

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DASHAWN BROOKS,	§	
	§	No. 310, 2003
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	
Plaintiff Below,	§	Cr. I.D. No. 0203008352A
Appellee.	§	

Submitted: June 1, 2004
Decided: August 16, 2004

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

ORDER

This 16th day of August, 2004, on consideration of the briefs of the parties it appears to the Court that:

1) Dashawn Brooks appeals from his convictions, following a jury trial, of murder second degree, possession of a firearm during the commission of a felony and conspiracy second degree. He argues that the trial court erred in two evidentiary rulings and that the prosecutor violated his right to a fair trial by referring to a prior incarceration. We find no merit to these arguments, and affirm.

2) On the evening of February 14, 2002, Kerwin Redding was shot to death on Concord Avenue, Wilmington, Delaware. Several people were in the area at the time

of the shooting. Redding's friend, Robert Sanders, testified that he saw Redding walking up Monroe Street toward Concord Avenue. He and Redding talked for a few minutes, and then Sanders went into a liquor store, while Redding walked over to a car to make a drug sale. Sanders noticed two men walking up the street, dressed in black. One went behind some houses and the other continued up the street. Sanders identified Brooks as the man walking up Concord Avenue. A few minutes after seeing Brooks, Sanders heard gunshots. He saw Brooks, across the street, shooting Redding.

3) Charles White, Brooks's co-defendant, testified against Brooks as part of his plea bargain. White explained that there had been several violent incidents involving Brooks, his younger brother, and Redding during the weeks before the murder. On February 5, White and another person robbed Redding at gunpoint. The next day, Redding and White had a fist fight. Later that day, White and Brooks's brother fired shots at Redding, hitting him in the leg. The day before the murder, when the three again met up, Redding drew first, and shot Brooks's brother in the leg.

(4) On the night of the murder, someone told White and Brooks that Redding was at the corner of Concord Avenue and Monroe Street. White was armed with a 22 caliber handgun and Brooks with a 380 caliber handgun. As they approached the victim, the two split up. Brooks walked straight up Concord Avenue and White went

into an alleyway. While still in the alleyway, White heard gunshots and someone screaming, “I’m hit, I’m hit.” White fled.

(5) The prosecutor asked White about the differences in the three statements he gave to the police. White admitted that he was not being very cooperative until the third interview, when he believed he was going to be given a lie detector test. No test was administered, but White testified that he gave the police more information that day “[because] I was going to take a lie detector test, and they were going to find out anyway.”

(6) Wilmington Police Detective Eugene Solge, the investigating officer, testified on direct about the gun casings he discovered at the murder scene and his investigation in general. On cross-examination, Brooks asked Solge whether his investigation ever focused on a man called “Mikey.” As a result of this line of questioning, the jury heard that a person named Vern Winfield gave a statement to the police claiming that Redding’s dying words were, “Mikey shot me.” Brooks also questioned Solge about the differences in White’s three statements. Solge explained the differences and said that the stories changed “towards the truth.” On redirect, the prosecutor asked Solge to explain why Winfield’s statement did not “ring true.” Solge explained that Winfield’s descriptions and the distances involved did not fit the crime scene.

5) Brooks objected to Solge’s testimony about White’s story moving “towards the truth” and to his testimony about why the “Mikey shot me” witness’s story did not “ring true.” On appeal, he argues that the trial court abused its discretion in allowing Solge to vouch for the credibility (or lack of credibility) of a witness. Brooks points out that White was a critical witness for the prosecution, and contends that this was a close case. Moreover, the trial court gave no “curative” instruction to mitigate the impact of Solge’s testimony.

6) We find no merit to this argument. Winfield was not called as a witness by either side, and, as the trial court noted, Brooks elicited the testimony about Winfield’s statement. Brooks thus “opened the door” to that subject, and the State was entitled to follow up with Solge in order to explain why “Mikey” was not charged with the crime. Under these circumstances, Solge’s testimony about the inaccuracies in Winfield’s statement did not constitute improper vouching.¹

(7) Brooks also elicited Solge’s testimony about the variations in White’s three statements. In his questions, Brooks suggested to Solge that White kept changing his story because he was boxed in, or because he was saying whatever Solge wanted to hear. In response, Solge explained that each time White was interviewed, White “gave more of what he did” and that his story “changed towards the truth.” The

¹*See: Powell v. State*, 527 A.2d 276 (Del. 1987).

record establishes that Brooks was trying to get Solge to vouch for White's *lack of credibility*. Brooks cannot adopt that trial tactic and then complain because Solge disagreed. In addition, even if Solge's testimony constituted improper vouching, Brooks has not demonstrated any prejudice. From the start, White named Brooks as the shooter. The changes in White's statements focused on White's level of involvement in the crimes. Thus, whether White's statements became more truthful or not, they all implicated Brooks. In sum, we find no abuse of discretion in the trial court's rulings on Solge's testimony.

(8) Brooks's argument about the lie detector test also lacks merit. White testified that he gave the police more information during his third interview because he thought the police were going to administer a lie detector test, and he thought the facts would come out during the test. Brooks argues that reference to a polygraph test constitutes prejudicial error. Under the facts of this case, we disagree. Since White never was given a polygraph test, and the jury knew that, there was no risk that the jury would draw any inappropriate inferences about what the test revealed.²

(9) Finally, Brooks argues that he was prejudiced by Solge's testimony that he told Brooks's mother that her son was in custody and that his name had come up in another investigation. The trial court promptly instructed the jury to disregard that

²*See Capano v. State*, 781 A.2d 556, 588 (2001).

comment, and we are satisfied that the instruction cured any slight prejudice caused by Solge's comments.³

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

BY THE COURT:

/s/ Carolyn Berger
Justice

³*Weddington v. State*, 545 A.2d 607, 612 (Del. 1988).