



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 REPLY BRIEF

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

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DATE: January 31, 2020

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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.

The State in its Answering Brief serves a plate full of icing and a few crumbs of cake. As one example, the State dwells at length and in detail about how the evidence at issue is not *unfairly* prejudicial pursuant to D.R.E. 404(b) but fails to recognize that the central focus of Matthews' claim is rather how the State failed to satisfy the nexus requirement as a predicate to admissibility pursuant to this Court's precedent. As a preliminary matter, it is self-evident how evidence of Matthews' internet search history and text messages involving the purchase of a firearm is unfairly prejudicial in a case where no shooter was ever identified and more importantly, no weapon was ever recovered.

Matthews and the State rely on the same authority, *Fortt v. State*¹ and *Farmer v. State*². This Court's prior decisions do not support the State's position and, in fact, supports the Defendant's argument when examined closely. Failing to align independent supportive legal authority in its Answering Brief, the State

¹ 767 A.2d 799 (Del. 2001).

² 698 A.2d 829 (Del. 1997).

misconstrues the holdings of *Fortt* and *Farmer*. In trying to trivialize the Defendant's contentions, the State claims that the decisions are inapposite and do not apply. Ans. Br. at 15. Not so as they are germane and congruent to the instant case. The State's contention that the case at bar is distinguishable because in *Fortt* and *Farmer* the State sought to admit a discovered gun into evidence is short sighted.

It goes without saying that the State would have attempted admissibility had a weapon been recovered here. However, because the alleged firearm was never recovered, coupled with a circumstantial case, the State was limited to the next best thing in introducing cell phone data as affirmative evidence to establish that Matthews intended to acquire a firearm days before the homicide and that the weapon sought was used in the shooting. Admission of this evidence was tantamount to admitting a weapon and linking it to Matthews.

Fortt and *Farmer* do not lose teeth simply because no weapon is recovered. The principle stands that "[e]vidence that a defendant, charged with a shooting, had a firearm in his possession [] without a satisfactory evidentiary link, [] 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." *Fortt v. State*, 767 A.2d

799, 805 (Del. 2001); citing *Farmer v. State*, 698 A.2d 829, 948-49 (Del. 1997). As this court held in *Farmer* and reaffirmed in *Fortt*, evidence that is speculative, as we have here, permits the jury to draw unwarranted inferences. That is what happened here.

Finally, the State's case, by its own admission was circumstantial. The State candidly admitted that its case was entirely circumstantial as no weapon was recovered and there were no eye witnesses to the crime. Additionally, no motive was ever presented. (A210). Its rather dubious of the State now to argue that the error complained of is harmless beyond a reasonable doubt. Ans. Br. at 17. 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.

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Shaheed Matthews' convictions should be reversed.

\s\ Santino Ceccotti
Santino Ceccotti, Esquire

DATE: January 31, 2020