

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID MATTHEWS,	§	
	§	No. 202, 2012
Defendant Below-	§	
Appellant	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE	§	ID No. 1104015690
	§	
Plaintiff Below-	§	
Appellee	§	

Submitted: August 9, 2012

Decided: October 15, 2012

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

ORDER

On this 15th day of October 2012, it appears to the Court that:

(1) Defendant-below/Appellant David Matthews appeals from his Superior Court Conviction for Robbery First Degree. Matthews raises one claim on appeal. Matthews contends that it was plain error for the Superior Court to admit testimony which amounted to witness vouching. We find no merit to Matthews' appeal, and affirm.

(2) On April 19, 2011 Kerryanne Sterling was engaged in her duties as a teller at the Wells Fargo in Meadowwood when a man wearing a black jacket with distinctive green and yellow markings approached her station. The man threw two

handwritten notes onto Sterling's station which demanded that she give him all of the cash in her drawer. Sterling gave him all of the money in her drawer, totaling \$1,077, and the robber exited the bank.

(3) Within minutes, Corporal John Jefferson of the Delaware State Police responded to a radio dispatch for the bank robbery, and observed Matthews walking along the road less than a mile from the bank. As Corporal Jefferson began to question Matthews, Matthews walked over to Corporal Jefferson's vehicle and placed his hands on the Officer's car. Corporal Jefferson handcuffed him and placed him in his vehicle to transport him to the bank for identification. Corporal Jefferson observed that Matthews was carrying a coat which matched the description of the robber's clothing. While being transported, Matthews stated "I can't even rob a bank." At the bank, Officers searched Matthews and discovered \$1,077 in cash concealed in his sock. Officers also discovered the two demand notes the robber had given Sterling. The Officers conducted a "show up" identification, in which Sterling identified Matthews as the man who robbed her.

(4) Matthews was subsequently arrested and charged by indictment with Robbery First Degree. A two-day jury trial was held in November, 2011. One of the State's witnesses was Detective Corey Godek of the Delaware State Police, who supervised the show-up identification at the bank. On cross-examination, Matthews' counsel pursued a line of questioning aimed at attacking the reliability

of show-up identifications. After Matthews' counsel made several failed attempts to elicit an admission from Detective Godek that show-up identifications were less reliable than photo array identifications, the prosecutor asked for a sidebar.

(5) At sidebar, the prosecutor objected to the questioning on the grounds that Detective Godek was not qualified as an expert in identification techniques. Matthews' counsel responded by requesting a curative instruction that Det. Godek should not be considered an expert in identification techniques or, in the alternative, for permission to continue his line of questioning because he believed Det. Godek had opened the door. The trial court allowed Matthews' counsel to continue his questioning in order to lay a proper foundation. After several more questions about the reliability of show-up identifications, Det. Godek testified that in regards to cases he worked on in which he used show-up identifications, "in every single one, the person was convicted." Matthews' counsel did not object or move to strike Det. Godek's testimony.

(6) Matthews was convicted of First Degree Robbery and sentenced to twenty-five years in prison. This appeal followed.

(7) Matthews' argues it was plain error for the Superior Court to have allowed Det. Godek to testify as to the reliability of "show up" identifications. We need not address the parties' arguments regarding plain error review, because even

if the Superior Court's admission of Detective Godek's statement was error, it was harmless beyond a reasonable doubt.¹

(8) It is well-established that this Court will not reverse when there is error at trial but that error is deemed to be harmless.² Harmless error will be found when "the evidence exclusive of the improperly admitted evidence is sufficient to sustain a conviction."³ When a review of the entire record reveals that the evidence against the defendant is "overwhelming," we will not reverse for the harmless admission of inadmissible evidence.⁴ Even when improper witness vouching is admitted, the testimony may be deemed to be harmless error when "measured against the strength of the total evidence against [the defendant]."⁵

(9) Here, there was overwhelming evidence presented at Matthews' trial sufficient to sustain his conviction apart from any improper witness vouching. This includes: Matthews' presence less than a mile from the bank within minutes after the robbery carrying a coat which matched the description of what the robber was wearing; his admission to the officer that transported him to the identification that he "can't even rob a bank"; Matthews' possession of the exact amount of money stolen from the bank; and the two handwritten notes discovered on

¹ *Nelson v. State*, 628 A.2d 69, 77 (Del. 1993).

² *Id.*

³ *Id.* (citing *Johnson v. State*, 587 A.2d 444, 451 (Del. 1991)).

⁴ *Id.*

⁵ *Capano v. State*, 781 A.2d 556, 601-02 (Del. 2001).

Matthews which matched the demand notes used in the robbery. When measured against the strength of the total evidence presented against Matthews, the admission of Detective Godek's statement, even if error, was harmless beyond a reasonable doubt.

(10) NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice