



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMIL T. BIDDLE,)	
)	
Defendant-Below,)	
Appellant,)	
)	
v.)	No. 323, 2022
)	
STATE OF DELAWARE)	
)	
Plaintiff-Below,)	
Appellee.)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT’S REPLY BRIEF

/s/ Nicole M. Walker
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DATED: February 18, 2023

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I. THE TRIAL COURT ABUSED ITS DISCRETION AND VIOLATED BIDDLE’S RIGHT TO A FAIR TRIAL WHEN IT ALLOWED THE STATE TO INTRODUCE THE LAY OPINION OF THREE OFFICERS THAT HE WAS ONE OF THE SUSPECTS IN A SURVELLIENCE VIDEO.

The State concedes both that “[t]he ultimate question of the identity ... remains one for the jury to decide” and that “lay opinion testimony will not be helpful to the jury when the jury can readily draw the necessary inferences and conclusions without the aid of the opinion.”¹ The State does not dispute that the video is “so unmistakably clear...that the witness is no better suited than the jury to make the identification.”² Nor does the State dispute the officers had no “particular expertise in comparing a videographic representation of a person with a suspect or defendant[.]”³ Instead, the State relies on the trial court’s erroneous conclusion that the officers’ testimony was needed because Biddle’s “appearance in court today is not the same as it was at the time of the alleged incident[.]”⁴

Biddle does not contest the framework set forth and followed in the cases cited by the State.⁵ Nor does Biddle dispute that the officers satisfied the

¹ State’s Ans.Br. at 9 (quoting *Thomas v. State*, 2019 WL 1380051, at *3 (Del. Mar. 26, 2019) (internal citations and quotation marks omitted).

² *Saavedra v. State*, 225 A.3d 364, 380–81 (Del. 2020).

³ *Thomas*, 2019 WL 1380051*3.

⁴ State’s Ans. Br. at 13.

⁵ State’s Ans. Br. at 9-11.

“familiarity requirement” contained in the framework. But, much more is required before a lay opinion is permitted for purposes of identification. And, our case is substantively distinguishable from those cited by the State because, here, the jury had an undisputed photo to which it was able to compare the video. Thus, Biddle’s change in appearance at trial did not warrant lay opinion testimony by officers.⁶

The crimes depicted on the video occurred on November 22, 2019. Biddle was arrested on November 29, 2019, only a week later. Two officers and Biddle’s fiancé testified there was no reason to believe that Biddle had recently changed his appearance at the time of his arrest.⁷ The State introduced the photo into evidence.⁸ The defense, including Biddle’s fiancé, did not dispute that Biddle was the one depicted in the November 29, 2019 photo. Thus, the issue was whether Biddle, as of November 29, 2019, was the one in the November 22, 2019 video.

Biddle’s concession that the arrest photo depicted him placed the jury in the same position as the witnesses. Both the jury and the officers could perceive any changes in appearance that may or may not have occurred between the time the arrest photo was taken and trial. And, more importantly, there was no suggestion that his appearance had changed leading up to the time his photo was

⁶ In fact, one of the State’s witness admitted as such. A70.

⁷ A62, 75.

⁸ State’s Trial Ex. 3.

taken.⁹ Thus, the officers' lay opinion testimony was not helpful to the jury because the jury was able to "readily draw the necessary inferences and conclusions without the aid of the opinion."¹⁰

The trial court's abuse of discretion led to a violation of Biddle's right to a fair trial under the Due Process Clause of both the United States and Delaware Constitutions and was far from harmless.¹¹ There was no physical evidence linking Biddle to the scene. And, significantly, no eyewitnesses or alleged victims appeared at trial or gave statements that were introduced into evidence. The only identification evidence presented was the testimony of the three law enforcement officers who claimed that two of the suspects in the video were the two defendants in the courtroom. To explain their ability to identify the defendants, the officers provided significant testimony as to how they became familiar with him. All of this evidence was erroneously introduced as a result of the improper admission of the lay opinion testimony. Thus, Biddle's convictions must be reversed.

⁹ *Commonwealth v. Suarez*, 129 N.E.3d 297, 306 (Mass.App.Ct. 2019) (finding inadmissible lay opinion when detective testified individual in one video was the same in another who was, concededly, the defendant).

¹⁰ *Thomas*, 2019 WL 1380051*3 (internal quotations omitted). See *D.R.E.* 701.

¹¹ U.S.Const., Amend. VI, XIV; Del.Const. Art.I, §7.

II. THE TRIAL COURT VIOLATED BIDDLE’S SIXTH AMENDMENT RIGHT TO A FAIR TRIAL WHEN IT DISCHARGED A SITTING JUROR, WITHOUT ATTEMPTING TO ASSESS HER ABILITY TO FOLLOW THE COURT’S INSTRUCTIONS AND FAIRLY WEIGH THE EVIDENCE, BECAUSE SHE EXPRESSED TO THE COURT DOUBT IN THE STATE’S CASE.

The extent of the State’s argument is that the trial court was not required to conduct the examination mandated by this Court because the judge decided Juror No. 1 “was no longer impartial to the facts of the case.”¹² That has it backwards. The point of the mandated examination is for the trial court to make an impartiality determination after following proper procedures.¹³ It is precisely because the trial court failed to follow that process and because the facts point to a finding that Juror No.1 was impartial that Biddle’s convictions must be reversed.

The State does not contest a significant portion of the record that supports a finding that Juror No. 1 should have remained on the jury or that, at a minimum, undercuts its position that no further assessment was necessary:

¹² State’s Ans. Br. at 25.

¹³ Although Superior Court Criminal Rule of Procedure 24 only applies to *voir dire* during the pretrial jury selection process, we hold that those same procedures should be followed after a juror has been seated and issues about that juror's impartiality are raised. The trial judge must personally conduct such examination as is necessary to ascertain the seated juror's ability to reach a verdict fairly and impartially. Following that substantive judicial inquiry, a definite judicial ruling must be made on the record[.]

Schwan v. State, 65 A.3d 582, 590 (Del. 2013).

- Juror No. 1 never expressed any firm conclusion as to the guilt or innocence of the defendant before she was discharged;
- As soon as Juror No. 1 expressed doubt, the judge presented her with evidence and asked her which individual she thought she recognized;
- Even after being presented evidence by the judge, Juror No. 1 still expressed only doubt, but not a firm opinion one way or the other;
- Juror No.1 never gave any indication that she would refuse to consider the evidence or follow the law;
- Juror No. 1 did not express any lack of faith in the justice system;
- Defense counsel asked the judge to conduct an inquiry into whether Juror No.1 could be fair and impartial;
- The judge denied defense counsel's request for an inquiry into whether Juror No. 1 could be fair or impartial;
- No finding was ever made that Juror No. 1 was improperly influenced by extraneous evidence;
- The initial reason given by the judge for discharging Juror No.1 was that she brought her doubts to the court's attention.

The only effort the State makes to justify the Court's conclusion is an attempt to analogize our case to *Hughes v. State*.¹⁴ That case addressed a situation where it was determined, after an evidentiary hearing, that jurors had been exposed to extraneous information about the defendant's prior murder conviction. In other words, unlike our case, findings were made after a proper inquiry.

¹⁴ 490 A.2d 1034 (Del. 1985).

One reason this Court requires that the trial court to make “a definite judicial ruling ... on the record” regarding the necessary impartiality assessment is “so that there can be effective appellate review on the issue of either cause for removal *per se* or the assessment of the juror's credibility, if removal for cause is discretionary.”¹⁵ This is significant in our case. The thrust of the State’s argument is that the trial court was not required to conduct further inquiry into Juror No.1’s impartiality because the trial court found her to be lacking impartiality. However, without a definite judicial ruling, one cannot be clear regarding this finding as the judge also concluded

if she looked at this individual and she’s processing this and said to herself and then when she’s in deliberations that this guy looks like whatever she just said he was, but she brought that to our attention. At this point, I think she has to be excused.¹⁶

Thus, it appears the trial court would not have had an issue with Juror No. 1’s doubt had she had the debate in her head only moments later in the jury room.

The trial court’s decision to discharge the juror deprived Biddle of his right to a unanimous verdict. Therefore, his convictions must be reversed.

¹⁵ *Schwan v. State*, 65 A.3d 582, 590 (Del. 2013).

¹⁶ State’s Ans. Br. at 23.

CONCLUSION

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

Respectfully submitted,

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