

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL J. GRIFFITH,)
) No. 570, 2002
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for Kent County
)
 STATE OF DELAWARE,) Cr. A. ID No. 0012016435A
)
 Plaintiff Below,)
 Appellee.)

Submitted: March 11, 2003

Decided: April 28, 2003

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

ORDER

This 28th day of April 2003, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. A Grand Jury indicted Daniel J. Griffith, the appellant, for Possession of a Firearm During the Commission of a Felony,¹ Robbery First Degree,² and Wearing a Disguise During the Commission of a Felony.³ In May 2002, a Superior Court jury convicted Griffith on all charges. In this appeal, Griffith raises four arguments: (1) the trial judge erred by allowing the State to introduce a muddy

¹ 11 *Del. C.* § 1447A.

² 11 *Del. C.* § 832.

³ 11 *Del. C.* § 1239(a).

floor mat; (2) the trial judge erred by denying his Motion for a Judgment of Acquittal based upon insufficient evidence to submit to the jury; (3) the trial judge abused his discretion by denying a proposed *voir dire* question; and (4) the trial judge abused his discretion by not granting a mistrial. We conclude that the trial judge did not err and that the convictions should be affirmed.

2. On December 11, 2000, a male wearing a ski mask and carrying a single barrel shotgun robbed a Happy Harry's drug store in Dover, Delaware. The store's video surveillance filmed the robbery, and the cashier identified the robber as a white male, approximately 5'11 to 6'1, with a blondish mustache, wearing a black mask, fatigue pants and a dark green sweatshirt.

3. A series of seemingly unrelated events occurred in the course of the police investigation resulting in substantial circumstantial evidence linking Griffith to the crime.

4. After receiving a radio dispatch purportedly relating the above facts, D.P.D. Officer Woodard saw a man matching the description of the robber. The man, later identified as Daniel Griffith, however, was not wearing the clothes described in the radio dispatch. Nevertheless, Officer Woodard, realizing that the robbery suspect may have crossed a field as an escape route and that it was raining that night, had Griffith lift up the soles of his black sneakers in order to determine whether the shoes were caked in mud. Although the record does not reveal

whether the sneakers were muddy, the fact that the Officer specifically took notice of the black sneakers later became an important fact in building the State's circumstantial case. Officer Woodard spoke to Griffith briefly, but allowed him to leave.

5. Approximately 40 minutes later, D.P.D. Officer Kelli Burns saw Griffith and another male walking east near a liquor store. Officer Burns spoke briefly with Griffith and noticed a wad of wet money in his jacket pocket. Griffith told Officer Burns that he fell in a puddle. However, Officer Burns noticed that the money was wet, but Griffith's clothes were not. Officer Burns then contacted Detective Stump, a Dover Police Detective and the Chief Investigating Officer, who responded and questioned Griffith. Officer Woodard then arrived to assist, recognized Griffith and noticed that he no longer wore the black sneakers. The officers, along with Detective Stump searched the Day's Inn, where Griffith stayed with Michael Connor and Connor's father, Willard Connor. During the search, the officers discovered a black ski mask and green sweatshirt in a hall closet. The officers did not find the black sneakers or a single barrel shotgun, but Griffith admitted that he owned the sweatshirt and mask. The police did not arrest Griffith at that time.

6. As part of the robbery investigation, Detective Stump seized a black floor mat with a muddy shoe print from Happy Harry's on the day of the robbery.

In addition, Detective Stump later seized a pair of black sneakers from Griffith. Unfortunately, neither the briefs nor the accompanying appendices explain the circumstances under which Detective Stump seized the sneakers. The record does reveal, however, that when Detective Stump seized the sneakers, Griffith replied, “The kid’s (apparently referring to Michael Connor) got me looking pretty bad, and possession is nine-tenths of the law.”⁴ Detective Stump showed the sneakers to Officer Woodward and Officer Woodward told him that the black sneakers appeared to be the same sneakers Griffith wore on the night of the robbery. Detective Stump carried the muddy floor mat in his car for 18 days. Detective Stump then delivered the black sneakers and the mat for forensics’ examination in a rolled up brown garbage bag. A forensic latent print examiner, trained in shoe print identification, testified that the muddy impression found on the mat corresponded in size, style and design pattern with the left shoe obtained from Griffith.

7. Events that might explain Griffith landing in police custody and his eventual arrest are unclear. It appears that the police may have been pursuing Connor or Griffith for another robbery when on December 23, 2000, Millsboro Police Chief John Murphy came into contact with Griffith and Michael and Willard Connor while the men were in a yellow Ryder rental truck. Chief Murphy

⁴ Appendix to Appellant’s Op. Br. at 17 (trial testimony of Detective Stump).

discovered a single barrel shotgun approximately three quarters of a mile from the truck. Griffith was then arrested for the Happy Harry's robbery. At trial the presiding judge carefully limited the focus of the arresting officer's questioning to the Happy Harry's robbery.

8. At trial, Michael Connor testified against Griffith. Connor testified that he purchased a single barrel shotgun at Griffith's request; that he overheard Griffith confess to Willard Connor that he obtained approximately \$200 from the robbery and that the police were dumb and could not catch him; that after the police searched his room at the Day's Inn, he saw Griffith retrieve the shotgun from under some leaves at a nearby maintenance shed; that Griffith told Connor that a police officer inspected the bottom of Griffith's black sneakers the night of the robbery and Griffith decided to hide the shoes for awhile; that he saw Griffith obtain the black sneakers from a bush behind the hotel; and that he observed Griffith soaking money in the motel sink in an attempt to "get rid" of fingerprints.

9. With respect to appellant's first argument, Griffith claims that the trial judge erred by admitting the muddy floor mat from Happy Harry's because the mat was irrelevant and lacked a proper chain of custody. This Court reviews for abuse of discretion whether the trial judge erred when admitting evidence.⁵

⁵ *Firestone Tire and Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988).

10. Evidence is relevant if it has “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.”⁶ The shoe print on the floor mat demonstrated that a person with Griffith’s shoe size and type was at the Happy Harry’s around the time that the robbery occurred. The evidence is material because it showed that Griffith could have been at the Happy Harry’s when the robbery occurred. Finally, the evidence has probative value because it had a tendency to support the prospect that Griffith committed the robbery. Therefore, the evidence was relevant.

11. Griffith next contends that the trial judge erred by allowing the State to admit the floor mat because the State failed to authenticate the mat properly under Delaware Rule of Evidence 901. D.R.E. 901(a) requires that “the party offering an item for evidence at trial is required to present other ‘evidence sufficient to support a finding that the matter in question is what its proponent claims.’”⁷ To satisfy the rule, the proponent can have witnesses visually identify the item as the item used in the crime or establish the item through a chain of custody.⁸ The purpose in establishing chain of custody is to indirectly establish

⁶ D.R.E. 401.

⁷ *Tricoche v. State*, 525 A.2d 151, 152 (Del. 1987) (quoting *Whitfield v. State*, 524 A.2d 13, 16 (Del. 1987)).

⁸ *Id.*

“the identity and integrity of the evidence by tracing its continuous whereabouts.”⁹

12. The officer seized the mat on the day of the robbery and left it in the back of his car for 18 days before presenting the mat to a forensic latent print examiner. First, Griffith argues the trial judge erred by allowing the footprint expert to testify before the State laid a foundation explaining how the police obtained the mat. We conclude that the trial judge correctly decided that the State could present the expert testimony and then have a later witness lay the proper foundation. Second, with respect to the chain of custody, the trial judge correctly determined that the mat was in the sole control of the officer and any problem with the validity of the expert testimony due to the 18-day delay went to the weight or the probative value of that testimony, not its admissibility. The trial judge did not abuse his discretion by admitting the floor mat as evidence because it had probative value and the jury could both decide the extent to which it was, in fact, what it was represented to be and the extent to which a reasonable person could rely on the expert testimony dependant upon it.

13. Griffith next argues that the judge erred by denying his motion for a judgment of acquittal. This Court reviews *de novo* the denial of a motion for judgment of acquittal to determine “whether any rational trier of fact, viewing the

⁹ *Id.*

evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt.”¹⁰

14. The State presented mainly circumstantial evidence against Griffith, but “the fact that most of the State’s evidence [is] circumstantial is irrelevant; the Court does not distinguish between direct and circumstantial evidence.”¹¹ The incriminating testimony of Michael Connor, the defendant’s roommate, corroborated by the substantial circumstantial evidence here easily provides a basis for a rational trier of fact to find Griffith guilty. While Griffith argued that Connor was the more likely perpetrator, the jury alone could resolve that dispute. Therefore, the trial judge did not err when he denied Griffith’s motion for a judgment of acquittal.

15. Griffith next argues that the trial judge committed reversible error by refusing to ask on *voir dire* whether the defendant’s assertion of his Fifth Amendment right not to testify would affect their ability to render a fair verdict. This Court reviews a trial judge’s decision regarding *voir dire* of prospective jurors for abuse of discretion.¹²

¹⁰ *Seward v. State*, 723 A.2d 365, 369 (Del. 1999) (quoting *Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991)).

¹¹ *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

¹² *Filmore v. State*, 813 A.2d 1112, 1118 (Del. 2003).

16. In *Filmore v. State*¹³ we reaffirmed our holding in *Jacobs v. State*¹⁴ that a trial judge may find that this type of question falls “within the prohibition of being irrelevant and in excess of the purpose of *voir dire* examination....”¹⁵ The trial judge, in his instruction to the jury, adequately addressed the significance of Griffith’s assertion of his Fifth Amendment right not to testify and how that might affect the jury’s ability to render a fair verdict.¹⁶

17. Finally, Griffith argues that the trial judge erred by not declaring a mistrial based on a witness’ unsolicited statement. This Court reviews for abuse of discretion a trial judge’s denial of a motion for mistrial after an “outburst” by a witness.¹⁷

18. Before trial, the trial judge ruled that the State could not present any evidence of Griffith’s pending bank robbery trial. At trial, Chief Murphy testified that when he pulled over the Ryder truck, officers immediately pulled Connor (not Griffith, the defendant) to the ground. The implication of the testimony, according to Griffith, is that the police were pursuing Griffith on other charges. At sidebar, the trial judge offered to give a curative instruction, but defense counsel chose not to emphasize the testimony by declining that option.

¹³ 813 A.2d 1112 (Del. 2003).

¹⁴ 358 A.2d 725 (Del. 1976).

¹⁵ *Filmore*, 813 A.2d at 1118.

¹⁶ *See id.*

¹⁷ *Taylor v. State*, 690 A.2d 933, 935 (Del. 1997).

19. When evaluating whether a witness’ “outburst” or unsolicited comment was so prejudicial that denying a motion for mistrial was error, this Court considers four factors.¹⁸ First, the Court examines the nature, persistency and frequency of the “outburst.” Second, the Court considers whether the “outburst” created a likelihood that the jury was misled or prejudiced. Third, the Court examines the closeness of the case. Finally, the Court considers the trial judge’s attempt to mitigate any prejudice.¹⁹

20. Applying the four factors, Chief Murhpy’s testimony did not warrant a mistrial. First, the statement was only stated once. Murphy did not elaborate on the statement. Second, the statement was not likely to have misled the jury or prejudiced Griffith because the statement referred to Connor and not Griffith. Third, to the extent this was a “close” case because there was an issue about whether Griffith or Conner committed the Happy Harry’s robbery, the jury more likely would have concluded that the police were more interested in Connor than Griffith. Finally, the Court attempted to mitigate the statement with a curative instruction, but Griffith’s counsel refused stating that he preferred not to emphasize the statement. After weighing the four factors, Chief Murphy’s unsolicited

¹⁸ *Id.* at 935.

¹⁹ *Id.*

statement did not warrant a mistrial. Therefore, the trial judge did not abuse his discretion by refusing to grant the Motion for a Mistrial.

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

BY THE COURT:

/s/ Myron T. Steele
Justice