IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEVON GARNER,	)	
	)	No. 186, 2000
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
STATE OF DELAWARE,	)	I.D. No. 9811012529
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: April 17, 2001
Decided: August 7, 2001

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

O R D E R

This 7th day of August, 2001, on consideration of the briefs of the parties, it appears to the Court that:

1. Devon Garner appeals the judgment of the Superior Court following his conviction by a jury of Attempted Murder First Degree, two counts of Possession of a Firearm During the commission of a Felony, Conspiracy First Degree, Recklessly Endangering First Degree and Conspiracy Second Degree. On March 24, 2000, the Superior Court sentenced him to life imprisonment.

2. Garner alleges four errors in this appeal:

a) Insufficient evidence presented by the State in its case which should have resulted in the Superior Court granting Garner's Motion for a Judgment of Acquittal;

b) Prosecutorial misconduct by improper remarks and questions during cross-examination which violated a substantial right that can be remedied only by a new trial;

c) Insufficient evidence to support the Attempted Murder conviction;

d) The trial judge abused his discretion when he admitted two letters Garner wrote to a female friend.

3. Because all of Garner's contentions lack merit, we affirm the judgment of the Superior Court.

4. We determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find a defendant guilty beyond a reasonable doubt when we review the denial of a Motion for Judgment of Acquittal. Here, the evidence showed that Garner fired three shots at the victim from close proximity. Two shots hit the victim, one in the arm and one in the abdomen. A rational trier of fact could easily conclude from these facts alone that Garner intended to kill.

5. Garner did not request a mistrial or any form of relief from any improper remarks made by the prosecutor at trial. No substantial right of the defendant was implicated by the remarks for which he now requests a remedy. Apparently, the prosecutor accused Garner of lying under oath by using a false name and concluded his cross by the unnecessary comment: "Your Honor, I have no further questions of whatever his name is." The defendant's actual birth

certificate name was neither an issue in the case nor did the fact Garner was prosecuted under an alias have any bearing on the outcome. Further, Garner admitted that he had used aliases in the past to avoid prosecution and can, as a result, hardly claim prejudice from the prosecutor's overzealous attempt to be clever. This was not a close case. The victim knew and clearly identified Garner as the shooter. Finally, Garner neither requested a curative instruction nor moved for a mistrial. Defense counsel's timely objection to the alias question, followed by his explanation in front of the jury allowed the jury to dispel any confusion over Garner's name and resolve any question of the lack of relevance of the alias to the issues at trial. Under the test set forth in ***Hughes v. State***, Garner's claim has no merit.[1]

6. Though Garner claims the evidence at trial to be legally insufficient to identify him as the shooter, the victim directly identified him and that alone is sufficient evidence for the jury, after assessing the relative credibility of the witnesses, to find him guilty.

7. The trial judge did not abuse his discretion when he admitted one letter and a portion of another Garner had written to a friend. The State offered the letters to establish consciousness of guilt on the theory that he sought her aid as a

[1] Del. Supr., 437 A.2d 559 (1981).

defense witness.[2] The trial judge weighed the probative value of the letters against the danger of unfair prejudice as required after the objection by D.R.E. 403. We find that he properly exercised that discretion required when making such a ruling.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice

[2] *See* ***Wooters v. State,*** Del. Supr., No. 258, 1992, Holland, J. (April 23, 1993) (Order).