

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DOUGLAS W. FIELDS,	§	
	§	No. 053, 2004
Defendant Below-	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr.A. Nos. IN03-08-0207; 0208;
	§	0210; 0210;
Plaintiff Below-	§	0211; 1811
Appellee.	§	

Submitted: September 9, 2005
Decided: November 28, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 28th day of November 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Douglas W. Fields, was found guilty by a Superior Court jury of the lesser-included charge of Assault in the First Degree, Possession of a Firearm During the Commission of a Felony, Burglary in the Second Degree, Possession of a Deadly Weapon by a Person Prohibited, and Resisting Arrest. He was sentenced as an habitual offender

to a total of 64 years incarceration at Level V, to be suspended after 61 years for probation. This is Fields' direct appeal.¹

(2) Fields raises seven issues for this Court's consideration, which may fairly be summarized as follows. He claims that: a) he should not have been sentenced as a habitual offender because there was no hearing to determine his status as a habitual offender; b) there was insufficient evidence to support his firearm and burglary convictions; c) he was denied his right to a trial by a jury of his peers; d) the prosecutor engaged in misconduct by leading the witnesses, misstating the evidence in closing argument, introducing false evidence and engaging in unprofessional conduct; and e) the jury should not have been instructed on first degree assault as a lesser-included offense of first degree attempted murder.

(3) The evidence presented at trial was as follows. At approximately 10:30 a.m. on Sunday, July 13, 2003, William Brown was riding a bicycle along East 23rd Street in Wilmington, Delaware. Two women, Neshe Jones and Vanessa Newman, stopped him and began arguing with him over ownership of the bicycle. Newman eventually went to her mother's house, which was nearby, but Jones continued to argue with

¹ On January 10, 2005, following an evidentiary hearing in the Superior Court, this Court granted Fields' motion to proceed pro se in his direct appeal. Supr. Ct. R. 26(d) (3).

Brown. The argument escalated, with Jones throwing a bottle at Brown and Brown throwing one at Jones.

(4) Without warning, a man, later identified as Fields, emerged from the residence at 3 East 23rd Street, took a handgun out of a bag he was carrying, walked up to Brown and started shooting. He shot Brown twice in the leg and then, as Brown lay on the ground, shot him a third time in the lower back. Fields was identified as the shooter by neighborhood residents William Caudle and Robert Jones.

(5) City of Wilmington police were patrolling the neighborhood in a marked police car at the time of the shooting. As the police approached the scene, Brown told them he had been shot by Fields, who by then was running back into the residence at 3 East 23rd Street. As Officer Michael Carnevale chased Fields into the house, Fields fled out the back. Officer Robert Cassidy ran to the back of the house and saw Fields running through the back yards down the street. Officer Carnevale began running parallel to 23rd Street to try to intercept Fields. Fields turned into an alley and back out onto 23rd Street. He then ran into the residence at 22 East 23rd Street with Officer Carnevale behind him. Officer Carnevale captured Fields as he attempted to open a locked back door, to exit from the kitchen. Vanessa

Newman testified at trial that she and her mother lived at that address and that Fields entered her house without her permission.

(6) A later search by City of Wilmington police of the portion of East 23rd Street where Fields was running yielded a black knit hat containing a .38 revolver with black electrical tape around the handle. The gun contained three casings and three live rounds, indicating that three shots had been fired. Police were unable to obtain any fingerprints from the gun.

(7) Both during and after jury deliberations, the prosecutor informed the Superior Court and defense counsel that he intended to file a motion to have Fields declared an habitual offender. Defense counsel discussed this issue with Fields. After the jury's verdict, defense counsel informed the trial judge in the presence of Fields that "we have reviewed the three certified copies of Mr. Fields' record" and that "[a]s far as the issue of does he qualify as an habitual offender, under (a) section, there will be no argument about that, no contest about that." Later, at sentencing, the trial judge noted that defense counsel had sent a letter in response to the State's habitual offender motion conceding that the facts recited in the motion were correct. Neither Fields nor his counsel voiced any objection to his status as an habitual offender and the judge proceeded to sentence Fields accordingly.

(8) Fields' first claim is that, because there was no hearing to determine his status as an habitual offender, he had no notice that he would be sentenced as one. To the contrary, the record reflects that Fields had actual notice of the State's intention to move to have him declared a habitual offender. Moreover, the factual basis for the State's habitual offender motion was conceded by the defense at the time of sentencing. Based upon the concessions made by defense counsel, there was no need for a hearing to determine Fields' status as an habitual offender and the judge properly proceeded to the sentencing phase of the hearing. Fields' first claim is, thus, without merit.

(9) Fields' second claim is that there was insufficient evidence presented at trial to support his burglary and firearm convictions. Because Fields did not move for a judgment of acquittal at the close of the State's evidence,² our standard of review is plain error.³ In reviewing a claim of insufficiency of the evidence, this Court determines whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.⁴ In doing so, we make no distinction between direct and

² Super. Ct. Crim. R. 29.

³ *Liket v. State*, 719 A.2d 935, 939 (Del. 1998).

⁴ *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997).

circumstantial evidence.⁵ Moreover, it is for the jury to weigh the relative credibility of the witnesses and reconcile any conflicting testimony.⁶

(10) The trial transcript reflects that Fields stipulated to the fact that he was guilty of the charge of Possession of a Deadly Weapon By a Person Prohibited.⁷ The trial transcript also reflects that more than sufficient evidence was presented to support Fields' convictions of Burglary in the Second Degree⁸ and Possession of a Firearm During the Commission of a Felony⁹. We, thus, find no plain error and no merit to this claim.

(11) Fields' next claim is that he was denied his right to trial by a jury of his peers because there were no African Americans on the jury panel and no individuals approximately the same age as he. As the appellant, it was Fields' burden to provide those portions of the transcript necessary to give this Court a fair and accurate account of the context in which the claim of error occurred.¹⁰ Fields failure to comply with the rule of this Court precludes our appellate review of this claim.¹¹

(12) Fields next claims that the prosecutor acted improperly by leading the witnesses, misstating the evidence in closing argument,

⁵ *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

⁶ *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

⁷ Del. Code Ann. tit. 11, § 1448 (2001).

⁸ Del. Code Ann. tit. 11, § 825 (2001).

⁹ Del. Code Ann. tit. 11, § 1447A(a) (2001).

¹⁰ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987); Supr. Ct. R. 9 (e)(ii) and 14 (e).

¹¹ *Slater v. State*, 606 A.2d 1334, 1337 (Del. 1992).

introducing false evidence and engaging in unprofessional conduct. To the extent the prosecutor asked leading questions, the number of such questions was minimal and no objection to any such questions was raised by defense counsel. Moreover, Fields has failed to articulate how he was prejudiced by any of the questions. Fields complains that the prosecutor noted in his closing statement that there was agreement among the witnesses concerning the events leading up to the shooting. We find no impropriety in the remarks of the prosecutor because they were squarely based upon the evidence presented at the trial.

(13) To the extent Fields argues that there was no physical or scientific evidence linking him to the weapon found by the police, the record does support that claim. However, there was more than sufficient evidence in the record from which the jury could infer that the gun found by the police belonged to Fields.¹² We find no basis for Fields' next argument that the prosecutor presented "false" evidence at the trial. Fields next argues that it was improper for the prosecutor and defense counsel to pick up the weapon during a trial recess. Assuming that happened, Fields does not explain how he was prejudiced, since the jury was not present in the courtroom. We, thus, find Fields' claims of prosecutorial misconduct to be without merit.

¹² *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

(14) Fields' final claim is that the jury should not have been instructed on first degree assault as a lesser-included offense of first degree attempted murder. A defendant is on notice that evidence presented with respect to a particular offense in an indictment may result in a conviction of any lesser-included offenses.¹³ Because the record in this case supports the trial judge's decision to instruct the jury on first degree assault,¹⁴ we find this claim to be without merit.

(15) This Court has reviewed the record carefully and has concluded that Fields' appeal is wholly without merit and devoid of any arguably appealable issue.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

¹³ Del. Code Ann. tit. 11, § 206(b) (2001); Super. Ct. Crim. R. 31(c).

¹⁴ Del. Code Ann. tit. 11, § 613 (2001).