

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|---|----------------------------------|
| DERRICK CARTER, | § | |
| | § | No. 387, 2004 |
| Defendant Below, | § | |
| Appellant, | § | Court Below: Superior Court of |
| | § | the State of Delaware in and for |
| v. | § | New Castle County |
| | § | |
| STATE OF DELAWARE, | § | Cr. I.D. No. 0306019202 |
| | § | |
| Plaintiff Below, | § | |
| Appellee. | § | |

Submitted: January 19, 2005
Decided: February 14, 2005

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 14th day of February 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

(1) After a trial in Superior Court, a jury convicted Carter of one count of first degree robbery. Carter appeals from that conviction, arguing that the trial judge erred by refusing to allow Carter to cross-examine the victim on a matter Carter contends was relevant to show that the victim was biased.

(2) The charge against Carter arose out of a June 2003 incident in which Charles Wambua, the victim, accompanied a prostitute to a hotel room that was rented in Carter's name. Carter had agreed to let the prostitute "turn tricks" in the room. At trial, Wambua testified that when he arrived at the hotel room, Carter

robbed him at gun point. During cross-examination, defense counsel asked Wambua if he had been with prostitutes in the past. The State objected to the question as irrelevant, and the trial judge sustained that objection.

(3) A decision to admit or exclude evidence based on relevancy is within the sound discretion of the trial judge and will not be reversed absent a clear abuse of discretion.¹ Relevant evidence is defined as evidence “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”²

(4) Although Carter contends that Wambua’s previous involvement with prostitutes was relevant to show the victim’s bias toward Carter, he has not shown how such prior involvement would bias Wambua against Carter. Nor has Carter shown how the evidence would otherwise be probative of his guilt or innocence. Accordingly, the trial judge did not abuse his discretion in excluding that evidence.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹ *Howard v. State*, 549 A.2d 692, 693 (Del. 1988); *Thompson v. State*, 399 A.2d 194, 198-99 (Del. 1979).

² D.R.E. Rule 401.