

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARNELL ROBERTS,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

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No. 307, 2005

Court Below: Superior Court
of the State of Delaware in
and for New Castle County
Cr. I.D. No. 0404013527

Submitted: February 22, 2006

Decided: April 10, 2006

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

ORDER

This 10th day of April, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) Carnell Roberts appeals from his conviction, following a jury trial, of first degree unlawful sexual contact. Roberts argues that the Superior Court abused its discretion by admitting into evidence the victim's videotaped statement because the victim did not recall giving the statement.

2) On April 16, 2004, then three-year-old Naomi Flanders¹ was visiting at the home of her neighbors, the Roberts. When she returned home, Flanders

¹The Court has given pseudonyms to the victim and her family, *sua sponte*, pursuant to Supr. Ct. R. 7(d).

spontaneously placed a pillow in front of her mid-section and told Shevonne Estrill, a family friend who was watching her, "You can't see my private." Then she took the pillow away and said, "Now you can see my private." When Estrill asked Flanders why she was saying that, Flanders replied that Roberts had touched her "cookie," "pulled his thing out," tried to get on top of her, and tried to put it in her mouth.

3) Estrill contacted Flanders' grandmother, who came home and took Flanders for a bath. The grandmother noticed blood and a white discharge in Flanders' underwear and in her vaginal area. Flanders was taken to the hospital, where she was examined by a sexual assault nurse examiner. The nurse testified that Flanders had two abrasions and a laceration in her genitalia. The white discharge was not identified, and swabs taken from Flanders' genital area revealed no male DNA. Testing of Roberts' linens, likewise, revealed none of Flanders' DNA.

4) After being examined by the sexual assault nurse, Flanders was interviewed by Terry Kaiser, a forensic interviewer at the Child Advocacy Center. During that videotaped interview, Flanders told Kaiser that Roberts touched her "cookie" and she identified her "cookie" as being her genital area. At trial, Flanders testified that Roberts touched her "real hard" with his hand on the outside of her genital area. Flanders recognized Kaiser in the courtroom. She did not remember being interviewed by Kaiser, however, even after viewing the videotape.

5) Roberts' sole argument on appeal is that the videotape should not have been admitted into evidence because Flanders' testimony did not "touch upon" the statement, as required by 10 *Del.C.* § 3507. We find no abuse of discretion in the trial court's decision to admit the statement. Flanders was questioned about the statement, and, because it was videotaped, she was able to see the interview while in court. Under these circumstances, even though Flanders did not recall giving the statement, we conclude that her testimony sufficiently touched upon it for purposes of admitting the statement under §3507.²

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

BY THE COURT:


Justice

²*See: Burke v. State*, 484 A.2d 490, 494 (Del. 1984).