



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CAMERON PIERCE,)
)
 Defendant – Below,)
 Appellant,)
)
 v.) **No. 417, 2020**
)
 STATE OF DELAWARE,)
)
 Plaintiff – Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE’S ANSWERING BRIEF

ANDREW J. VELLA (ID No. 3549)
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street, 7th Floor
Wilmington, DE 19801
(302) 577-8500

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NATURE AND STAGE OF THE PROCEEDINGS

On December 17, 2018, a New Castle County Grand Jury returned an indictment against Cameron Pierce (“Pierce”), charging him with two counts each of Robbery First Degree, Aggravated Menacing, Wearing a Disguise During the Commission of a Felony and felony Theft. A1; A10. After a three-day bench trial, a Superior Court judge convicted Pierce of all charges on September 26, 2019.¹ A7. When the court announced its verdict, Pierce fled the courtroom, and the trial judge issued a capias.² A271. On January 10, 2020, the capias was returned. A7. While pending sentencing, Pierce filed a Motion for a New Trial, which the court denied. A8. On November 13, 2020, the Superior Court sentenced Pierce to an aggregate five years incarceration followed by descending levels of supervision. Ex. C to Op. Brf. Pierce has appealed his convictions. This is the State’s Answering Brief.

¹ The State entered a *nolle prosequi* on the two counts of Aggravated Menacing. A21.

² As a result of his flight, Pierce was charged with Escape After Conviction. *State v. Cameron Pierce*, Super. Ct. ID No. 1909016267 at Docket Item (“D.I.”) 2). He pled guilty and was sentenced to a period of probation. D.I. 4, 5. B1.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. Pierce waived his authentication argument when he informed the trial court that he was not challenging the admissibility of the fingerprint comparison evidence. And he failed to raise in the Superior Court his claim that the trial judge improperly admitted palm print evidence. Supreme Court Rule 8 precludes this Court's review unless Pierce can demonstrate plain error, and the interests of justice warrant consideration of the issue. Pierce cannot do so. In any event, the Superior Court correctly admitted and considered the palm print evidence.

II. Appellant's argument is denied. The State presented sufficient evidence for any rational trier of fact to convict Pierce of the liquor store robberies.

STATEMENT OF FACTS

In 2018, Anesh Kalyanapu (“Kalyanapu”) worked at Silverside Discount Liquors on Philadelphia Pike in Wilmington. A32-33. On two separate occasions, roughly three weeks apart, a man wearing a hooded shirt and a hat, with his face partially covered, robbed the liquor store at gunpoint. Both armed robberies were captured by the liquor store’s surveillance cameras. A37; A49; State’s Trial Exhibit 2; State’s Trial Exhibit 4.

The first robbery occurred on July 26, 2018. A35. At approximately 9:30 p.m., Kalyanapu was assessing the store’s inventory when he felt something on his back. A35. Kalyanapu turned around and saw a man pointing a gun at him. A36. The man, who Kalyanapu described as a “young black male,” was wearing a hooded shirt, a hat, and had a “handkerchief” partially covering his face. A40; A45. The man ordered Kalyanapu to “give [him] all the money.” A36. After Kalyanapu emptied the cash register, the robber directed Kalyanapu to hand him a pint bottle of Rémy Martin cognac. A36. The robber left the liquor store with the cash and the bottle of liquor, and Kalyanapu called the police. A44.

The second robbery occurred on August 17, 2018. A48. At approximately 7:30 p.m., a man wearing a hooded shirt and a hat, with his face partially covered by a handkerchief, walked into the liquor store brandishing a gun and demanded Kalyanapu give him money. A48. Believing it was the same person who robbed

the store just a few weeks earlier, Kalyanapu said, “Again?” to which the robber replied, “Yeah, again.” A49; A51. According to Kalyanapu, the robber brandished a different gun on this occasion; it was a “short” gun. A51; A57. The robber told Kalyanapu to empty the cash registers and put the money in a bag. A52. Before leaving the liquor store, the robber said, “Let me get that pint again.” A53. Kalyanapu handed over a pint bottle of Rémy Martin. A53.

It appeared to Kalyanapu that the same person committed both robberies. A56. The robber on both occasions had a deep voice, wore the same style hat and handkerchief, and demanded the same pint size bottle of liquor. A54; A57.

Delaware State Police detectives investigated both robberies. Detective Timothy Harach reviewed store video surveillance that captured the first robbery and determined that the suspect was not wearing gloves. A83-84. Det. Harach processed the liquor store door and the sales counter for fingerprints but was unable to collect any prints of value. A84. Detective Anthony Pantalone reviewed the video surveillance that captured the second robbery and determined that the suspect was not wearing gloves when he committed the robbery. A124. Det. Pantalone also determined where the suspect placed his hand on the sales counter during the robbery and processed the liquor store door and the sales counter for fingerprints. A124-25; A130. Det. Pantalone collected latent prints of value and submitted the fingerprint impressions he recovered from the liquor store to

Anthony DiNardo (DiNardo), the Automated Fingerprint Identification System (“AFIS”) administrator at the State Bureau of Identification (“SBI”) for comparison. A148; A156.

DiNardo, who had been trained in the collection, identification, and comparison of latent fingerprints, examined seven latent fingerprint “lifts” submitted by Det. Pantalone. A157. Five of the seven latent lifts were of no value. A157. DiNardo, however, identified the two remaining latent lifts and compared them to Pierce’s known prints on file at SBI. A159. The two latent lifts collected by Det. Pantalone from the liquor store sales counter matched Pierce’s left palm print. A159-62.

After learning that the palm prints collected at the liquor store matched Pierce’s palm prints, Det. Pantalone secured a warrant for his arrest. A189-90. Pierce was incarcerated, and an officer was sent to HRYCI to transport Pierce to Troop 2 for processing. A190-91. Piece agreed to speak with the investigators, and, prior to the interview, Det. Pantalone told Pierce that he had a warrant for his arrest for a robbery. A192. But Det. Pantalone did not tell Pierce that it was a robbery of a liquor store. A192. During the interview, conducted by Det. McDerby, Pierce asked what evidence the police had that he robbed a liquor store. State’s Trial Exhibit 56. Pierce was unsure of whether he had ever been to Silverside Discount Liquors but allowed for the possibility that he might have.

State's Trial Exhibit 56. According to Pierce, he had no idea of the last time he was in any liquor store and he did not commit either robbery of Silverside Discount Liquors. State's Trial Exhibit 56.

ARGUMENT

I. PIERCE EXPRESSLY WAIVED ANY CHALLENGES TO THE ADMISSION OF THE FINGERPRINT EVIDENCE IN HIS CASE. IN ANY EVENT, THE SUPERIOR COURT DID NOT PLAINLY ERR WHEN IT PERMITTED THE STATE TO INTRODUCE FINGERPRINT EVIDENCE AND ANTHONY DINARDO’S COMPARISON REPORT.

Questions Presented

Whether Pierce expressly waived his authentication argument, thus precluding this Court’s review under Supreme Court Rule 8.

Whether the Superior Court plainly erred by permitting the State to introduce into evidence latent palm print impressions collected by Det. Pantalone and a comparison report prepared by Anthony DiNardo.

Standard and Scope of Review

Ordinarily, a trial judge’s evidentiary rulings are reviewed by this Court for an abuse of discretion.³ This Court “generally decline[s] to review contentions not raised below and not fairly presented to the trial court for decision.”⁴ The Court, however, may consider a question for the first time on appeal “when the interests of justice so require,”⁵ but “[t]he exception is extremely limited and invokes a plain error standard of review.”⁶ “Under the plain error standard of review, the

³ *Cooney-Koss v. Barlow*, 87 A.3d 1211, 1217 (Del. 2014).

⁴ *Turner v. State*, 5 A.3d 612, 615 (Del. 2010) (citations omitted).

⁵ Supr. Ct. R. 8.

⁶ *Clark v. Clark*, 47 A.3d 513, 518 (Del. 2012).

error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”⁷

Merits of the Argument

For the first time on appeal, Pierce claims “[t]he trial judge committed plain error by admitting into evidence non-authenticated palm prints – purported to be Pierce’s – which were fundamental in identifying Pierce as the robber.”⁸ Pierce expressly waived this argument at trial.⁹ “As this Court explained in *King v. State*, there is an express and effective waiver as to any appellate presentation on an issue where defense counsel responds to queries by a trial judge, by stating that there are no objections to the admission of evidence. Indeed, such affirmative statements are a stronger demonstration of a waiver ‘than the mere absence of an objection.’”¹⁰

At trial, the State introduced into evidence the latent fingerprint impressions collected by Det. Pantalone during his investigation of the second robbery. Pierce did not object. The State then called Anthony DiNardo, who testified about the comparison he performed on the latent fingerprint impressions collected by Det.

⁷*Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (citing *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982)).

⁸ Op. Brf. at 14.

⁹ A204.

¹⁰ *Stevenson v. State*, 149 A.3d 505, 516 (Del. 2016) (quoting *King v. State*, 239 A.2d 707, 708 (Del. 1968)).

Pantalone. According to DiNardo, two of the impressions collected by Det. Pantalone matched Pierce's known left palm print. Pierce did not object. The State also introduced into evidence DiNardo's report documenting his comparison. A163. Again, Pierce did not object. A163.

On cross examination, DiNardo testified that he employs the "ACE-V" methodology conducting fingerprint and palm print comparisons. A167. He explained that ACE-V is an acronym: Analysis, Comparison, Evaluation – Verification. A167. The following exchange occurred when Pierce questioned DiNardo about the verification process:

DEFENSE COUNSEL: As I see in the report, there's no notation about verification in this report; is that right?

DINARDO: That's correct. I've never done that. But if you look at the screen shot, you'll see an "OK KRM." That stands for Kevin Rocco Murphy, who is a latent fingerprint examiner at the New Castle County Police. He verified these comparisons.

DEFENSE COUNSEL: Well, how do you know he verified them?

DINARDO: Because I asked him to, and I wrote his initials on the report after he verified it. He can look at the same screen that I can look at with the AFIS system. So he doesn't have to be physically with me.

DEFENSE COUNSEL: All right. But the initials are entered by you; is that right?

DINARDO: Yes.

DEFENSE COUNSEL: All right. So nothing responsive back from him that shows that it was verified by him, correct?

DINARDO: That's correct. He did not write a report.

DEFENSE COUNSEL: All right. So you're suggesting that he did not verify it, in fact, is based on something he told you later?

DINARDO: I'm not suggesting it. I'm telling you that I asked him to verify this print.

DEFENSE COUNSEL: Right.

DINARDO: He replied in the affirmative that he agreed with my conclusion.

DEFENSE COUNSEL: And that's your only knowledge for that; is that right?

DINARDO: Yes. I don't know what more to tell you, but, yes.

DEFENSE COUNSEL: You didn't watch him verify it?

DINARDO: No. He was 50 miles away.

DEFENSE COUNSEL: All right. So your only knowledge of it is what he said to you after the fact, correct? What he replied back to you; is that right?

DINARDO: Yes.

DEFENSE COUNSEL: He told you by phone or by email? How does that work?

DINARDO: It could be either, or text. It could be any of them.¹¹

After eliciting testimony from DiNardo about the verification process, Pierce then objected to DiNardo's testimony about the verification process.¹² Pierce

¹¹ A168-69.

¹² A169

claimed that DiNardo's explanation of the notation on his report indicating that his comparison analysis was verified by Kevin Murphy amounted to hearsay.¹³ After hearing argument on the objection, the trial judge said he would not consider the verification notation.¹⁴ Prior to the court recessing trial for the day, the State indicated it would attempt to contact Kevin Murphy to have him testify that he verified DiNardo's comparison the following day.¹⁵ Pierce objected, claiming that Murphy would be testifying as an expert for whom he did not have notice.¹⁶ The court deferred ruling on Pierce's objection. Ultimately, the State did not call Kevin Murphy.

Pierce expressly waived any challenges to the authentication of the palm print evidence when he "respond[ed] to queries by [the] trial judge, by stating that there are no objections to the admission of evidence."¹⁷ Pierce did not object to the admission of DiNardo's testimony or his comparison report. Rather, he objected to evidence he affirmatively elicited -- DiNardo's explanation of the verification notation on DiNardo's comparison report. But the trial judge said he would not consider the verification testimony, and Pierce objected to the State calling Kevin

¹³ A170-71.

¹⁴ A171.

¹⁵ A202.

¹⁶ A203.

¹⁷ *Stevenson*, 149 A.3d at 516.

Murphy as a witness, who ultimately did not testify. The following exchange summarizes Pierce's objections and demonstrates his waiver:

THE COURT: At the end of the day, I ruled that I was not going to consider the verification evidence, correct? But there's no challenge to . . . DiNardo? I have to give DiNardo's testimony its due [weight].

DEFENSE COUNSEL: Yes, Your Honor. Well, we were going to be arguing in closing that the State did not follow its own - the science did not follow its own methodology.

THE COURT: Understood. But you're not saying his testimony is disqualified?

DEFENSE COUNSEL: I'll not argue that, no, Your Honor.¹⁸

Pierce did not challenge the authentication of the fingerprint evidence and expressly waived any such challenge in his responses to the trial judge's questions about the evidence presented through DiNardo.¹⁹ Pierce challenged the reliability of the fingerprint evidence in his extensive cross examination of DiNardo about the AFIS database.²⁰ But he informed the trial judge he was not objecting to its admission. Thus, Pierce expressly waived any challenge to the authenticity of the evidence, and this Court should decline review of this claim.

¹⁸ A204.

¹⁹ Although the court used the term "disqualify" when questioning defense counsel about DiNardo's testimony, it is abundantly clear that Pierce was not challenging DiNardo's qualifications as a witness or the admissibility of his testimony.

²⁰ A173-76.

In any event, Pierce cannot demonstrate plain error because the palm print evidence introduced by the State was properly authenticated. Here, for the first time, Pierce claims that the Superior Court plainly erred when it did not, after Pierce's agreement to their admissibility, *sua sponte* exclude the palm print comparison evidence presented at trial. Pierce contends the State failed to establish that the "known prints" contained in the AFIS database were his, thus failing to carry its burden to authenticate the palm print evidence. His argument is unavailing.

Under D.R.E. 901(a), "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."²¹ "The authentication requirement is a 'lenient burden.'"²² That burden is "easily met"²³ "when there is evidence sufficient to support a finding by a reasonable juror that the proffered evidence is what its proponent claims it to be."²⁴

Under Pierce's theory, the State can only satisfy its authentication burden by showing how, when, and why a defendant's known palm prints were entered into the AFIS database as a condition precedent to the admission of a fingerprint/palm

²¹ D.R.E. 901(a).

²² *Guy v. State*, 913 A.2d 558, 564 (Del. 2006)(quoting *Whitfield v. State*, 524 A.2d 13, 16 (Del. 1987).

²³ *Cabrera v. State*, 840 A.2d 1256, 1264-65 (Del. 2004) (citing *Whitfield*, 524 A.2d at 16).

²⁴ *Parker v. State*, 85 A.3d 682, 688 (Del. 2014) (citations omitted).

print comparison. This Court has previously rejected an approach to authentication that subjects different classes of evidence to different authentication requirements.²⁵ To adopt Pierce’s rigid formula for fingerprint/palm print comparison using the AFIS database would create a rule, applicable only to a discreet class of evidence, that runs counter to the standard for authentication under Rule 901 articulated by this Court.

Here, the State satisfied its authentication burden under Rule 901 through a witness with knowledge that the palm print evidence was what the State claimed it to be. DiNardo testified that the AFIS database contains a record of people who have been fingerprinted in Delaware for any number of reasons.²⁶ When DiNardo entered the latent prints collected from the liquor store into AFIS, the database revealed possible matches to individuals whose prints were contained in the database.²⁷ Here, the AFIS database revealed that Pierce’s known palm prints matched the two palm prints lifted from the liquor store counter.²⁸ DiNardo reasonably relied on the information contained in the AFIS database.²⁹ Pierce’s argument that the State failed to conclusively demonstrate that the “known prints”

²⁵ See *Parker*, 85 A.3d at 687 (stating, “[w]e conclude that social media evidence should be subject to the same authentication requirements under the Delaware Rules of Evidence Rule 901(b) as any other evidence”).

²⁶ A173-75.

²⁷ A158.

²⁸ A158.

²⁹ See *Hickson v. State*, 2003 WL 1857529, at *1 (Del. Apr. 7, 2003) (law enforcement’s routine use of DELJIS “renders it sufficiently trustworthy”).

in the AFIS database were his goes to the weight of the evidence rather than its admissibility. “The State must establish a rational basis from which the jury could conclude that the evidence is connected with the defendant. The link need not be conclusive. An inconclusive link diminishes the weight of the evidence but does not render it inadmissible.”³⁰ Pierce’s argument amounts to a claim that DiNardo’s testimony established an inconclusive link to the “known prints,” identified as Pierce’s in the AFIS database. In the event of a purportedly inconclusive link, any questions about Pierce’s prints contained in the AFIS database go to the weight of the palm print evidence, not its threshold admissibility under Rule 901.³¹ Because the Superior Court properly admitted DiNardo’s testimony and comparison report, Pierce cannot demonstrate plain error.

³⁰ *Cabrera*, 840 A.2d at 1264–65.

³¹ Interestingly, Pierce’s standard, requiring the State to establish how, when, and why fingerprints are stored in the AFIS system, would require the introduction of otherwise prejudicial information in circumstances where a suspect’s prints are on file from a prior investigation or arrest.

II. THERE WAS SUFFICIENT EVIDENCE TO CONVICT PIERCE OF THE LIQUOR STORE ROBBERIES.

Question Presented

Whether there was sufficient evidence for any rational trier of fact, viewing the evidence in the light most favorable to the State, to convict Pierce of the liquor store robberies.

Standard and Scope of Review

On appeal from a bench trial, this Court reviews a sufficiency of the evidence claim “to determine whether *any* rational trier of fact, viewing the evidence in the light most favorable to the State, could find [a] Defendant guilty beyond a reasonable doubt.”³²

Merits of the Argument

On appeal, Pierce argues that there was insufficient evidence to sustain his convictions for the liquor store robberies. He contends, “the only evidence linking Pierce to the crime was a palm print found on the liquor store sales counter . . . none of the [other] evidence meaningfully contributed to the State’s identification case.”³³ His claim discounts the strength of the palm print evidence and ignores the other evidence in the case.

³² *Bradley v. State*, 2018 WL 5304859, at *2 (Del. Oct. 24, 2018) (citation and internal quotation marks omitted)

³³ *Op. Brf.* at 21.

Principally relying on this Court’s decision in *Monroe v. State*,³⁴ Pierce claims that fingerprint evidence alone is insufficient to sustain a conviction. In *Monroe*, the Court considered an insufficiency of evidence claim “where the sole evidence of identity was the defendant’s fingerprints on the outside of a business’s front door.”³⁵ The Court determined that “the range of abundant, innocent explanations for the presence of Monroe’s prints on the plexiglass shards is too vast for any rational trier of fact to have found beyond a reasonable doubt an essential element of both charged offenses—namely, identity.”³⁶ While instructive, *Monroe’s* holding was limited to the facts of that case.³⁷ Pierce’s case involved different circumstances and more closely resembles *Chavis v. State*.³⁸

In *Chavis*, the defendant was charged with burglary of a ground-floor apartment.³⁹ The police were unable to recover any fingerprints of value from the point of entry, but they successfully collected DNA evidence, later identified as Chavis’ DNA, from the exterior of a window.⁴⁰ On appeal, Chavis argued that the

³⁴ 652 A.2d 560 (Del. 1995).

³⁵ *Chavis v. State*, 227 A.3d 1079, 1095 (Del. 2020)(citing *Monroe*, 652 A.2d at 560).

³⁶ *Monroe*, 652 A.2d at 567 (citations omitted).

³⁷ *Id.* (“Our holding is limited to the facts before us today. We express no opinion on the sufficiency of fingerprint evidence to establish guilt in cases involving different circumstances. We hold only that the evidence the State presented at trial in this case fell short of the reasonable doubt requirement”).

³⁸ 227 A.3d 1079.

³⁹ *Chavis*, 227 A.3d at 1082.

⁴⁰ *Id.*

State “relied solely on DNA evidence to establish identification as to the alleged burglary.”⁴¹ The Court rejected Chavis’ argument and determined that there was other circumstantial evidence that supported a conclusion that Chavis was the burglar “as well as several surveillance photographs depicting the burglary suspect who resembled Chavis.”⁴² Such is the case here.

Notwithstanding Pierce’s characterizations of the palm print evidence, it was not “the only evidence linking Pierce to the crime.”⁴³ The State introduced into evidence surveillance video of both robberies. The robber depicted in both surveillance videos is of similar build to Pierce. In both robberies, the suspect is similarly disguised and, according to Kalyanapu, employed the same *modus operandi*, even asking for the same bottle of Rémy Martin on each occasion.⁴⁴ Indeed, Kalyanapu testified that he believed both robberies were committed by the same person.⁴⁵ And, when questioned, Pierce asked what evidence police possessed that he robbed a liquor store prior to being told that the police were investigating the robbery of a liquor store.⁴⁶ During the interview, Pierce claimed that he could not recall whether he had ever been to Silverside Discount Liquors

⁴¹ *Id.* at 1095.

⁴² *Id.*

⁴³ *Op. Brf.* at 21.

⁴⁴ A36; A53.

⁴⁵ A56.

⁴⁶ State’s Trial Exhibit 56.

but allowed for the possibility that he might have.⁴⁷ Kalyanapu, who knows nine out of ten of his customers, testified that he had never seen Pierce in the liquor store.⁴⁸

In *Monroe*, the fingerprints had no context – they were simply prints found on broken pieces of a plexiglass door at the scene of a commercial burglary.⁴⁹ Here, the prints lifted by Det. Pantalone have context. There is video depicting the location on the sales counter where the robber placed his hand.⁵⁰ Det. Pantalone lifted the prints from the same area on the sales counter.⁵¹ Unsurprisingly, Pierce asks this Court to view the palm prints in isolation. However, when viewed in context, there is not a “range of abundant, innocent explanations for the presence of [Pierce’s] prints”⁵² on the sales counter of Silverside Discount Liquors. The totality of the evidence surrounding Pierce’s palm prints, when viewed in the light most favorable to the State, supports the conclusion that any reasonable trier of fact could have concluded beyond a reasonable doubt that Pierce robbed Silverside Discount Liquors on both occasions.

⁴⁷ State’s Trial Exhibit 56.

⁴⁸ A60.

⁴⁹ *Monroe*, 652 A.2d at 562.

⁵⁰ State’s Trial Exhibit 4.

⁵¹ A124-25; A130.

⁵² *Monroe*, 652 A.2d at 567.

CONCLUSION

For the foregoing reasons the judgment of the Superior Court should be affirmed.

/s/ Andrew J. Vella
ANDREW J. VELLA (ID No. 3549)
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street, 7th Floor
Wilmington, DE 19801
(302) 577-8500

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CAMERON PIERCE,)
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STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Andrew J. Vella
Deputy Attorney General
ID No. 3549

DATE: June 28, 2021