



IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAHEED MATTHEWS,)
)
 Defendant Below,)
 Appellant,)
) **No. 296, 2019**
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

APPELLANT'S OPENING BRIEF

**ON APPEAL FROM THE SUPERIOR COURT IN AND FOR
NEW CASTLE COUNTY**

Santino Ceccotti, Esquire [#4993]
Office of the Public Defender
Carvel State Building
820 N. French St.
Wilmington, Delaware 19801
(302) 577-5150

Attorney for Appellant

DATE: December 9, 2019

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NATURE AND STAGE OF THE PROCEEDINGS

Shaheed Matthews ("Matthews") was indicted for murder first degree, possession of a firearm during commission of a felony ("PFDCF"), possession of a firearm by a person prohibited ("PFBPP") and Purchase of ammunition by person prohibited ("PABPP"). (A15). The PFBPP charge was bifurcated and proceeded to non-jury trial. The charge for PABPP was *nolle prossed*. (D.I. #75).

A five day jury trial commenced on April 15, 2019. The State's case was circumstantial. Over Defense Counsel's timely objection, the State was permitted to introduce the Defendant's cell phone records including internet searches and text message conversations concerning purchase of a firearm. See Exhibit A.

Matthews was found guilty on all counts. (D.I. #72). He was sentenced on July 1, 2019 to life in prison. *See* Sentence Order attached as Ex. C.

Matthews filed a timely appeal. This is his Opening Brief as to why his convictions must be reversed.

SUMMARY OF THE ARGUMENT

1. Over objection, the trial court erroneously allowed the State to present evidence of Matthews' internet search history and text messages involving the purchase of a firearm. This cell phone data was used as affirmative evidence to establish that Matthews intended to acquire a firearm days before the homicide in question and that the weapon sought was used in the shooting of the decedent. This was a proper purpose provided the State could establish a nexus between the particular gun searched and attempted to purchase with the actual shooting. Even if it is assumed that searching and inquiring to purchase a firearm days before the shooting permitted the inference that Matthews had possession of the gun before the shooting, the State was unable to link the weapon referenced in his phone with the one used in the crime. This evidence was speculative and carried the potential for permitting the jury to draw unwarranted inferences in a weak circumstantial case. The erroneous admission of evidence led to a violation of Matthews' rights to a fair trial. Thus, his convictions must be reversed

STATEMENT OF FACTS

At approximately 12.50 a.m. on December 28 2017, New Castle County Police were dispatched to a report of a suspicious person laying on the ground in the area of 241 Parma Avenue, in New Castle, Delaware. (A46). Parma Avenue is known as a high crime area with frequent shootings. (A232). Upon arrival police discovered Antoine Terry, the decedent, laying face down, unresponsive and with visible gunshot wounds. (A47). The autopsy report could not determine the time of death. (A177).

Investigators later arrived on the scene and collected evidence from the decedent including a cigarette lighter and cell phone near his person. These items were swabbed for DNA and processed for latent prints. (A51). A bag of marijuana was also found near the decedent's body. (A58). Police executed a search warrant at 227 Parma Avenue, the residence of Devon Johnson, girlfriend of Shaheed Matthews, the Appellant. No firearm or incriminating evidence was discovered. Police recovered cell phones and a pay stub belonging to Matthews. (A54). A search warrant was also executed on a 2011 Chevy Impala belonging to Johnson where miscellaneous documents and receipts were collected. (A56). Attempt was made to collect gunshot residue

from the jacket of the decedent however none was recovered. (A55).

Antoine Harrison was the only eye witness to the incident. Harrison testified that at approximately 10:30 p.m. on Dec 27, 2017 he was awakened to multiple gunshots near Parma Avenue. (A72). He did not see any weapon or the alleged shooter's face. (A73). He did, however, provide a description of the alleged shooter who is someone of a different size and who wore a different jacket than Matthews. (A76). Harrison stated to police that the alleged shooter was wearing a grey hooded sweatshirt. (A56).

As part of the investigation in this matter police collected surveillance footage from various camera sources in the area. (A77,A81). Nothing in the videos directly linked Matthews to the shooting. The most that could be deduced was three unidentified individuals. Two were running in the direction of 241 Parma Avenue, the third subject had a hooded jacket with dark shoes with flashes of light coming from his or her hands. (A97). Nothing in the video appeared to show any of the subjects agitated, arguing or engaged in a physical altercation. (A105).

Johnson, Matthews' girlfriend, testified that on the evening of December 27, 2017 she, Matthews and the decedent, went together to

pick up Chinese food. (A118). The three of them spent most of the evening together watching basketball. (A120). After the game, Johnson drove Matthews to see Chanelle Brooks. Brooks and Matthews had been friends for years and he considered her as a sister. (A136). Later that evening Johnson received a call from Matthews asking to be picked up at the Coleman Memorial United Methodist Church due to a flat tire. (A137). When she picked him up, she said Matthews appeared to be acting normal. He was neither nervous, twitchy, sweating or breathing heavy. More importantly she did not see him in possession of any weapon. (A138). Johnson told detectives that she arrived back home before midnight and learned about the decedent from her mother the following day. (A128). Johnson testified that there was not any bad blood between Matthews and the decedent on the evening in question or any time previously. (A135). In fact, Johnson considered Matthews and the decedent to be good friends. (A136). Text messages between the two confirm this. (A217).

The state presented various witnesses who testified that they communicated with Matthews on the night in question, most of which were friends of his. However, none of these witnesses implicated Matthews in the alleged crime. In fact, their testimony was

exculpatory. (A159, A160).

As part of the investigation in this case, police produced a re-enactment video in an attempt to recreate the camera footage of the shooting. However, police only used the jacket and sneakers seized from Matthews. (A186). Since no other alternative clothing was attempted in producing the video it was undetermined if other colored jackets would have produced the same image. (A189). Also, although police attempted to meet the conditions exactly as the original video this could not be done to absolute certainty. (A190).

No murder weapon was ever recovered as part of the investigation into this case. (A192). Over defense counsel's objection, the State was permitted to introduce an internet search history from Matthew's phone from a few days prior to the shooting. This showed he had made a search for a Ruger 45 firearm. The State was also permitted to introduce a text conversation between Matthews and an unknown party inquiring as to the price of a Taurus Millennium firearm. (A220).

Matthews was interviewed as part of the investigation on December 28, 2017. This interview was videotaped on an officer's bodycam. Video footage shows that Matthews was wearing a different jacket than the one that was seized upon his arrest. (A226). Matthews

voluntarily made himself available again for questioning and provided his cell phone. The coat that Matthews was wearing was collected upon his arrest and initially checked with a light source for blood and gunshot residue. None was found. (A59). Gunshot residue analysis was collected from the jacket and found on the right cuff. (A170). No gunshot residue testing was conducted on the decedent's hands. (A232). In his interview with police Matthews referenced the fact that the decedent did not trust people in the community. This stemmed from the fact that the decedent had assisted police in a past investigation against his own cousin. (A228).

I. THE SUPERIOR COURT ABUSED ITS DISCRETION AND VIOLATED MATTHEWS' RIGHTS TO A FAIR TRIAL WHEN IT ALLOWED THE STATE TO INTRODUCE PREJUDICIAL INTERNET SEARCH HISTORY AND TEXT MESSAGE COMMUNICATIONS INVOLVING A FIREARM PURCHASE EVEN THOUGH THE STATE COULD NOT ESTABLISH A NEXUS BETWEEN THE GUN REFERENCED WITH THE ONE USED IN THE CRIME.

Question Presented

Whether the trial court abused its discretion when, over Matthews' objection, it allowed the State to introduce internet search history and text messages involving the purchase of a firearm from Matthews' phone even though the State failed to satisfy the nexus requirement as a predicate to admissibility? The issue was preserved by defense counsel's objection to the admission of evidence. (A184).

Standard and Scope of Review

This Court reviews "a trial judge's evidentiary ruling for abuse of discretion." *Hovington v. State*, 616 A.2d 829 (Del. 1992). It reviews "an evidentiary ruling resulting in an alleged constitutional violation *de novo*." *Greene v. State*, 966 A.2d 824, 827 (Del. 2009).

Argument

Over defense counsel's objection, the trial court erroneously permitted the State to introduce evidence of Matthews' internet search history and text

messages involving the purchase of a firearm. This cell phone data was used as affirmative evidence to establish that Matthews intended to acquire a firearm days before the homicide in question and that the weapon sought was used in the shooting. Evidence that the defendant who is charged with a weapons offense had access to a firearm is only probative if that particular firearm is connected to the specific criminal act charged. *Fortt v. State*, 767 A.2d 799, 805 (Del. 2001); citing *Farmer v. State*, 698 A.2d 829, 948-49 (Del. 1997). This court has held that the “nexus requirement” must be satisfied as a predicate to admissibility. “It is not sufficient that the defendant had a handgun available to him”. *Id.* Therefore, it was an abuse of discretion for the trial court to have admitted the evidence and reversal is now required.

On the fourth day of trial, during the State’s case in chief, it was brought to the courts attention that the State sought to introduce internet searches on behalf of Matthews, that he was searching for a Rugar 45 firearm. The State also sought to introduce text message communications between Matthews and an unknown subject relating to the purchase of a Taurus Millennium firearm. A picture of the weapon was included in the message exchange. (A185). This was the first time the court was made aware of this issue as no motion *in limine* was filed by the State. (A184).

Defense counsel objected as to both pieces of evidence arguing that the probative value is very low and the prejudice extreme. (A185).

Relevant evidence is “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.” Delaware Rule of Evidence 401. “Evidence which is not relevant is not admissible.” D.R.E. 402. Relevancy is determined by examining the purpose for which evidence is offered. *Register v. Wilmington Medical Center*, 377 A.2d 8,10 (Del. 1977). The purpose must accommodate the concepts of materiality, i.e., be of consequence to the action, and probative value, i.e., advance the likelihood of the fact asserted. *Getz v. State*, 538 A.2d 726, 731 (Del. 1988).

In the instant case, the State’s claimed purpose in offering evidence of the search and text messages was to establish Matthews’ intent in acquiring a firearm that was ultimately used in the alleged homicide. Since Matthews was classified as a person prohibited, the State was seeking to admit this evidence under D.R.E. 404(b). (A184). This was a proper purpose provided the State could establish a nexus between the particular gun searched and attempted to purchase with the actual shooting. *Farmer v. State*, 698 A.2d at 948-49. However, it is not sufficient that Matthews *could* have had a gun

available to him. Even if it is assumed that searching and inquiring to purchase a firearm days before the shooting permitted the inference that Matthews had possession of the gun before the shooting, the State was unable to link the weapon referenced in his phone with the one used in the crime. *Id.*

"Evidence that a defendant, charged with a shooting, had a firearm in his possession is surely probative if that firearm is tied to the criminal act. But without a satisfactory evidentiary link, such evidence carries the risk that the jury may associate mere ownership of a firearm with a disposition to use it. Speculation based on mere ownership of instruments adaptable for use in a crime subjects the defendant to the same risk that impermissible character or bad act evidence may pose—equating disposition with guilt." *Id.* citing *State v. Onofrio*, 425 A.2d 560, 564 (Conn. 1979); *Getz v. State*, 538 A.2d at 730.

As this court held in *Farmer*, evidence that is speculative, as we have here, carries the potential for permitting the jury to draw unwarranted inferences. "Where those inferences reflect adversely on the defendant by portraying him as having 'a gun' available to him, without establishing that the gun was probably used in the shooting, admissibility is barred because speculation creates prejudice[.]" *Id.*

Here, it was an abuse of discretion for the trial court to admit into evidence the internet search and text messages that the State could not link to the shooting in question. It is not even known if the gun referenced in the cell phone data varied from the gun used in the crime. The State candidly admitted that its case was entirely circumstantial. No weapon was recovered and there were no eye witnesses to the crime. Additionally, no motive was ever presented. (A210). Accordingly, it would be conjecture to conclude that the speculative evidence advanced by the State was not a factor in the jury's deliberations and reversal of the conviction is now required in order to ensure that Matthews is not deprived of his right to a fair trial.

Finally, Matthews' right to a fair trial was further violated by the State when it waited until the end of its case in chief to present evidence regarding the internet search history and text message exchange. Despite multiple pre-trial conferences covering various evidentiary issues, the court was made aware of the State's intention to submit this evidence for the first time in the midst of trial. This was prejudicial to Matthews because defense counsel admittedly would have changed his entire approach to Matthews' defense. (A184). By the time the State sought to admit the evidence from Matthews' cell phone concerning the weapon, defense counsel had gone to extreme lengths to exclude references to firearms, ammunition and things of that

nature. Had the evidence been presented earlier defense counsel could have presented a defense in an effort to show the jury that Matthews was someone who routinely handled firearms. This also would have served to account for the possibility of how gunshot residue was found on Matthews' jacket.

CONCLUSION

For the reasons and upon the authorities cited herein, the undersigned counsel respectfully submits that Shaheed Matthews' convictions and sentences must be reversed.

Respectfully submitted,

/s/ Santino Ceccotti
Santino Ceccotti, Esquire

DATED: December 9, 2019