



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

**BRETT SCOTT,** )  
 )  
 **Defendant Below-** ) **No. 523, 2018**  
 **Appellant,** )  
 **v.** )  
 )  
 **STATE OF DELAWARE,** )  
 )  
 **Plaintiff Below-** )  
 **Appellee.** )

**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: January 10, 2019

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## **NATURE AND STAGE OF THE PROCEEDINGS**

Appellee, the State of Delaware, generally adopts the Nature and Stage of the Proceedings as contained in Appellant Brett Scott's December 14, 2018 Opening Brief.

This is the State's Answering Brief in opposition to Scott's direct appeal.

## SUMMARY OF ARGUMENT

I. DENIED. While Raymond Ward may have originally hoped to snatch Dequan Dukes' bag of money and drugs from the back seat of Dukes' car while the victim's attention was diverted by front seat passenger Lisa Wagaman, that attempted theft plan changed when Wagaman left the victim's vehicle and refused to return and carry out the theft plan. At that point the criminal activity transformed from an attempted theft to an attempted robbery. Brett Scott armed with a handgun approached Dukes' car and confronted the target victim with the intent to steal Dukes' money and drugs by the use or threat of deadly force.

Based upon this trial evidence of the unfolding and changing crime the trial judge correctly denied the defense motion for a judgment of acquittal. (A-495-98).

## STATEMENT OF FACTS

On the afternoon of June 27, 2017, Lisa Wagaman encountered Raymond (“Sunny”) Ward near her Rodney Village home in Dover. (A-410-12). Ward asked to use Wagaman’s phone and also requested a ride to Woodside. (A-412).

Borrowing a friend’s car, Wagaman drove Ward to Woodside. (A-412). While digging through Wagaman’s cell phone, Ward found a picture of Dequan Dukes who was in possession of money and contraband drugs. (A-413). Previously, Wagaman had engaged in sexual relations with Dukes in exchange for money or drugs. (A-414).

After viewing a photograph of Dukes holding up money, Ward expressed to Wagaman a desire “to hit him up” in order to get Dukes’ money. (A-414).

According to Wagaman’s July 24, 2018 Superior Court jury trial testimony, she was to lure Dukes to a location because Ward “wanted to basically do like a grab-his-stuff type robbery.” (A-414). Dequan Dukes usually kept his money and drugs in a brown Gucci bag. (A-429).

To carry out his criminal scheme, Ward used Wagaman’s phone to contact Gregory Sellers. (A-163). According to Sellers, Ward “needed my help taking him to go do his robbery.” (A-163). Sellers expected to get some money from Ward’s crime. (A-168).

Sellers drove his 2000 Chevrolet Impala automobile to Woodside to pick up

Raymond Ward. (A-162-64). There Sellers saw Lisa Wagaman, who then left in another vehicle. (A-164). Ward next asked Sellers to drive to the Waffle House to pick up Brett Scott before continuing on to the Pine Grove Apartments in Dover. (A-164-65). During this trip Ward used Sellers' phone to send text messages to Wagaman. (A-166). At trial Sellers testified that during the trip to the Waffle House and then to Pine Grove Apartments there was no discussion about what was going to happen that evening. (A-185).

Following Sellers' arrival (A-415), Wagaman drove back to Dover to return the car she borrowed. (A-416). Dequan Dukes then telephoned Wagaman and said he was on his way to pick her up. (A-417). Next, Wagaman was contacted by Ward on Sellers' telephone. (A-417). Wagaman asked Ward what he wanted her to do, and Ward answered that Wagaman should tell Dukes to go to Pine Grove Apartments and park by the dumpster. (A-417).

When Dequan Dukes arrived to pick up Lisa Wagaman, Lisa's sister was also walking by. (A-418). Lisa asked Dukes to give her sister a ride to Pine Grove Apartments where the sister's baby's father lived. (A-418). Dukes parked his car near the Pine Grove dumpster. (A-418). Wagaman and her sister exited Dukes' car, and Wagaman sent a text message to Ward announcing that she and Dukes were at the apartment dumpster. (A-418-19). Ward instructed Wagaman to return to Dukes' vehicle because "If I don't get back in the car, it's not going to look like

he was basically trying to grab his backpack to rob him.” (A-419). Ward then returned to Dukes’ car (A-419), but later left the vehicle a second time. (A-419-20).

Sellers, Ward and Scott arrived at the Pine Grove Apartments before Dukes and Wagaman. (A-167). The trio backed into a spot near the dumpster, and Ward and Scott exited Sellers’ Impala. (A-167). Sellers testified that he was unaware of any guns in his car. (A-167). Sellers did know that Dequan Dukes was the target, and Sellers was told that Dukes had money and drugs. (A-168).

At Pine Grove Apartments Sellers observed Brett Scott and Raymond Ward exit his vehicle. (A-186). Sellers also saw Lisa Wagaman get out of Dequan Dukes’ car. (A-189, 419-20). As she exited Dukes’ vehicle a second time, Wagaman saw Brett Scott approach and ask her for a cigarette. (A-419-20). Next, Scott also asked Dukes for a cigarette. (A-420-21).

At trial Wagaman testified that Dukes usually keeps money in a brown Gucci bag (A-429), and she noticed that the bag was in the back seat of Dukes’ vehicle. (A-437). According to Wagaman, “We were after the bag and drugs.” (A-429). The plan was for Wagaman to keep Dukes busy in the front seat of his car. (A-437). Raymond Ward was then supposed to open the back door of Dukes’ car and grab the brown Gucci bag. (A-437).

When she left Dukes’ car the second time (A-419-20), Wagaman saw Brett



Scott walking near the vehicle (A-421), but Wagaman continued walking away and did not turn around. (A-421, 440). Following this second vehicle exit, Ward telephoned Wagaman and told her to return to Dukes' car, but she refused. (A-439-40). Wagaman told Ward that she did not want to do this. (A-439-40).

Like Sellers (A-167), Dukes backed his car into a location by the Pine Grove dumpster, (A-192). When Ward and Scott left Sellers' Impala (A-167), the pair walked to the middle of the development, circled around, and returned to Dukes' car. (A-168). Sellers testified that he observed Scott approach the passenger side of Dukes' car while Ward went toward the passenger side rear door. (A-168-69, 193-94). Sellers confirmed that Wagaman left Dukes' car as Ward and Scott approached. (A-194).

Sellers stated that words were exchanged between Dukes and Scott. (A-169). Sellers saw Scott reach for his waistband, but Dukes shot first. (A-169). Sellers said at trial that he assumed Dukes shot first because he initially did not see a gun in Scott's hand. (A-193-94). When Scott was shot by Dukes, Scott returned fire. (A-169, 194). Brett Scott went down after being shot by Dukes, and Ward tried to help Scott up. (A-169). Scott dropped his gun and Ward picked up the weapon. (A-169). After the exchange of gunfire between Dukes and Scott, Sellers drove his car over to put the wounded Scott in the back seat. (A-169). From there Sellers drove the injured Scott to the Kent General Hospital where a nurse put Scott in a

wheelchair and took Scott inside. (A-169).

As she walked away, Wagaman said that she heard a whole bunch of gunshots and she ran into an apartment. (A-421). Robert M. James, Jr., a resident of the Pine Grove Apartments, was on his back balcony on June 27, 2017. (A-139). James was acquainted with Gregory Sellers. (A-143). James saw a young lady running through Building D at the apartment complex (presumably Lisa Wagaman) and a young man on the ground being pulled into a black vehicle with two occupants. (A-140, 142).

James went outside where he saw a trail of blood, gun shells, and Dukes' running vehicle. (A-140). The passenger side of Dukes' car was riddled with bullet holes, and Dukes was inside the running car. (A-140-41). James turned off the car, checked Dukes' pulse, and called 911. (A-141). When Dover Police arrived at the shooting scene, Dukes had no pulse. (A-154-56).

Dover Police Detective Jeffrey Gott (A-257) testified that the Pine Grove shooting call came in about 8:45 P.M. on June 27, 2017. (A-258-59, 272). Detective Gott initially went to the Kent General Hospital (A-258-59), where Brett Scott was being treated for gunshot wounds to his left anterior chest, right ankle, and left hand. (A-359). From the hospital Gott went to the Pine Grove shooting scene where he noticed a designer bag (State's Exhibit # 43) in the back seat of Dukes' vehicle (A-309), and a Taurus 9 millimeter handgun on the driver's side

floorboard of Dukes' car. (A-299-300). Numerous 9 millimeter shell casings were located by Gott at the shooting scene, including several rounds inside Dukes' car. (A-275-82, 296, 301-02). Four of the shell casings were determined to have been fired from the Taurus handgun found inside Dukes' car (A-299-300, 349), while nine other casings inside Dukes's car (A-393) were fired from a different weapon. (A-349). According to Gott, the Taurus PT 111 model 9 millimeter semi-automatic handgun found in Dukes' car (A-298-300) had a magazine holding 12 rounds. (A-300).

Gregory Sellers' iPhone was recovered by the police (A-290, 380), and an extraction report for the device revealed text messages to Lisa Wagaman's 6330 phone number. (A-380-81, 426). One incoming text message said "Bag in back seat," and a 8:38 P.M. text read: "parking now." (A-383-84).

Dequan Dukes' death certificate (State's Exhibit # 81) listed his cause of death as a gunshot wound to the chest. (A-375-77). The manner of death was described as a homicide. (A-377).

At the July 2018 Kent County Superior Court jury trial, the defendant Brett Scott elected not to testify (A-507-09), and the defense rested without presenting any witnesses. (A-510).

**I. THERE WAS SUFFICIENT EVIDENCE TO CONVICT  
THE ACCUSED OF ATTEMPTED ROBBERY**

**QUESTION PRESENTED**

Did the trial judge correctly deny the defense motion for a judgment of acquittal as to the attempted first degree robbery allegation?

**STANDARD AND SCOPE OF REVIEW**

Appellate review of a trial judge's denial of a defense motion for judgment of acquittal (A-495-98) is de novo to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the essential elements of attempted first degree robbery beyond a reasonable doubt. See Bethard v. State, 28 A.3d 395, 397 (Del. 2011); Winer v. State, 950 A.2d 642, 646 (Del. 2008).

**MERITS OF THE ARGUMENT**

At the conclusion of the State's case-in-chief (A-472-73), the defense pursuant to Del. Super. Ct. Crim. R. 29(a), moved for a judgment of acquittal as to the attempted first degree robbery allegation and as to the other three pending charges because they were dependent upon a finding of guilt as to the attempted robbery. (A-473-81). The two stated reasons for the defense motion were that "a mere theft was planned and a mere theft was attempted," and, second, "there was no evidence presented as to any substantive planning of a robbery." (A-480-81).

In opposition to the defense trial motion (A-481-85), the State pointed out that while “a snatch-and-grab” may have been originally contemplated (A-481), that plan changed when “things went wrong and that force was used converts that theft to a robbery.” (A-482). After further discussion among trial counsel and the Superior Court Judge (A-485-95), the court recessed (A-495), and upon return announced the ruling denying the motion for judgment of acquittal, as follows:

**THE COURT:** All right. Mr. Scott moves for a judgment of acquittal at the close of the State’s evidence in this case which has been represented and will just be done as a matter of formality when the jury returns. The standard for a motion for judgment of acquittal is whether any rational trier of fact, when viewing the evidence in the light most favorable to the State, could find a defendant guilty beyond a reasonable doubt of all elements of the crime. Mr. Scott moves for judgment of acquittal regarding the Attempted Robbery charge, which he argues in turn requires an acquittal of all other charges because they hinge on that charge.

The charge of Attempted Robbery includes the elements for an attempt, which includes doing anything which, under the circumstances as the defendant believed them to be, was a substantial step in a course of conduct planned to culminate in the commission of the crime of Robbery in the First Degree. Robbery First Degree requires the following five elements: (1) The Defendant’s conduct occurred while Defendant committed a theft or is in the course of committing a theft, (2) the Defendant used force or threatened the immediate use of force, (3) the Defendant acted to prevent or overcome resistance to the theft, (4) while committing the theft (or while immediately fleeing from it), the defendant displayed a deadly weapon, and (5) the defendant acted intentionally.

In this case, the evidence, when viewed in the light most favorable to the State, adequately supports a rational trier of fact in finding beyond a reasonable doubt, that Mr. Scott was guilty of all

elements of the crime of Attempted Robbery in the First Degree. Evidence admitted, if accepted by the trier of fact, includes that Mr. Scott rode to Pine Grove Apartments, with a weapon at one point that was in his waistband, after an occupant of his car coordinated the stealing of drugs and money from the alleged victim at that location. In the light most favorable to the State, the accumulation of those individuals, and their coordinated movement towards confronting the alleged victim constitutes a substantial step in furtherance of theft and what was to be a robbery attempt. Upon arriving there, evidence supports that Mr. Ward and Mr. Scott together approached the vehicle, possibly after Codefendant Wagaman has left, that words were exchanged, Mr. Scott reached for his waistband, but was shot at by Mr. Dukes before Mr. Scott was able to shoot his gun and fire.

Mr. Scott primarily attacks what he feels is insufficient evidence regarding formulation of intent to rob as opposed to merely conduct a snatch-and-grab. The jury, however, is permitted to draw inference, in other words, to reach conclusions about the defendant's state of mind from the facts and circumstances surrounding the act the defendant is alleged to have done and to consider whether a reasonable person in the defendant's circumstances would have had or lacked the requisite state of mind or belief. Evidence of Mr. Scott traveling to a planned theft site with a gun, his not sneaking up on a car, but rather approaching and confronting the alleged victim with Mr. Ward, his exchanging words with an alleged victim without committing a snatch-and-grab, and then reaching for his waistband before the first gun was discharged, would support a rational trier of fact in concluding that both Mr. Scott's state of mind and conduct satisfied all elements of attempted robbery. For that reason, his motion for judgment of acquittal is denied.

(A-495-98).

The Superior Court applied the proper legal standard. See Morgan v. State, 922 A.2d 395, 400 (Del. 2007); Williams v. State, 539 A.2d 164, 168 (Del.), cert. denied, 488 U.S. 969 (1988). In addition, the trial judge correctly distinguished the

difference between attempted theft (the defense contention) and attempted robbery.

11 Del. C. §§ 841 and 832. There was no factual or legal basis to dismiss the attempted first degree robbery charge or any of the other contingent offenses, and the defense motion for judgment of acquittal prior to submission of the case to the jury was correctly denied. (A-495-98).

While Raymond Ward may have initially hoped to be able to grab Dukes' bag of money and drugs from the back seat of the victim's car (A-414), that plan unraveled when Lisa Wagaman left the victim's car a second time (A-419-20), and refused to return to the vehicle. (A-439-40). At that point the attempted theft changed into an attempted robbery because Brett Scott approached the vehicle with a deadly weapon and the intent to commit a theft by use or threat of immediate force. See 11 Del. C. §§ 831(a) and 832(a). When Lisa Wagaman exited Dukes' vehicle a second time and refused to return, there was no longer a potential front seat diversion of the target victim to permit Ward simply to open the back door of Dukes' car, snatch the brown Gucci bag, and flee.

When Raymond Ward told Gregory Sellers to stop by the Waffle House to pick up Brett Scott (A-165), it was obvious that Ward was enlisting an additional armed confederate (Scott), who would be available to take Dequan Dukes' money and contraband drugs by the use or display of a deadly weapon if necessary. As Scott approached Dukes' vehicle after Wagaman departed (A-168-69, 193, 419-20),

Scott was armed with a deadly weapon (a handgun), and a rational trier of fact could reasonably infer that Scott intended to take Dukes' property either by the display or use of deadly force.


Gregory Sellers, the fourth participant in the criminal enterprise, testified that he saw Scott reach for his waistband after exchanging words with Dukes, and that a gun battle between Scott and Dukes ensued. (A-168-69). The threatening and confrontational actions of Brett Scott are evidence that the attempted theft had now transformed into an attempted first degree robbery. On the basis of this trial evidence the Superior Court Judge found that the evidence now pointed to an attempted first degree robbery, not an attempted theft.

11 Del. C. § 841(a) defines theft as the taking of another's property with the intention to permanently deprive the owner of its use. First degree robbery is merely a theft combined with the use or threat of immediate force together with the display of a deadly weapon or infliction of physical injury to the victim. 11 Del. C. §§ 831(a) and 832(a). Scott both displayed a deadly weapon (a handgun) and caused physical injury by fatally shooting Dukes in the chest. These additional actions by Scott are what changed an attempted theft into an attempted first degree robbery. Accordingly, the defense motion for a judgment of acquittal was correctly denied. (A-495-98).



**CONCLUSION**

The judgment of the Superior Court should be affirmed.

  
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Dated: January 10, 2019

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<b>Defendant Below-</b>	)	<b>No. 523, 2018</b>
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v.	)	
	)	
<b>STATE OF DELAWARE,</b>	)	
	)	
<b>Plaintiff Below-</b>	)	
<b>Appellee.</b>	)	

**AFFIDAVIT OF SERVICE**

**BE IT REMEMBERED** that on this 10th day of January 2019, 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 January 10, 2019, she did serve electronically the attached State's Answering Brief properly addressed to:

Patrick J. Collins, Esquire  
Collins & Associates  
716 North Tatnall Street, Suite 300  
Wilmington, DE 19801

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

**SWORN TO** and subscribed  
Before me the day aforesaid.

*Dwaine Shott*  
\_\_\_\_\_  
Notary Public


Dwaine B. Scott, Esquire  
NOTARIAL OFFICER  
 pursuant to 29 Del.C. § 4325(a)(3)

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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 STATE OF DELAWARE, )  
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 Plaintiff Below- )  
 Appellee. )

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT  
AND TYPE-VOLUME LIMITATION

1. This Brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times Roman 14-point typeface using Microsoft Word 2016.
2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 2979 words, which were counted by Microsoft Word 2016.

  
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