

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AARON K. CARTER, )  
 ) No. 182, 2002  
 Defendant, Below )  
 Appellant, ) Court Below: Superior Court  
 v. ) of the State of Delaware in  
 ) and for New Castle County  
 )  
 STATE OF DELAWARE, ) Cr. ID No. 0105020018  
 )  
 Plaintiff Below, )  
 Appellee. )

Submitted: September 24, 2002  
Decided: October 16, 2002

Before **VEASY**, Chief Justice, **WALSH** and **STEELE**, Justices

***ORDER***

This 16<sup>th</sup> day of October, 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) In March of 2002, a Superior Court jury convicted Appellant Arron K. Carter of Burglary in the First Degree, twelve counts of Possession of a Firearm during the Commission of a Felony, three counts of First Degree Robbery, five counts of Second Degree Kidnapping, three counts of Aggravated Menacing, one count of Second Degree Conspiracy, and one count of Wearing a Disguise during the Commission of a Felony.

(2) Carter claims that: a) the prosecutor's repeated suggestive comments on the defendant's post arrest silence violated the defendant's Fifth and Fourteenth

Amendment Rights; and, b) in the absence of a defense objection, the trial judge erred by failing to intervene, *sua sponte*, to cure the effect of that improper argument. We find no prosecutorial misconduct and, therefore, need not reach the second argument. Accordingly, we AFFIRM.

(3) The State's comment in closing rebuttal did not amount to improper comment on the defendant's post arrest silence and did not rise to the level of misconduct described by this Court in *Williams v. State*.<sup>1</sup> In *Williams*, we reversed a conviction below because of prejudicial prosecutorial comment in closing argument that constituted plain error. We held that the closing remarks improperly suggested to the Jury that in order to acquit the accused, they must believe that the State's witnesses lied. The remarks consequently improperly branded the defendant as a liar.

(4) This case is distinguishable. Here, the State did not use improper language, maintained an emphasis on the jury's role as assessors of credibility, and permissibly responded to the defense's commentary on the State's failure to call certain witnesses.<sup>2</sup> Though the Defendant's credibility was at issue at trial, it cannot be said that it was a central issue in a close case.<sup>3</sup> While the Defendant's

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<sup>1</sup> *Williams v. State*, Del. Supr., No. 12, 2002, per curium (July 8, 2002)

<sup>2</sup> See *Michael v. State*, 529 A.2d 752, 762 (Del. 1987) (explaining and applying the invited response doctrine).

<sup>3</sup> *Trump v. State*, Del. Supr., 753 A.2d 963, 964-965 (2000).

defense that the State “had the wrong man” is similar to that of *Williams*, there is ample evidence to support the jury verdict<sup>4</sup> and it is likely that the jury’s assessment of Defendant’s credibility was not a critical factor in the sense that their decision turned on whether they believed the defendant or the witnesses for the State.

Accordingly, there was no plain error in this case sufficient to warrant reversal.

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

BY THE COURT

/s/ Myron T. Steele  
Justice

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<sup>4</sup> When arrested, Defendant was in possession of: (1) the Dudlecks’ check written to cash in the amount of \$1000, (2) \$851 in cash consistent with the amounts withdrawn and plan to shortchange his companion on the proceeds of the robbery; and, (3) .45 caliber ammunition. Furthermore, Defendant’s appearance was consistent with the Dudlecks’ description.