



IN THE SUPREME COURT OF THE STATE OF DELAWARE

KASHIEM THOMAS,)
)
 Defendant-Below,)
 Appellant,)
)
 v.) No. 99, 2019
)
 STATE OF DELAWARE)
)
 Plaintiff-Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

NICOLE M. WALKER [#4012]
Office of Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801
(302) 577-5121

Attorney for Appellant

DATED: November 20, 2019

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
ARGUMENT	
I. NO RATIONAL TRIER OF FACT, VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, COULD FIND THOMAS GUILTY BEYOND REASONABLE DOUBT OF THE CHARGES FOR WHICH HE WAS CONVICTED AS THE STATE FAILED TO PROVIDE SUFFICIENT EVIDENCE THAT HE POSSESSED A FIREARM AND THAT HE WAS THE ONE WHO SHOT HALE.	1
Conclusion	5

TABLE OF AUTHORITIES

Cases:

<i>Culp v. State</i> , 815 A.2d 348 (Del. 2003)	3
<i>Holden v. State</i> , 305 A.2d 320 (Del. 1973)	4
<i>Monroe v. State</i> , 652 A.2d 560 (Del. 1995)	4
<i>Morgan v. State</i> , 922 A.2d 395 (Del. 2007)	3
<i>O'Laughlin v. O'Brien</i> , 568 F.3d 287 (1st Cir. 2009)	4
<i>Priest v. State</i> , 879 A.2d 575 (Del. 2005).....	4

I. NO RATIONAL TRIER OF FACT, VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, COULD FIND THOMAS GUILTY BEYOND REASONABLE DOUBT OF THE CHARGES FOR WHICH HE WAS CONVICTED AS THE STATE FAILED TO PROVIDE SUFFICIENT EVIDENCE THAT HE POSSESSED A FIREARM AND THAT HE WAS THE ONE WHO SHOT HALE.

Significantly, the State fails to address either the 5-page transcript of the trial court's oral decision or the trial court's 12-page written decision. Accordingly, it fails to contest and, in some cases, concedes, via its own recitation of the facts, that the trial court's findings of facts are clearly erroneous. For example,

The trial court found:

- Thomas was the only person in front of the Hale house when those five initial shots were fired.¹

But, the State says:

- "Haile Omar Baird ("Omar"), was also outside standing on the steps at [Hale's house], talking with Hale."²

The trial court found:

- Mr. Hale confirmed to police that the person on his sidewalk was his attacker.³

¹ Ex.B at 10-11.

² State's Resp.Br. at 6.

³ Ex.B at 10-11.

But, the State says:

- “When Kavanaugh arrived, “a man wearing a yellow traffic vest with reflective strips on it walked up [to Kavanaugh].”⁴
- “A crowd started to form around Corporal Kavanaugh and Thomas[.]”⁵
- “There were other men outside with Thomas, including his brother Mike, ‘hanging around the crime scene.’”⁶
- “The body-worn cameras of officers who arrived after Corporal Kavanaugh showed three or four men squatted around Thomas with the Corporal.”⁷
- Right after the shooting, Shavontai looked outside saw Thomas on the ground and “people surrounding him.”⁸
- These individuals were all on the scene before Det. Mosley asked Hale, “the guy outside shot you, buddy?” He did not ask about a person on the sidewalk.⁹

The trial court found:

- Thomas did not and could not flee from his murderous ambush *only* because he was struck by Mr. Hale’s return fire.¹⁰

But, the State did not bother to defend this finding.

⁴ State’s Resp.Br. at 4.

⁵ State’s Resp.Br. at 5.

⁶ State’s Resp.Br. at 18.

⁷ State’s Resp.Br. at 5.

⁸ State’s Resp.Br. at 7.

⁹ State’s Resp.Br. at 5; A42-43.

¹⁰ Ex.B at 10-11.

The State argues that this Court must rely on witness credibility for purposes of the identification of the suspect. While this is a true statement of law, it is inapplicable in our case. Here, no one identified Thomas as the shooter. Rather, the State relied on circumstantial evidence to establish that he shot Hale. The facts that actually are in the record are insufficient to allow a rational juror to conclude that Thomas was the one who shot Hale. That Thomas “masked up” before he entered the block where Hale lived may be indicative of intent to do something “wrong” or “bad” but not necessarily an intent to shoot/kill Hale. And, the best inference the State’s own evidence can support regarding the origin of the shots is that they came from the direction of the sidewalk where Thomas may have been standing.

As for an absence of evidence: There was no weapon *at all* found that was responsible for Hale’s death. What is in evidence is Hale’s autopsy that says he died from “shotgun wounds.”¹¹ And, while motive is not necessary for the State to establish a circumstantial case, it is a factor to consider in the totality of the circumstances.¹² Here, there was no evidence that Thomas had

¹¹ A-17-20.

¹² Compare *Morgan v. State*, 922 A.2d 395, 401 (Del. 2007) (noting that “the State’s inability to prove motive is not fatal to the sufficiency of its other evidence”) with *Culp v. State*, 815 A.2d 348 (Del. 2003) (relying, in part, on evidence of motive in finding sufficient evidence to affirm trial court’s denial of defendant’s motion for judgment of acquittal).

any motive to kill Hale.¹³ In fact, there was no evidence that he had any relationship with Hale. There was no evidence that Thomas made any threats to Hale or comments to anyone indicating an intent to harm, shoot or kill him. There was no evidence that he scoped out the scene ahead of time. At best, the circumstantial evidence presented by the State placed Thomas at or near the scene of the crime. This Court has established that mere presence at the scene of a crime is not sufficient to establish that a defendant is responsible for the crime at issue.⁷⁵ While the totality of the evidence presented at trial may have raised a suspicion that Thomas shot Hale, “mere suspicion, however strong, is insufficient for criminal conviction.”¹⁴ Tellingly, the State cites to no case law countering that cited by Thomas in support of this argument.

Because the State failed to present evidence that would allow a rational trier of fact to conclude that Thomas was the individual who shot Hale, his convictions must be reversed.

¹³ *O'Laughlin v. O'Brien*, 568 F.3d 287, 302 (1st Cir. 2009) (finding State's alleged motive to commit crime weak at best in concluding insufficient evidence that the defendant committed the crime). ⁷⁵ See *Monroe v. State*, 652 A.2d 560 (Del. 1995); *Priest v. State*, 879 A.2d 575 (Del. 2005).

¹⁴ *Holden v. State*, 305 A.2d 320, 321 (Del. 1973) (holding State failed to establish drug offense based on circumstantial evidence).

CONCLUSION

For the reasons and upon the authorities cited herein, Thomas' convictions must be reversed.

Respectfully submitted,

/s/ Nicole M. Walker
Nicole M. Walker [#4012]
Carvel State Building
820 North French Street
Wilmington, DE 19801

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