stabbed his mother was inconsistent with statements he previously made to Detective Timothy Morris and, therefore, should have been excluded.[13] The record reflects that, after the prosecution had rested its case, defense counsel called Detective Morris to the witness stand. On direct examination, Morris testified that he interviewed Myles at the scene of the incident. At that time, Myles said that the only weapon he saw was "Bryan Dawkins' hands" and never mentioned that Dawkins had "stabbed" his mother. In a subsequent interview with Detective Morris, Myles also did not use the term "stabbed."

(13) We find no basis for excluding Myles' testimony under these circumstances. It is for the jury to assess the credibility of witnesses, including reconciling their trial testimony with any prior statements that are alleged to be inconsistent with that testimony.[14] In the absence of any

[13] In asserting this argument, Dawkins erroneously cites to Del. Code Ann. tit. 11, § 3507, which permits the admission of prior witness statements as affirmative evidence.
[14] *Hatcher v. State*, 337 A.2d 30, 32 (Del. 1975).

evidence that the jury failed to properly carry out its duty in this respect, we find no error, plain or otherwise, with respect to Dawkins' final claim.

(14) This Court has reviewed the record carefully and has concluded that Dawkins' appeal is wholly without merit and devoid of any arguably appealable issue.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice