

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RALPH REED,	§
	§
Defendant Below,	§
Appellant,	§ No. 44, 2001
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
STATE OF DELAWARE,	§ for Sussex County
	§ Cr.A. Nos. IS99-12-0398
Plaintiff Below,	§ through 0399
Appellee.	§

Submitted: July 10, 2001

Decided: July 12, 2001

Before WALSH, BERGER, and STEELE, Justices.

ORDER

This 12th day of July 2001, upon consideration of the briefs of the parties, it appears to the Court that:

(1) This is an appeal from a conviction in the Superior Court following a jury trial. The appellant, Ralph Reed, Jr. (“Reed”), was convicted of murder first degree and possession of a firearm during the commission of a felony for the fatal shooting of Gregory Howard on November 23, 1999.

(2) In this appeal, Reed asserts two claims of error: (i) that the trial court abused its discretion in admitting evidence that on prior occasions he had discharged a handgun and had been involved in drug dealing and (ii) that the court gave an

incorrect instruction concerning the use of certain statements for impeachment purposes.

(3) With respect to Reed's claim involving evidence of uncharged misconduct, this claim was the subject of a post-trial ruling by the trial judge. *See State v. Reed*, Del. Super., Cr. A. Nos. 99-12-0398, 99-12-0399, 2000 WL 33179685, Graves, J. (Dec. 19, 2000). In that ruling the court concluded that the admissibility of such misconduct evidence was appropriate under *Getz v. State*, Del. Supr., 538 A.2d 726 (1988), as part of the State's case-in-chief because the evidence was directly relevant to identifying Reed as the assailant and it supported the State's claim that the killing was related to Reed's activities as a drug dealer. We conclude that the court correctly applied pertinent Delaware law in rejecting Reed's claim of inadmissibility.

(4) With respect to Reed's claim that the court incorrectly charged the jury concerning the admissibility of prior out-of-court statements of witnesses used by the State for impeachment purposes, we note that no objection was made at trial either to the immediate limiting instruction or to the final instruction. Accordingly, we review this claim under the plain error standard. *See Wainwright v. State*, Del. Supr., 504 A.2d 1096 (1986). This claim of error was also the subject of the trial

court's post-trial decision denying a new trial. As the trial court noted, the disputed evidence was not offered by the State under 11 *Del. C.* § 3507 but, in any event, the declarants were available for cross-examination on the alleged inconsistent statements. We agree with the trial court that the defense was not placed at any strategic disadvantage by this practice and that the court's instruction was properly limited to the treatment of these statements as impeaching evidence. Clearly the court's handling of this matter at trial was not plain error.

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

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice