

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL CARELLO,	§
	§
Defendant Below-	§ No. 224, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0304001480
Plaintiff Below-	§
Appellee.	§

Submitted: August 18, 2006

Decided: October 17, 2006

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

ORDER

This 17th day of October 2006, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Michael Carello, filed this appeal from the Superior Court's denial of his motion for a new trial. In February 2004, following a two-day bench trial, the Superior Court convicted Carello of second degree burglary, felony theft, and conspiracy. The Superior Court sentenced Carello, as an habitual offender, to a total period of twelve years incarceration to be suspended after serving eight years for decreasing levels

of supervision. This Court affirmed his convictions on direct appeal.¹ Carello then filed a motion for postconviction relief, which the Superior Court denied. We affirmed that decision on appeal.²

(2) Carello filed his motion for new trial based on a claim of newly-discovered evidence. The new evidence consisted of the testimony of an inmate at the Delaware Correctional Center who overheard a conversation between two other inmates, identified as Jason Eldreth and “Dave,” during which Eldreth stated that he had committed the crimes for which Carello was convicted and that Carello had been not involved. The Superior Court held an evidentiary hearing on the motion on March 27, 2006. On April 13, 2006, the Superior Court denied the motion for a new trial on the ground that the Carello’s newly-discovered evidence would not likely have changed the result of the trial.³

(3) We review the denial of the motion for a new trial for abuse of discretion.⁴ After careful consideration of the parties’ contentions on appeal,

¹ *Carello v. State*, 2004 WL 2520905 (Del. Nov. 1, 2004).

² *Carello v. State*, 2006 WL 212131 (Del. Jan. 26, 2006).

³ *See Downes v. State*, 771 A.2d 289, 291 (Del. 2001) (holding that on a motion for new trial, the movant must establish that: (i) the new evidence likely would have changed the result of the trial; (ii) the evidence could not reasonably have been discovered before trial; and (iii) the evidence is not merely cumulative or impeaching)

⁴ *Swan v. State*, 820 A.2d 342, 350 (Del. 2003).

we find no abuse of the Superior Court's discretion in this matter. The Superior Court conducted a thorough analysis of the newly-discovered evidence. The court first noted that the issue of Eldreth's involvement in the burglary had been raised and considered by the trial judge at Carello's original trial. The Superior Court ultimately concluded that the new evidence would not have changed the outcome of the trial because of the strength of the eyewitness identification of Carello as the perpetrator, coupled with the fact that Carello and Eldreth look nothing alike and could not have been mistaken for one another. Under the circumstances, we find no abuse of the Superior Court's discretion in denying Carello's motion for a new trial.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice