



IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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DATE: January 13, 2020

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NATURE AND STAGE OF THE PROCEEDINGS

On June 18, 2018, a New Castle County grand jury indicted Shaheed Matthews for Murder First Degree, Possession of a Firearm During the Commission of a Felony, Possession or Control of a Firearm by a Person Prohibited and Possession (“PFBPP”), and Purchase, Ownership, or Control of Ammunition by a Person Prohibited (“PABPP”). (DI 1¹; A1, 15-16). On July 3, 2018, Matthews entered a not guilty plea. (A1). The State later amended the Indictment to remove the ammunition charge, which it pursued in a separate case. *See* DI 72, 75; A12, 26.

On December 18, 2018, at a scheduling conference, the parties agreed to bifurcate the PFBPP charge to be heard by the same jury after the verdict on the lead charges. (DI 19, 29; A4, 6, 26).

Matthews’ trial began on April 9, 2019. (DI 72; A12). On April 15, 2019, a Superior Court jury found Matthews guilty of Murder First Degree and PFDCE. (DI 72; A12). Matthews agreed to a bench trial for the PFBPP charge, and the trial judge found him guilty of that charge. (DI 75; A12).

On July 1, 2019, the Superior Court sentenced Matthews to prison for the balance of his natural life for murder, plus a total of eleven years at Level V for the

¹ “DI” refers to Superior Court Docket Item 1 in Superior Court Criminal Docket Number 1806005163. (A1-14).

firearms convictions, three years of which is mandatory. Sent. Ord. (Op. Br. Ex. C). Matthews appealed.

On December 10, 2019, Matthews filed his Opening Brief. This is the State's Answering Brief.

SUMMARY OF ARGUMENT

I. DENIED. The Superior Court did not abuse its discretion in admitting into evidence: (1) a text exchange recovered from Matthews' cell phone in which he declined the chance to buy a gun approximately one week before the murder; and (2) two internet searches found on his cell phone one and two days before the murder for a particular brand of handgun. These pieces of evidence are not propensity evidence, but form the background of the crime, are relevant and material, and their probative value was not substantially outweighed by the danger of unfair prejudice.

STATEMENT OF FACTS

At about 10:42 p.m. on December 27, 2017, a resident of Briarcliff Drive, in New Castle, called the police and reported hearing five to six gunshots. (A87). Patrol officers responded and drove through the area but did not see any evidence of gun violence. (A87, 107). Briarcliff Drive is parallel to Parma Avenue, a high crime area. (A87, 231). At about 10:30 p.m. that same night, a resident who lived at 243 Parma Avenue was awakened by at least three to four gunshots, looked out his window, and saw a large person in a grey or black hoodie pointing or extending their arm. (A72-75). He did not know someone had been hit by gunfire, did not see the subject lying on the ground, and could not identify the person he saw. (A73). It was very dark because the streetlight was not working. (A73, 75, 104).

At 12:25 a.m. on December 28, New Castle County Police Master Corporal Casey Bouldin was dispatched for a report of a subject laying on the ground in the area of 245 Parma Avenue. (A46-47, 88). It was bitter cold outside. (A47). Corporal Bouldin arrived at the location, approached the person, who was face down on the pavement, and noticed there was no movement. (A47). He checked the body and found it to be cold and stiff; the victim and did not appear to be breathing or have a pulse. (A47). The victim was essentially frozen. (A192).

No other people were outside in the area. (A47). As other officers arrived, they secured the scene and began to canvass the neighborhood looking for

information. (A47). Of all the doors they knocked on, the only house where no one responded was at 227 Parma Avenue. (A144).

The victim was Antoine Terry. He died as a result of gunshot wounds to the back, back of the head, anterior right thigh, and right arm. (A175-76). The gunshots were from an undetermined range, and all of them contributed to his death. *Id.*

Terry was friends with Shaheed Matthews, who stayed at 227 Parma Avenue with his longtime girlfriend, Devon Johnson and her family. (A56, 116, 134). Terry and Matthews had a few text exchanges on December 27, 2017. (A217-18). Among them, Terry asked Matthews if Matthews wanted him to “come to the crib,” and Matthews said yes. (A217). Matthews and Johnson were at home. Johnson woke up at about 8:30 p.m. (A118). They decided to get takeout for dinner. *Id.* As Johnson and Matthews were leaving to go pick up their dinner, Terry was dropped off at their house. (A118).

At 8:41 p.m. Terry sent a text to Matthews, “Out front,” and three minutes later, “Yo, it’s cold, girl.” (A218). Matthews opened the door for Terry.

The three got in Johnson’s red Chevy Impala and went to Family Dollar and Rite Aid, and then to pick up their dinner. (A56, 119). While they were waiting for the Chinese food, Matthews and Terry got out of the car and went to see Dominique Brooks, around the corner from the restaurant. (A119). They returned

home and watched a basketball game. (A120). When the game was over, at about 10:30 p.m. Johnson went upstairs to get her coat and shoes. (A121-22).

Matthews and Johnson gave varying stories to police about what happened next. According to Matthews in his first police interview, Terry left at about 10:30 p.m. after the basketball game ended, and Matthews and Johnson left a few minutes later, to go see Matthews' sister, Chanelle Brooks. (A218).

Video surveillance from a number of sources in the neighborhood showed that two people exited 227 Parma Avenue (A104), where Matthew and Terry had watched the basketball game, walked toward 245 Parma Avenue, stopped, engaged in a physical altercation, one man ran away while the second man chased him, fired several shots and ran away, leaving the first man for dead. (A95-99, 104, 108-09, 230, 238).² When he was found, Antoine Terry was wearing a black puffy jacket, white hood, white pants and pants around his knees, and his cell phone nearby. (A108). The video footage from 241 Palma Avenue in particular showed that one of the people walking out of 227 Parma Avenue was wearing what appeared to be a white hood, and that person was running away from a second person as flashes came from an object in the second person's hand. (A97, 108-09).

² Police collected surveillance video from residences at 227 Parma Avenue, 241 Parma Avenue, from a laundromat at 256 Parma Avenue, from the rear yard of 19 Briarcliff Avenue, and from a pole camera with night vision technology owned by New Castle County Police. (A88, 95-96, 99, 187, 230). The various views provide different angles and portions of the overall scene. *Id.*

Johnson testified that when she came back downstairs, Matthews was not there. (A121). Johnson testified that Matthews called soon thereafter and told her to pick him up at a church in Dunleith. (A122). Matthews told her he got a flat tire, but she does not know if that happened. (A123). The church is a three to five-minute walk from her house. (A123-24). She did not know if Matthews had a car and she did not see him drive a car that night. (A124). She picked Matthews up at the church and drove him to Brooks' house. (A120, 126). They stayed there about ten minutes and then went back to Parma Avenue, where Johnson dropped Matthews at his sister's car and she went home. (A127). Johnson then went home, arriving a bit before midnight. (A127-28). Matthews either went back to Brooks' house or stayed at Johnson's. (A127). Johnson did not notice the police lights on the street and did not hear about the homicide until the next morning, either from her mother, Johnson, or Delaware Online. (A128).

Police first interviewed Matthews on December 28, 2017, at about 7:45 p.m., at 227 Parma Avenue, in the course of seeking information about the homicide.³ (A196). Matthews told police Terry asked him to borrow \$20 to buy clothing,⁴ went with them to get Chinese food, stayed for the basketball game, and

³ The interview was recorded by one of the detective's body cameras, and the redacted recording was admitted into evidence as State Exhibit 118 and played at trial. (A196).

⁴ When police recovered Terry's body, there was a "wad" of cash in his pocket,

Terry left at about 10:30 p.m., after the basketball game ended. (St. Ex. 118; A216). Terry went outside to smoke, and wait for his girlfriend to pick him up. Matthews and Johnson left to go see Matthews' sister, and Matthews drove his sister's car back to Parma Avenue. (A218).

According to Matthews, there were a lot of people who had issues with Terry, including those who disliked that Terry had snitched on a family member. During the interview, Matthews first denied having a cell phone, but then admitted he had one, and gave police the number, but it was the wrong number. (A196, 219). Matthews left and retrieved the phone for police. (A226).

Matthews went to New Castle County Police on December 29, 2017, when he was taken into custody. (A225). Police seized the dark blue winter jacket and black Nice Air Force One shoes Matthews wore to the police station. (A168, 186). The right cuff of the jacket tested positive for gunshot residue ("GSR") (that is, testing showed all three components of GSR present—lead, barium and antimony). (A168-69). The right front pocket tested positive for two separate instances of two of the three components of GSR on the right front pocket. *Id.*

Police obtained a search warrant for Matthews' cell phone. (A100). They found internet searches for "Ruger 45" on December 25 and 26, 2017. (A220).

and the bill on the outside was a \$50 bill. (St. Ex. 39; A216).

These searches were deleted before Matthews turned the phone over to police. *Id.* Police also found a text exchange with an unknown individual who offered to sell Matthews a Taurus Millennium handgun for \$450 on December 20, 2017. (A220-21). Matthews said it was too much and the person responded he would get back to Matthews if he found anything else. (A220-21).

Police did not recover the gun used in Terry's murder. (A192).

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING THE EVIDENCE OF MATTHEWS' INTERNET SEARCHES FOR A GUN AND HIS TEXT EXCHANGE.

Questions Presented

Whether the internet search history and text messages were relevant to the murder and whether their probative value was substantially outweighed by the danger of unfair prejudice.

Scope and Standard of Review

The determination of whether proffered evidence is relevant is reviewed for abuse of discretion.⁵ This Court “reviews a trial judge's discretionary rulings under D.R.E. 403 for an abuse of discretion.”⁶ “An abuse of discretion occurs when ‘a court has . . . exceeded the bounds of reason in view of the circumstances,’ [or] . . . so ignored recognized rules of law or practice . . . to produce injustice.”⁷ This Court can affirm on grounds different from those cited by the Superior Court.⁸

Argument

The Superior Court did not abuse its discretion in permitting the State to enter into evidence Matthews' internet searches for a gun and text messages related

⁵ *Lilly v. State*, 649 A.2d 1055, 1060 (Del. 1994) (quoting *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988)).

⁶ *Smith v. State*, 913 A.2d 1197, 1232 (Del. 2006).

⁷ 649 A.2d at 1059 (quoting 541 A.2d at 570).

⁸ *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

to potentially buying a gun. The evidence was relevant to the homicide, and its probative value was not substantially outweighed by the danger of unfair prejudice. The Superior Court did not abuse its discretion in admitting this evidence.

“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence.”⁹

Under D.R.E 402, all relevant evidence is admissible subject to the other rules of evidence or statutory limitations. D.R.E. 403 is one such limitation. D.R.E. 403 provides that the trial judge may exclude relevant evidence if its probative value is “substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.”¹⁰

Matthews shot Antoine Terry multiple times and left him for dead on the street near Matthews’ home in New Castle on the evening of December 27, 2017. Police never found the gun Matthews used. State Exhibits 119 and 120, introduced through the testimony of the Chief Investigating Officer, New Castle County Police Detective Eugene Reid, and encompassed five transcript pages of a five-day trial. (A86, 220-21). Exhibit 119, a report created from a search of Matthews’ cell phone, revealed two internet searches for “Ruger 45” on December 25 and 26, 2017, using the Safari internet application. (A220). Exhibit 120 is a printout of

⁹ D.R.E. 401.

¹⁰ *Smith v. State*, 913 A.2d at 1232.

December 20, 2017 text messages recovered from Matthews' cell phone between Matthews and an unknown individual. (A220-21). The unknown individual informed Matthews his "folks" just got a Taurus Millennium, Matthews asked how much, the person responded, "450," and Matthews replied, "That's too much." (A220-21). There is also a photo of a Taurus handgun. (A221). The person responded to Matthews, "If I run into something else, I'll hit you." (A221).

The State introduced these documents as relevant to show Matthews' motive, evidencing his planning for the homicide, and/or that he had the opportunity to commit it because he was getting a gun. As the prosecutor explained:

No firearm was recovered in this case. Gunshot residue was found on the jacket the defendant was wearing two days after the homicide. The fact that the defendant was searching for a gun two days prior to the homicide, and then deleted that history, and that he was attempting to purchase a firearm one week prior to the homicide, is extremely probative that the defendant is, in fact, guilty of the crimes he's been charged.

(A210). The Superior Court correctly found that the evidence was relevant. (A206, 211).

The next question was whether the probative value of this evidence was substantially outweighed by the danger of *unfair* prejudice.¹¹ As the prosecutor explained, "just about every piece of evidence the State has put in and intends to

¹¹ D.R.E. 403.

put in is, in fact, prejudicial to the defendant in that it's our position it tends to show his guilt." (A210). The Superior Court found, "I think it's got prejudice, and the State's acknowledged that. I don't think it's, quote, inflammatory, end quote. That's reserved for a lot more high-octane situations . . . than what we have here." (A212). The photo of the gun only showed that Matthews searched for the same type of gun that may have been used in the murder, and that he later deleted those searches. The Superior Court also found that the acts were "sufficiently dissimilar" such that it "militate[d] towards its admission." (A212). The State did not attempt to establish that it was a photo of the actual gun used in the homicide. On cross-examination, defense counsel effectively highlighted that the text exchange result was that Matthews did not buy the gun, and the two internet searches did not result in purchases. (A227). Matthews has not established how this evidence was *unfairly* prejudicial.

Rule 404(b) does not apply here. Rule 404(b) states, "Evidence of a crime, wrong or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character."¹² Although 404(b) says "other act," the *Getz*¹³ analysis clearly addresses "bad acts." The Superior Court recognized that the evidence at issue here were "acts," but not

¹² D.R.E. 404(b).

¹³ *Getz v. State*, 538 A.2d 736 (Del. 1988).

“bad acts”:

I don't think the cell phone and text messages are wrongs or crimes. I think they're acts. And, so, I would describe that to the jury, I think. It's not a crime, and not a wrong, but just an act.¹⁴

(A209). These acts show Matthews' interest in purchasing a firearm. That alone is not bad character. It is when the internet searches are coupled with the other evidence and point to Matthews as the killer that they become prejudicial. The Superior Court correctly found Rule 404(b) did not preclude this evidence. Rule 404(b) only protects a defendant from *unduly* prejudicial evidence, not *all* prejudicial evidence. Further, “Rule 404(b) only forbids introduction of extrinsic bad acts whose only relevance is to prove character, not bad acts that form the factual setting of the crime in issue.”¹⁵

Although it acknowledged these were merely acts and not “bad acts,” Matthews had raised the issue under Rule 404(b), so the Superior Court completed the Rule 404(b) analysis. (A211-12). The Superior Court correctly held that the evidence was admissible. (A212). Also, despite not finding the evidence to be “bad acts,” the Superior Court also instructed the jury of the limited purpose of the

¹⁴ During the State's DRE 404(b) argument, the trial judge stated, “I'll just interrupt to make this observation. . . . Because I've come up with a draft instruction which is upstairs. I don't think the cell phone and text messages are wrongs or crimes. I think they're acts. And, so, I would describe that to the jury, I think. It's not a crime, and not a wrong, but just an act.” (A209).

¹⁵ *United States v. Williams*, 95 F.3d 723, 731 (8th Cir. 1996) (citations omitted).

evidence. (A272). “Juries are presumed to follow the trial judge’s instructions.”¹⁶ Matthews has failed to establish that the Superior Court abused its discretion in so ruling.

Instead, Matthews contends that this Court should reverse the judgement because there was not a sufficient “nexus” between the gun referenced in the searches and the gun used in the homicide to admit these documents. Op. Br. at 8, 9. Matthews argues that “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.” Op. Br. at 12. He is mistaken.

Matthews’ arguments confuse the legal issue. *Farmer v. State*¹⁷ and *Fortt v. State*¹⁸ are inapposite. The evidence at issue here is not a gun—it is internet searches and a text exchange. In *Farmer* and *Fortt*, the State introduced a *gun* into evidence that had not been adequately linked to the crime. In *Farmer*, when the defendant was arrested, police found a gun in his apartment, but they were not able to tie it to the gun used in the shooting.¹⁹ The trial court denied Farmer’s motion *in limine* to exclude the gun, and this Court found:

¹⁶ *Revel v. State*, 956 A.2d 23, 28 (Del. 2008) (citations omitted).

¹⁷ 698 A.2d 946 (Del. 1997).

¹⁸ 767 A.2d 799 (Del. 2001).

¹⁹ 698 A.2d at 948-49.

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.”²⁰

The Court found that the trial judge abused its discretion in admitting the gun, but also held:

We find no error in the admission of evidence concerning Farmer’s use of an unloaded gun in his prior confrontation with [the victim]. The use of a gun as a striking instrument on that occasion is relevant to the intensity of the previous encounter between the parties.²¹

So, this Court allowed evidence that the defendant had used a gun on a prior occasion, but not an actual gun, because the State had not established its relevance of the actual gun beyond its existence in the defendant’s apartment. To the extent *Farmer’s* ruling applies here, it supports admission of the internet searches and text exchange into evidence, as they show his intent and plan to engage in the homicide.

In *Fortt* the link was even more tenuous. The gun was found in the defendant’s friend’s apartment, where Fortt was arrested.²² This Court, however, found harmless error because three victims testified defendant used a gun when he

²⁰ *Id.* at 949.

²¹ *Id.*

²² 767 A.2d at 804.

robbed them.²³ While *Fortt* did not apply here because no gun was admitted, the gunshot residue on Matthews' jacket, Matthews being the last person with the victim, video footage where Matthews is consistent with the person who appears to be shooting the victim, and the victim dying outside Matthews' home are ample evidence to convict Matthews beyond a reasonable doubt. If this Court finds *Farmer* or *Fortt* to apply, the evidence of texting about buying (but not buying) a gun and doing two web searches for guns is harmless.

Finally, Matthews argues on appeal that “the court was made aware of the State’s intention to submit this evidence for the first time in the midst of trial.” (Op. Br. at 12). Matthews misstates the record. He raised this claim below, and it was addressed in detail and dispelled as contrary to the trial judge’s recollection and written proof. (A184-86, 204-208). When Matthews first raised the issue, the trial judge stated, “I do recall, as to the Internet, as to the cell phone data, [the defense] objection . . . was only authentication. I don’t remember hearing a substantive objection to this evidence the State wants to get in.” (A185). After further discussion, the trial judge said, “I’m going to think about it a little bit further, but I’m thinking the State disclosed it. . . . We’ll take it up in another recess.” (A186).

The next day, the Superior Court issued its ruling:

²³ *Id.* at 805.

On the Rule 404(b) issue, the procedural background of the issue generally is that we've had several meetings, much correspondence, emails and all issues were identified.

And with respect to issues, and including specifically evidence that would come from the cell phone of the defendant, I think the State and I fairly thought that the only issue the defendant might have would be authentication of the cell phone information.

And so for the first time, I think, yesterday it was said, and the State had furnished that cell phone information in particular to the defense quite a while ago. And I think for the first time the State undertook the defendant to have a Rule 404(b) objection to the admission of the evidence.

But I don't think the State has . . . it's, I guess, fair for the defendant to make an argument for it . . . and I'll allow that to happen. But I'll want to go through the 404(b) balancing test that *Getz* and *DeShields* say that the Court should do.

But I think the State, consistent with it, asked if there were any issues from the defendant about it. . . .

So I think the State is within its complete rights to seek to have the evidence admitted now.

(A204-05). Defense counsel continued to disagree. (A205-06). This prompted the prosecutors to introduce additional email evidence of their attempts to settle issues prior to trial, and of defense counsel's continued objections to the evidence only on authentication and foundation grounds. (A206-07). The Superior Court again ruled:

I still think, having heard further from both sides on the procedural background of the case, that the defendant was fairly put on notice through the emails and the discussions that the State intended to admit the text message relating to the Taurus Millennium and the Internet search relating to the Ruger handgun.

Those two specific documents were sent on February 11 by [a trial prosecutor to defense counsel, copying the other trial prosecutor].

They were again sent to the Court in the subsequent email, and we'll make sure—well, we'll docket this as a court exhibit, and this should have been copied to the prothonotary. We'll make sure. . . .

While, I think, the way I review this, that the defense's repeated statement that the only basis of a possible objection would be foundation or authenticity fairly enough led the State to think there was no other objection to the admissibility of the statement.

The only slight—I'll say slight. The only thing that might have happened otherwise was an affirmative statement by the State this was going to be 404(b) evidence, but what else could it be? Maybe that's the logical lynchpin for the evidence coming in.

I recognize that [defense counsel] says he doesn't think the State acted intentionally in doing so. I don't find that at all. As I said, the only thing that might have been done would have been maybe an affirmative statement by way of *help* to the Court and the defendant that this was, quote 404(b) evidence.

But I do think defense's response, that sort of became a nonissue because there was no objection other than a possible objection as to authenticity or foundation.

So I do think that—and I'll also say that my sense of this is the State has tried throughout this case to furnish information to defense to keep defense apprised to avoid the very situation where we are right now with the defense claim of *unintentional* misleading of defense with respect to this evidence.

So for all those reasons—but I will ask you now to make a further record of the prejudice that you say defendant has.

(A208-09) (emphasis added). The State disclosed for some time before trial that it wished to admit these exhibits. There was no sandbagging, and Matthews' claims to the contrary have no merit. To the extent Matthews claims he would have presented a different trial strategy, it appears that having "gone to extreme lengths to exclude references to firearms, ammunition and things of that nature," changing the trial strategy to depict Matthews as someone who "routinely handled firearms"

would have permitted all that excluded evidence, and been much more prejudicial than the evidence at issue in this appeal. The most reasonable explanation for how the gunshot residue was found in Matthews jacket is the one the jury found—Matthews murdered Terry.

CONCLUSION

The judgment of the Superior Court should be affirmed.

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DATE: January 13, 2020

CERTIFICATE OF SERVICE

I, Abby Adams, being a member of the Bar of the Supreme Court of Delaware, hereby certify that on January 13, 2020, I caused the attached document to be served by File and Serve to:

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**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 Time New 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 4,507 words, which were counted by Microsoft Word 2016.

Dated: January 13, 2020

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