



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

<b>CAMERON NORWOOD,</b>	)	
	)	
<b>Defendant Below-</b>	)	<b>No. 382, 2013</b>
<b>Appellant,</b>	)	
<b>v.</b>	)	
	)	
<b>STATE OF DELAWARE,</b>	)	
	)	
<b>Plaintiff Below-</b>	)	
<b>Appellee.</b>	)	

**ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY**

**STATE'S ANSWERING BRIEF**

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DATE: November 8, 2013

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## **NATURE AND STAGE OF PROCEEDINGS**

Appellee, the State of Delaware, generally adopts the Nature and Stage of the Proceedings as set forth in Appellant Cameron Norwood's September 26, 2013 Opening Brief. This is the State's Answering Brief in opposition to Norwood's direct appeal of his Kent County Superior Court jury convictions.

## SUMMARY OF ARGUMENT

I. DENIED. The trial judge did not abuse his discretion in excluding evidence that a different person participated in a robbery and attempted robbery of the same store with the two co-defendants on earlier occasions. (A-99-102). The evidence was properly excluded as irrelevant. It was neither material nor probative of the identity of the robber who wore a black ski mask during the robbery offense that was the subject of the trial.

## STATEMENT OF FACTS

On September 4, 2012, just before 7 p.m., three men robbed the Family Dollar store located in Bay Court Plaza in Dover, Delaware. (A-6). It was still light outside. (B-5). The store was empty except for two employees, Martha Lewis (“Lewis”) and Rebecca Chillas (“Chillas”). (A-31-32).

At the time the men entered the store, Ms. Lewis was approaching the front of the store and Ms. Chillas was putting labels on the candy display in one of the aisles (the “candy aisle”). (A-6, 31). One of the men, wearing a mask tied around his face, approached Lewis, put a gun to her head and told her to open the register. (A-6). She did not have a key, so instead, the masked gun man ran over to Ms. Chillas, pulled her off of her step stool, pointed the gun at her and brought her up front to open the register. (A-7, 32-34).

A second man, wearing a black ski mask pulled over his head, took Lewis back to the candy aisle and told her to get on her knees. (A-9, 16; B-4). He stayed with her while the other two men – the masked man with the gun and an unmasked adolescent wearing a green shirt and camouflage shorts – took money from the registers and packs of cigarettes from a nearby cabinet. (A-10, 12, 35 – 38). The men then fled. (A-39-40). Chillas and Lewis immediately locked the doors and called the police. (A-13, 40). Chillas described the men to the dispatcher as three

black males, one of whom was wearing a green shirt and camouflage shorts. (A-40, 116-17).

Corporal Lance Chandler (“Corporal Chandler”), a Dover police officer on patrol that night, received the call about the armed robbery while just a few minutes south of Bay Court Shopping Center on Route 13. (B-2). Aware that there was a path behind the Kent County Division of Motor Vehicles (“DMV”) complex that people from the Bay Court area used as a pathway to Capitol Park, he drove towards the DMV. (B-2). Just after he passed the roundabout on Public Safety Boulevard, he saw three black males walking across a field to his right towards the path entrance. (B-3). He could see that one of the men was wearing a green shirt and camouflage shorts. (B-3). Another was wearing a white tank top and blue jeans. (B-3).

After a brief chase, Corporal Chandler confronted the man in the white tank top and blue jeans, Defendant Cameron Norwood (“Norwood”), drawing his gun and ordering him to the ground. (B-4, 6). The other two men disappeared down the path towards Capitol Park. (B-4-5). Before complying with Corporal Chandler’s order to get down on the ground, Norwood threw a black object away from himself. (B-4). The object, recovered by Corporal Chandler, was a black knit ski mask. (B-4). Norwood was taken into custody and returned to the Family

Dollar store, where Lewis positively identified him as one of the robbers. (A-14).

She also recognized the ski mask he had thrown away. (A-14, 16).

Soon after the dispatch about the robbery, Corporal Jeffrey Davis of the Dover Police Department responded to one of the spots where the path from the DMV ends in Capitol Park. (B-10). There he saw a young black male wearing camouflage shorts and a green t-shirt run out from behind a house two or three houses down from the path exit and jump into the back of a vehicle. (B-10). Corporal Davis pulled the vehicle over and arrested the young man, Khareim Hanzer ("Hanzer"), at gunpoint. (B-11).

Hanzer was returned to the Bay Court Family Dollar store, where he too was positively identified by Chillas and Lewis. (A-15, 51, 68, 70). Latent fingerprint impressions found on a cigar package that had been dropped on the floor of the Family Dollar store during the robbery were a match to Hanzer. (A-73, 77, 81).

The third robbery suspect was not apprehended that night. (A-84). However, latent fingerprint impressions on a pack of cigarettes found on the evening of the robbery lying on the path down which the three men had fled were a match to Orlando Ingram ("Ingram"). (A-80; B-5). He was taken into custody on September 27, 2012. (A-84).

As a result of his involvement in the robbery, Cameron Norwood was charged with two counts of robbery first degree – one count as to Lewis and one

count as to Chillias, one count of possession of a firearm during the commission of a felony, one count of possession of a firearm by a person prohibited, one count of wearing a disguise during the commission of a felony, and one count of conspiracy second degree. (A-1).

Norwood elected not to testify at his 2013 Superior Court jury trial. (B-12).

**I. EVIDENCE THAT ANOTHER PERSON  
ROBBED THE STORE THE MONTH  
BEFORE IS NOT RELEVANT**

**QUESTION PRESENTED**

Should the accused have been permitted to present evidence that a different individual participated with the two co-defendants in robbing and attempting to rob the same store the preceding month?

**STANDARD AND SCOPE OF REVIEW**

A trial judge's evidentiary rulings (A-99-102) are reviewed on appeal for an abuse of discretion. See Gallaway v. State, 65 A.3d 564, 569 (Del. 2013); Watkins v. State, 23 A.3d 151, 155 (Del. 2011); McNair v. State, 990 A.2d 398, 401 (Del. 2010); Stickel v. State, 975 A.2d 780, 782 (Del. 2009).

**MERITS OF ARGUMENT**

On September 4, 2012, three men robbed the Bay Court Family Dollar store in Dover. (A-6). Two of the robbers, Orlando Ingram and Cameron Norwood, wore masks. (A-6-9, 16). The third robber, Khareim Hanzer, was wearing camouflage shorts and a green t-shirt, but no mask. (A-8). Two of the robbers, Hanzer and Norwood, were arrested by the Dover Police that same evening a short distance from the robbery scene. (B-4-6, 10-11). The third robber, Ingram, was

arrested on September 27, 2012, after a latent fingerprint comparison. (A-80, 84; B-5).

At Cameron Norwood's April 2013 Kent Superior Court jury trial, his defense counsel during cross-examination of Dover Police Detective Jeffrey Gott attempted to question the police officer about an August 18, 2012 robbery and an August 27, 2012 attempted robbery of the same Family Dollar store. (A-99-102). The defense wanted to show that Ingram, Hanzer, and a third individual named Khalil Dixon had committed the August 18 robbery and August 27 attempted robbery of the same store, but that Norwood had no involvement in the August crimes. (A-99-102). The State objected to this line of defense questioning as irrelevant, confusing, and misleading (A-100-02), and the Superior Court Judge sustained the prosecution's evidentiary objections. (A-100-02). The trial judge pointed out to Norwood's defense counsel, "You're trying to elicit evidence that somebody else, at some other point, may have attempted a robbery at the same place. I don't think it has any meaning." (A-102). The trial judge did not abuse his discretion in these evidentiary rulings. (A-100-02).

D.R.E. 401 defines relevant evidence as ". . . evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." See Stickel v. State, 975 A.2d 780, 782-83 (Del. 2009) ("Evidence must be relevant to

be admissible at trial.”). D.R.E. 402 further provides that relevant evidence is generally admissible, but irrelevant evidence is inadmissible. See Powell v. State, 2009 WL 3367068 (Del. October 20, 2009) at \* 3. Evidence of a unique or highly distinct characteristic may be admissible to prove identification. See Layton v. State, 2003 WL 22001181 (Del. August 4, 2003) at \* 3. A trial judge’s ruling that evidence is irrelevant and not admissible (A-99-102) is reviewed on appeal for an abuse of discretion. See Gallaway v. State, 65 A.2d 564, 569 (Del. 2013) (admission of YouTube video of accused upheld on appeal).

To be relevant, evidence must be both material and probative. See Getz v. State, 538 A.2d 726, 731 (Del. 1988). “Evidence is material if it is ‘of consequence’ in light of the issues or ultimate facts in the case, and the evidence has probative value when it advances the probability that the fact, as the party asserts it, is true.” Turner v. Delaware Surgical Group, P. A., 67 A.2d 426, 434 (Del. 2013). Evidence that Khalil Dixon may have participated in an August 18, 2012 robbery and an August 27, 2012 attempted robbery of the Dover Bay Court Family Dollar store with Cameron Norwood’s two co-defendants, Orlando Ingram and Khareim Hanzer, was neither material nor probative evidence of the identity of the three individuals who robbed that same store on September 4, 2012. Accordingly, the trial judge did not abuse his discretion in excluding a defense

cross-examination inquiry into the identity of the three suspects in the two August crimes. (A-99-102).

At the April 2013 Superior Court jury trial, the State presented both direct and circumstantial evidence that Cameron Norwood was one of the three individuals who robbed the Bay Court Family Dollar store at gunpoint on the early evening of September 4, 2012. During the September 4 robbery a man wearing a black ski mask took store employee Martha Lewis to the candy aisle and told her to get on her knees. (A-9, 16; B-4).

Dover Police Corporal Lance Chandler heard the police radio broadcast that three black males had robbed the Family Dollar store in the Bay Court Shopping Center, and one of the suspects was wearing a green shirt and camouflage shorts. (A-40, 116-17; B-2). Corporal Chandler was only a few minutes South of the Bay Court Shopping Center. (B-2). Near a pathway from the Bay Court area toward Capitol Park (B-2), Chandler observed three black males walking across a field toward the pathway. (B-3). One of the individuals was wearing a green shirt and camouflage shorts. (B-3). When the police officer drove over the curb and across the grass, the three suspects began running. (B-3).

Following a short chase, Chandler was able to catch Norwood, who was wearing a white tank top and blue jeans. (B-4). Chandler drew his gun and ordered Norwood on the ground while the other two suspects continued to flee. (B-4-6).

Before getting on the ground, Norwood threw away a black knit ski mask. (B-4). Chandler also recovered a black T-shirt that was balled up and thrown into some bushes near where Norwood was apprehended. (B-7). When Norwood was returned to the Family Dollar store that same evening, employee Lewis was able to identify both the black ski mask and Norwood's clothing as the same as worn by one of the store robbers. (A-14, 16).

The flight from a police officer by Norwood and the other two armed robbery suspects is evidence of a consciousness of guilt. See Robertson v. State, 41 A.3d 406, 409 (Del. 2012); Staats v. State, 902 A.2d 1125, 1128-29 (Del. 2006); Pope v. State, 632 A.2d 73, 77 (Del. 1993); Thomas v. State, 467 A.2d 954, 958 (Del. 1983). Norwood's jeans matched the garment worn by one of the robbers. (A-14). Finally, Norwood's furtive attempt to discard the highly incriminatory black ski mask when stopped by the police (B-4) was further evidence of his participation in the recent nearby store robbery. (A-14, 16).

Faced with this incriminatory trial evidence, defense counsel argued in closing to the jury that Norwood had been misidentified as one of the robbers. (A-130-38). In closing, defense counsel pointed out that Norwood was taller than Lewis's height estimate of the third robber and that when apprehended Norwood was wearing a white tank top, not a dark t-shirt. (A-130-32). Of course, Corporal Chandler recovered both a black T-shirt (B-7) and black ski mask (B-4) when he

took Norwood into custody. Defense counsel in closing also pointed out that there was no DNA testing of the black ski mask Norwood was observed discarding. (A-133-34).

On appeal, Norwood's sole complaint is that he should have been permitted to present evidence that perhaps Khalil Dixon participated in the September 4 robbery with Ingram and Hanzer because those three were thought to have committed the August 18 and 27 crimes at the same store. The August 27 offense was an attempted robbery allegation because when the would be robbers arrived the store had already closed for the night and the trio was unable to gain entrance. While Norwood argues on appeal that Dixon did plead guilty to some robbery allegations (Opening Brief at 14-15), he does not specify whether those were the August 18 and August 27 crimes at the Bay Court Family Dollar store. (A-141-48). In any event, whether Dixon participated in the two August crimes is not material or probative of whether Dixon, rather than Norwood, was the third ski masked robber in the September 4 robbery.

In a New York state criminal prosecution for a November 29, 1975 robbery and rape at a Buffalo General Hospital parking facility, the accused wanted to present evidence that the day before (November 28, 1975), another female victim had been robbed and raped at a parking garage underneath a downtown Buffalo shopping mall and that the accused was not identified as the November 28 attacker

in a lineup conducted on December 3, 1975. People v. Johnson, 405 N.Y. Supp.2d 538, 540 (N.Y. Supr., App. Div. 1978). The trial court ruled that testimony about the earlier November 28 similar crime was not relevant to whether Johnson committed the November 29 offenses, and on appeal the New York State court found no abuse of discretion in this evidentiary ruling. Id. at 540. The New York court pointed out that testimony from another victim in the earlier crime “. . . had no probative value in determining whether defendant robbed, raped and sodomized complainant in this case. Consequently, the proffered testimony was irrelevant.” Id. at 540. Collateral testimony regarding the prior rape offense was excluded. Id. at 540-41.

The reasoning in Johnson has been followed in other subsequent decisions. See State v. Scheidell, 595 N.W.2d 661, 673 (Wisc. 1999); People v. McMahon, 580 N.Y. Supp.2d 252, 253 (N.Y. Supr., App. Div. 1992); People v. Reynolds, 479 N.Y. Supp.2d 736, 740 (N.Y. Supr., App. Div. 1984). The Third Circuit has also found that refusing to admit evidence of prior convictions of a third party in a bank robbery prosecution where the defense was that someone else committed the robbery did not improperly restrict the presentation of a defense. United States v. Cunningham, 110 Fed. Appx. 238, 241 (3rd Cir. 2004). See also United States v. Farrington, 58 Fed. Appx. 919, 924 (3rd Cir. 2003) (“reverse 404(b)” evidence); Annot., “Admissibility of evidence of Commission of Similar Crime by one other

than accused,” 22 A.L.R. 5th 1 (1994). In Smith v. State, 913 A.2d 1197, 1229 (Del. 2006), this Court discussed Farrington in finding that evidence of an alleged co-conspirator’s prior robbery arrest was not admissible to prove that someone other than the accused committed the robbery. Smith, supra at 1227-29.

In truth, what Norwood attempted to do at trial was present “reverse 404(b)” evidence [Farrington, supra at 924] that Dixon committed other similar crimes, and for this reason the jury should have heard this evidence as part of a misidentification defense. As the cases just discussed illustrate, a tangential connection or similarity is not enough to permit such extraneous evidence under D.R.E. 404(b). Not only is the alternative suspect evidence irrelevant, it may, as the prosecutor urged, be “confusing and misleading” (A-101), and excludable under D.R.E. 403. See Turner, 67 A.3d at 434-35. Norwood has also failed to prove his “reverse 404(b)” other crimes evidence by evidence that is plain, clear, and conclusive. See McNair v. State, 990 A.2d 398, 401 (Del. 2010) (citing Getz, 538 A.2d at 734).

The evidence in Norwood’s case distinguishes his situation from the circumstances surrounding the two bank robberies in Watkins v. State, 23 A.3d 151, 152-55 (Del. 2011). Unlike Adam Watkins, who was arrested on the basis of a photograph a little less than a week after an armed robbery of a PNC Bank ATM customer [Watkins, 23 A.3d at 152-53], Norwood was arrested a short distance

from the Family Dollar robbery scene. Norwood initially fled from the police, and he was seen discarding a black ski mask later identified by one of the robbery victims as similar to what one of the robbers wore that same evening. Norwood may have changed his shirt shortly after the September 4 robbery since a balled up black t-shirt was found near where the police officer had observed Norwood. A showup identification of Norwood was also done the same evening as the robbery. It is these facts that distinguish Norwood's case from the situation presented in Watkins. This is also not a case like Kiser v. State, 769 A.2d 736, 740-41 (Del. 2001), where the accused had not only a twin brother, but a cousin who looked quite similar. Kiser presented a very unique factual circumstance that is not like the misidentification defense Norwood was attempting to establish merely through cross-examination of the investigating detective. (A-99-103).

**CONCLUSION**

The judgment of the Kent County Superior Court should be affirmed.

  
\_\_\_\_\_  
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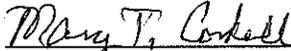
AFFIDAVIT OF SERVICE

BE IT REMEMBERED that on this 8th day of November 2013, personally appeared before me, a Notary Public, in and for the County and State aforesaid, Mary T. Corkell, known to me personally to be such, who after being duly sworn did depose and state:

(1) That she is employed as a legal secretary in the Department of Justice, 102 West Water Street, Dover, Delaware.

(2) That on November 8, 2013, she did deposit in the mail two copies of the attached State’s Answering Brief properly addressed to:

Adam D. Windett, Esquire  
Hopkins & Windett, LLC  
438 S. State Street  
Dover, DE 19901

  
\_\_\_\_\_  
Mary T. Corkell

SWORN TO and subscribed  
Before me the day aforesaid.

Devera Bhatt  
Notary Public

Devera B. Scott, Esquire  
NOTARIAL OFFICER  
Pursuant to 29 Del.C. § 4323(a)(3)