

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES W. REED,	§	
	§	No. 74, 2013
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for Kent County
STATE OF DELAWARE,	§	
	§	Cr. No. 1204016188
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 7, 2013
Decided: September 25, 2013

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

ORDER

This 25th day of September 2013, on consideration of the briefs of the parties, it appears to the Court that:

1) Charles W. Reed (Charles) appeals from his convictions, after a jury trial, of second degree assault, possession of a deadly weapon during the commission of a felony, aggravated menacing, and second degree conspiracy. He argues that the trial court committed plain error by precluding him from cross-examining a State witness about the witness's prior conviction.

2) On April 6, 2012, Donald Reed, Jr. (Donnie) called Christopher Miller (Christopher) and told Christopher that his uncle, Charles, paid Donnie's father, Donald Reed (Donald), to beat up Christopher. Donald lived across the street from Christopher and his housemate, Jeff Helm (Helm). After receiving the call, Christopher and Helm walked over to Donald's house. Donald came outside and started fighting with Christopher. The two men exchanged punches for a few minutes, and then Christopher went home.

3) Less than an hour later, Christopher's wife, Karen Miller (Karen), saw Donnie, Donald, and Charles standing by their neighbor's garage, holding metal pipes. She also saw one of the Reeds hitting Helm's dog. Helm ran outside and saw Charles striking the dog. While Helm was trying to bring his dog home, Charles struck Helm in the head with a metal object. Donald then repeatedly hit Helm in the head with a metal object. Karen called the police, and Helm was flown to a hospital. He suffered a fractured skull.

4) Charles and Donald were tried together. Christopher was a State's witness. He is also a twice convicted felon. During cross-examination, the court allowed Charles to admit one of Christopher's prior convictions for impeachment, but the court did not allow Reed to introduce the other conviction. On appeal, Charles contends that the trial court applied the wrong test in deciding that Christopher's first

degree assault conviction could not be used for impeachment. The trial court conducted a balancing test under Delaware Rule of Evidence (D.R.E.) 404(b)¹ rather than the balancing test under D.R.E. 609(a)².

5) This Court considered and rejected the same argument in Donald’s appeal³:

In *Getz v. State*, this Court held that before the admission of “other crimes” evidence under 404(b), “the Court must balance the probative value of such evidence against its unfairly prejudicial effect, as required by D.R.E. 403.” D.R.E. 403 provides: “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.”

The record below reflects that defense was attempting to proffer the assault conviction as impeachment evidence pursuant to D.R.E. 609. As Assault is not a crime of dishonesty, it can only be admitted pursuant to D.R.E. 609(a)(1). D.R.E. 609 states that prior crimes “shall” be admitted “if the probative value . . . outweighs its prejudicial effect.” D.R.E. 403 allows relevant evidence unless its “probative value is *substantially* outweighed by the danger of unfair prejudice.” These are two different standards, the former arguably being a more relaxed standard than the latter. Nevertheless, Rule 403 also allows for the trial

¹ D.R.E. 404(b) provides: Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

² D.R.E. 609(a) provides: For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted but only if the crime (1) constituted a felony under the law under which the witness was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect or (2) involved dishonesty or false statement, regardless of the punishment.

³ *Reed v. State*, 2013 WL 3963450 at *3 (Del. Supr.) (Footnotes and citations omitted.).

court to exercise control over the trial process so that cumulative evidence is excluded.

Assuming arguendo that the D.R.E. 609 standard should have been applied, the error in applying D.R.E. 403 and 404 was harmless beyond a reasonable doubt. The jury was presented with evidence of [Christopher's] prior burglary conviction, his disdain for police, his history of fighting, his time in prison, and his experiences assaulting "child molesters" while serving time. Hearing evidence of the prior assault conviction would have added little to the impeachment mix against [Christopher]. Further, [Christopher] was one of two witnesses who testified to seeing [Charles] strike Helm with a metal object. Karen Miller also testified to having witnessed [Charles] hit Helm The State submitted photographs of Helm's injuries, and a State Trooper who arrived on the scene took note of a laceration on the side of Helm's head. When measured against the strength of the total evidence presented by the State, the failure to utilize the proper balancing test in precluding the assault conviction, even if error, was harmless beyond a reasonable doubt.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice