IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY D. MARVEL,	§	
	§	No. 548, 2006
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID. No. 0510007925
Appellee.	§	

Submitted: June 20, 2007
Decided: September 18, 2007

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

O R D E R

This 18th day of September, 2007, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Larry Marvel appeals from his convictions, following a jury trial, of criminal solicitation and second degree conspiracy. Marvel argues that the trial court abused its discretion in three evidentiary rulings. We find no merit to these arguments and affirm.

2) In 1990, after he was convicted of raping Leah Vinguierra, Marvel was sentenced to 17 years of imprisonment. Throughout his incarceration, Marvel

maintained that Vinguierra lied, and he sought vindication with the help of his family. In addition to filing appeals, postconviction motions and other petitions, Marvel tried to obtain affidavits that would establish his innocence. Marvel understood that an affidavit from Vinguierra recanting her trial testimony would be critical to his success. His family hired a private detective, who allegedly worked on Marvel's case for 10 years, but he was unable to find or interview Vinguierra.

3) While in prison, Marvel became acquainted with another inmate, James Hollis, who was serving time for unlawful sexual intercourse and other crimes. Marvel frequently told Hollis that he was innocent. In 2003, a few months before Hollis was scheduled to be released from prison, Marvel started asking Hollis to cripple Vinguierra by shooting her or stabbing her in the spine. According to Hollis, Marvel complained that Vinguierra had taken away his life and his family, and that he wanted her to pay for that by having to suffer for the rest of her life.

4) Hollis told Marvel that it would cost $10,000, and Marvel assured him that he could get the money from selling a beach house. Marvel gave Hollis a piece of a hospital record from the time of the rape that had Vinguierra's address, telephone number and social security number. He told Hollis that, with that information, it would be easy to find her through the internet.

5) Hollis was released from prison in April 2005. A few weeks before his release, Hollis contacted the authorities and told them about Marvel's plan to harm Vinguierra. Hollis cooperated with the police by giving them several letters that the two men had written to each other after Hollis left prison. At trial, Hollis explained the plan and the code words used in the letters.

6) Marvel first argues that the trial court abused its discretion by allowing the State to admit evidence of the fact that he was incarcerated for raping Vinguierra. Marvel contends that the jury should have been told only that Marvel had committed a felony. He says that, under *Getz v. State,*[1] the fact that the felony was rape should have been excluded because the prior crime was remote in time, irrelevant and highly prejudicial. The trial court decided that it was "important for the jury to understand what the underlying offense was because that may explain some of the emotion that is obviously going to be in this case."[2]

7) We conclude that the trial court properly applied the *Getz* guidelines.[3] In analyzing remoteness, this Court usually uses ten years as the standard for deciding

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[1]538 A.2d 726 (Del. 1988).

[2]Appellant's Appendix, A-27.

[3]Prior bad acts evidence is admissible if: 1) it is material to an issue in dispute; 2) it is admitted for a proper purpose; 3) it is clear and conclusive; 4) it is not too remote in time; 5) its probative value outweighs its prejudicial effect; and 6) a limiting instruction is given to the jury.

whether evidence of the prior crime is admissible. But ten years is not a bright line rule. The prior crime is too remote, "only when there is no visible, plain, or necessary connection between it and the proposition eventually to be proved."[4] "[T]he nature of the proposition that the evidence is intended to prove or disprove [determines] whether a particular piece of evidence is too temporally remote ...."[5] Here, the fact that Marvel was convicted of rape (and not some other, less personal, violent crime), provides compelling evidence to explain Marvel's motive to get revenge against Vinguierra – the victim and complaining witness.

8) The same reasoning applies to the balancing of prejudice against probative value. A jury would not understand why Marvel harbored such long standing ill will toward Vinguierra without knowing the nature of the prior crime. In a rape trial, the victim's testimony may be the most critical evidence. Marvel certainly believed that, claiming that Vinguierra ruined his life by falsely testifying against him. Thus, the fact that the prior crime was rape was highly probative on the issue of Marvel's motive, and we agree with the trial court that the probative value outweighed the prejudice.

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[4] *Lloyd v. State*, 1991 WL 2447737 at *3 (Del. Supr.).

[5] *Taylor v. State*, 777 A.2d 759, 769 (Del. 2001).

9) Marvel next argues that the trial court should have excluded evidence of his prior convictions from 1972, 1979 and 1980. The trial court found that Marvel had opened the door to the State's impeachment evidence when Marvel testified that he was trying to get a statement from Vinguierra in order to clear his good name. Since a reversal of the Vinguierra rape conviction would not erase his other convictions (including another rape conviction), the trial court allowed the impeachment evidence.

10) Marvel complains that he never said he was trying to "clear his name." That is technically correct. Marvel's mother testified that he was trying to clear his name, and Marvel's attorney began a question to Marvel by saying:

> Now, right where we were leaving off yesterday, we had talked about the efforts that were being made to have a statement taken from Leah Vinguierra. And we left off where you were saying that Mr. Juliano, the private investigator, was unsuccessful in doing that, and you had a renewed interest in attempting to clear your name. And you thought that maybe when Mr. Hollis was going to get out, that he could help you. So I want to focus on that ....

The essence of the question, and the thrust of virtually all of Marvel's testimony (including his response to that question), however, was that Marvel solicited Hollis to help Marvel clear his name. Thus, the trial court correctly ruled that Marvel had opened the door to impeachment evidence on the issue of Marvel's "good name."[6]

[6] *Smith v. State*, 913 A.2d 1197, 1239 (Del. 2006).

11) Finally, Marvel argues the trial court abused its discretion by excluding from evidence two letters written by Bruce Mason, another inmate, to James Hollis in May and June 2005. The letters describe Marvel as a snitch who interfered with Mason's plan to smuggle contraband to Hollis. Marvel argues that the letters are not hearsay because they show Hollis's state of mind. The theory is that Hollis made up a story incriminating Marvel because Hollis was mad at Marvel for being a snitch.

12) The letters were written after Hollis told the authorities that Marvel solicited him to assault Vinguierra. Thus, it is difficult to understand how those letters affected Hollis's state of mind. Even if the letters fall within an exception to the hearsay rule, however, we conclude that Marvel suffered no prejudice from the trial court's ruling. Hollis referred to at least one of Mason's letters during his trial testimony, and said: "I believed that Larry had snitched. That's what [Mason] said."[7] Hollis also confirmed that he wrote back to Mason and told Mason that they both knew who talked, and that "[The snitch will] get his. They always do."[8] In sum, Marvel's contention that Hollis had a motive to frame him was established through Hollis's own testimony. Mason's letters would have added nothing to the evidence on this issue.

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[7]Appellant's Appendix, A- 78.

[8]*Ibid.*

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

BY THE COURT:

/s/ Carolyn Berger
Justice