

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	I.D. # 0505004361
v.	)	
	)	
CHAKKIRA WONNUM,	)	
	)	
Defendant.	)	

UPON DEFENDANT'S MOTION *IN LIMINE*
DENIED

Submitted: March 28, 2008

Decided: April 24, 2008

This 24th day of April, 2008, it appears to the Court that:

1. On December 26, 2007, the Delaware Supreme Court reversed Chakkira Wonnum's ("Wonnum") convictions for Murder in the First Degree (Felony Murder), Possession of a Firearm During the Commission of a Felony, Assault in the First Degree, Robbery in the First Degree, Conspiracy in the Second Degree, and Possession of a Deadly Weapon by a Person Prohibited.¹ In its opinion, the Supreme Court held, *inter alia*, that a 2005 psychological evaluation of Wonnum was relevant to a duress defense, and should have been admitted at trial, since a jury should have had the

¹ *Wonnum v. State*, 942 A.2d 569 (Del. 2007).

opportunity to determine whether abuse of and threats against Wonnum by her former boyfriend, Steve Martin (“Martin”), constituted duress.²

2. Now before the Court is Wonnum’s request to have Martin transported from the Department of Correction to the courthouse so that the jury may view him in person at Wonnum’s retrial. Wonnum argues that the jury should be permitted to see Martin so that it can fully assess the tangible factors associated with his alleged coercion of her. She submits that requiring Martin to appear at her retrial would not violate Martin’s constitutional rights, and if the jury is not permitted to observe Martin, she will be further limited in her ability to present a duress defense. In the alternative, if the Court declines to permit Martin to be presented in person, Wonnum asks this Court to permit her to take a full-length photograph of Martin to show to the jury at her retrial.

3. Martin objects to Wonnum parading him in front of the jury during Wonnum’s retrial. He contends that such an exhibition would be cumulative and unnecessary because Wonnum can elicit testimony of Martin’s height, age, weight, and other physical characteristics from two detectives who interviewed him at trial. Martin also contends that it would be testimonial and prejudicial for Martin to be displayed before the jury in

² *Id.* at 572.

his prison attire. He suggests that flaunting him before the jury violates his right against self-incrimination.

4. The affirmative defense of duress may be raised by a defendant where a third party coerces her with threats of bodily harm to commit a crime.³ The defense must be established by the defendant by a preponderance of the evidence.⁴ A jury must evaluate the defendant's duress defense objectively, applying a reasonable person standard, by considering factors such as: the threat's immediacy and explicitness; the time in which the coercer intends to implement the threat; the nature of the physical injury threatened; the defendant's ability to escape from the coercer; and the coercer's presence or absence at the crime.⁵ The jury may also consider the objective situation in which the defendant claims to have been subjected to duress, including evidence of the defendant's past history with the coercer.⁶

5. In this case, Wonnum seeks to have Martin shown physically in person to the jury to support her duress defense. Where a defendant seeks to offer the in-court identification of a person as an exhibit, rather than having

³ *Wonnum*, 942 A.2d at 572.

⁴ 11 *Del. C.* § 304(a).

⁵ *Wonnum*, 942 A.2d at 572.

⁶ *Id.* at 574 (citing *U.S. v. Willis*, 38 F.3d 170 n.8 (5th Cir. 1994)).

the witness testify, the Delaware Rules of Evidence are applicable.⁷ Thus, the decision to admit such evidence is within the trial judge's discretion.⁸ In this regard, the case of *Banther v. State*⁹ is particularly instructive. There, the defendant sought to subpoena a co-defendant to show his size, height, and weight to the jury. Applying Delaware Rule of Evidence 403, the Superior Court excluded the "show-up" as cumulative because photographic and testimonial evidence showing the size, weight and age of the co-defendant had been offered into evidence.¹⁰ On appeal, the Supreme Court affirmed and found no abuse of discretion.¹¹

6. Wonnum urges this Court to allow her to show Martin to the jury so that it can consider "[s]tark tangible factors that differentiate the actor from another, like his size, strength, age, or health."¹² Other courts applying the Model Penal Code have held that these factors must be "gauged

⁷ *Kiser v. State*, 769 A.2d 736, 743 n.4 (Del. 2001).

⁸ *Id.*

⁹ 823 A.2d 467 (Del. 2003).

¹⁰ *Banther*, 823 A.2d at 489.

¹¹ *Id.*

¹² Kelly Monacella, *Supporting a Defense of Duress: The Admissibility of Battered Woman Syndrome*, 70 Temp. L. Rev. 699, 739, Summer 1997) (quoting MODEL PENAL CODE § 2.09 cmt. 3 (2001)). The Delaware definition of duress is partially based on the Model Penal Code ("MPC"). Compare MODEL PENAL CODE § 2.09 with 11 Del. C. § 431; see also *Wonnum*, 942 A.2d at 577 n.27 (Ridgely, J., dissenting).

against the coercer in order to determine whether the defendant acted reasonably and therefore justifiably.”¹³ While the Court agrees that Wonnum is entitled to place before the jury evidence of Martin’s size, height, weight, and other characteristics to bolster her duress defense, Wonnum can offer this evidence through her own testimony, if she chooses to testify, as well as through the testimony of the two detectives who interviewed Martin. Wonnum can also offer the photograph of Martin that was taken by police after he was arrested. Thus, just as in *Banther*, the Court concludes in its discretion that a show-up of Martin to the jury would be unnecessary and cumulative. Similarly, there is no need to require Martin to submit to a full-length photograph because the evidence of his physical characteristics can be offered through other testimony.

7. Moreover, under Rule 403, the Court has determined that forcing Martin to appear at Wonnum’s retrial would be unfairly prejudicial to the State.¹⁴ Although the Court agrees that evidence of Martin’s physical characteristics is relevant to Wonnum’s defense, the fact that the defendant wants to parade him before the jury suggests that Wonnum wants the jury to do more than simply assess his size, height and weight but seeks to create an

¹³ *Connecticut v. Heinemann*, 920 A.2d 278, 305 (Conn. 2007).

¹⁴ See D.R.E. 403. The Court will not address Wonnum’s contention that forcing Martin to appear or to submit to a full-length photograph would not be testimonial because it has already concluded that such evidence would be cumulative, unnecessary, and prejudicial.

impression upon the jury based exclusively on Martin's appearance. Such speculation, in my judgment, creates precisely the prejudice that the Rules of Evidence seek to avoid. The Court can only assume that Wonnum's goal is to show the jury that Martin's appearance is sinister and menacing, suggesting therefore that Martin actually is sinister and menacing. In proverbial terms, Wonnum seeks to have the jury "judge a book by its cover," and would like it to be able to draw inferences about Martin's character based upon aspects of his physical appearance that are simply not probative of character. To the extent that Wonnum seeks to establish Martin's bad character through his appearance, the limited probative value is substantially outweighed by the danger of misleading the jury or the needless presentation of cumulative evidence.¹⁵

8. The Court further notes that denying Wonnum's request will not affect her ability to present an effective defense. As explained above, Wonnum can place the evidence of Martin's physical characteristics before the jury through the testimony of two detectives. The jury will then be able to compare Wonnum's physical characteristics with those of Martin in order

¹⁵ See D.R.E. 403; *see also* D.R.E. 404(a) ("Evidence of a person's character or a trait of his character is not admissible for the purpose of proving action in conformity therewith on a particular occasion . . .").

evaluate her duress defense. As a result, she will not be denied the right to an effective defense.¹⁶

9. For all of the foregoing reasons, Defendant's Motion *in Limine* is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Mark Conner, Esq.
Ipek Medford, Esq.
Timothy J. Weiler, Esq.
Nicole M. Walker, Esq.

¹⁶ See *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (“[T]he Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’”) (citations omitted).