IN THE SUPREME COURT OF THE STATE OF DELAWARE

BEN ROTEN,	§	
	§	
Defendant Below,	§	No. 262, 2012
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 0907011738
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 21, 2012
Decided: November 16, 2012

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

O R D E R

This 16th day of November 2012, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Ben Roten, appeals from a Superior Court's order denying his motion for a new trial. We find no merit to Roten's appeal. Accordingly, we affirm.

(2) A Superior Court jury convicted Roten in January 2010 of one count of Assault in a Detention Facility. The court sentenced Roten as a habitual offender to twenty-five years at Level V incarceration to be followed by six months at Level IV work release. This Court affirmed

Roten's conviction and sentence on direct appeal.[1] Thereafter, Roten moved for a sentence modification and for postconviction relief. The Superior Court denied both of those motions, and this Court affirmed.[2] In January 2012, Roten moved for a correction of an illegal sentence and for a new trial based on new evidence. This Court affirmed the Superior Court order denying his motion for a sentence correction.[3] Roten now appeals the Superior Court order denying his motion for a new trial.

(3) On appeal, Roten contends that the Superior Court erred in its denial based on allegedly new evidence relating to Roten's state of mind. According to Roten, his mother was a victim of childhood sexual assault, and Roten's victim had a prior conviction for sexual assault of a child. Roten argues that the court should have required that this evidence be presented to a jury in a new trial, because it is relevant to Roten's state of mind at the time he committed his assault.

(4) We review a Superior Court denial of a motion for a new trial for abuse of discretion.[4] To be considered "newly discovered evidence," the

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[1] *Roten v. State*, 5 A.3d 631, 2010 WL 3860663 (Del. Oct. 4, 2010) (TABLE).

[2] *Roten v. State*, 35 A.3d 419, 2011 WL 5419684 (Del. Nov. 8, 2011) (TABLE).

[3] *Roten v. State*, 49 A.3d 1194, 2012 WL 3096659 (Del. July 30, 2012) (TABLE).

[4] *Hicks v. State*, 913 A.2d 1189, 1193 (Del. 2006).

evidence, among other things, "must have been discovered since trial, and the circumstances must be such as to indicate that it could not have been discovered before trial with due diligence."[5]

(5) In this case, Roten admits that he has known of his mother's childhood trauma since he was a young child. Obviously, this information was not newly discovered. Had the information been relevant to Roten's defense at trial, he should have raised it with his attorney instead of offering a misidentification defense. Under these circumstances, we find no abuse of discretion in denying Roten's motion.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[5] *Id*. at 1193-94.