



IN THE SUPREME COURT OF THE STATE OF DELAWARE

NATHANIEL BANKS, )  
 )  
 Defendant Below, )  
 Appellant, )  
 )  
 v. ) No. 428, 2013  
 )  
 STATE OF DELAWARE, )  
 )  
 Plaintiff Below, )  
 Appellee. )

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

APPELLANT'S OPENING BRIEF

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DATED: December 20, 2013

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## NATURE AND STAGE OF THE PROCEEDINGS

The Defendant was arrested in September 2012 and later indicted for the offenses of aggravated menacing, possession of a deadly weapon during the commission of a felony, carrying a concealed deadly weapon, assault third degree, endangering the welfare of a child (2 counts), and offensive touching.

After a jury trial, he was convicted of the offenses of carrying a concealed deadly weapon, assault third degree, and endangering the welfare of a child (2 counts), but acquitted of the offenses of aggravated menacing, possession of a deadly weapon during the commission of a felony, and offensive touching.

He was sentenced to, *inter alia*, one year imprisonment at Level 5 suspended for one year supervision at Level 3 for the assault third degree offense, two years imprisonment at Level 5 suspended for one year supervision at Level 3 for the endangering the welfare of a child offenses, and two years imprisonment at Level 5 suspended for one year supervision at Level 3 for the carrying a concealed deadly weapon offense. Exhibit B attached to Opening Brief.

A notice of appeal was docketed for the Defendant. This is the Defendant's opening brief on appeal.

## SUMMARY OF THE ARGUMENT

1. The Complainant testified that when she attempted to discuss the Defendant's infidelities with him, the Defendant physically beat her without provocation. The Defendant testified that the Complainant, angry about his infidelities, physically attacked him and that he only used force to defend himself from her attack. During her testimony, the Complainant maintained that she was not the aggressor and did not try to harm the Defendant when she tried to discuss their future relationship. The Defendant proffered evidence that the Complainant had contacted and threatened harm to the other women in order to rebut her contention that she was not angry and did not attempt to harm the Defendant when she later confronted him. The Superior Court excluded testimony that the Complainant had threatened to harm the other women on the ground that it was irrelevant because the Complainant was not on trial. The Superior Court's ruling was an abuse of discretion because evidence of the Complainant's angry and aggressive state of mind was relevant to rebut her contention that she was neither angry nor an aggressor and abridged the Defendant's Constitutional right to present favorable evidence on his behalf for a complete defense.

## STATEMENT OF FACTS

Paulline Saunders testified that she and the Defendant were in a relationship for some time when she attempted to discuss with him his infidelities that she had learned about after recently searching his cellphone. She testified that the Defendant had returned to her home in New Castle from a week-end motorcycle trip when she attempted to discuss with him their future relationship. She testified that during this discussion in her bedroom, the Defendant became angry and put his finger in her face which she pushed away. When she told the Defendant to leave, she testified that he reached down to the side of the bed and pulled a knife out of his pants which he pointed at her. She testified that she was frightened and the Defendant put the knife away but remained angry. A7-15.

She testified that, when she left the bed to go to her dresser and put pants on, the Defendant punched her with his fist and continued punching her about twenty to thirty times. She testified that she tried to curl into a ball to protect herself but the Defendant pulled her head up and punched her in the face. She yelled for help from her children and one of her sons came to her room. The Defendant then left the bedroom and the house by the front door. She called 911 and the Defendant remained outside until police arrived. A16-23. She testified that she had a bruised lip and bruises on her

face but that she did not need medical attention. A19-21.

The Complainant's fourteen year old son testified that he heard his mother screaming for help and went to her room where he saw the Defendant hitting her. The Defendant pushed him out of the way of the door and left. Her thirteen year old son testified that he heard his mother screaming and then saw the Defendant leave the bedroom and house. He testified that his mother had lumps on her head and was bleeding. A53-72.

The Defendant testified that when he returned from his motorcycle trip, Ms. Saunders was very angry with about seeing other women. He told her that he was leaving and, as he tried to put his pants on, she punched him in the side of the head. He testified that he pushed her against a wall after she punched him and used his hands for self-protection to keep her from attacking and punching him. He testified that he did not punch her or put his hands on her twenty times. He testified that the Complainant's oldest son came into the room with a knife and that he pushed him out of the way in order to get out of the bedroom and leave the house. He called the police and remained outside until the police arrived. A95-106.

I. THE SUPERIOR COURT ABUSED ITS DISCRETION BY RESTRICTING THE DEFENDANT’S CONSTITUTIONAL RIGHT TO PRESENT FAVORABLE EVIDENCE.

Question Presented

The question presented is whether the Superior Court erred in preventing the Defendant from introducing evidence that the Complainant had threatened harm to her rivals for the Defendant’s attention, an issue which was relevant to rebut the Complainant’s testimony that she was not angry and not the aggressor in her confrontation with the Defendant who maintained that he used force only in self-defense from the Complainant’s physical attack on him. The question was preserved for review by the Defendant’s proffer of evidence that the Complainant had threatened physical harm to her rivals for the Defendant’s attention. A73-90.

Standard and Scope of Review

Ordinarily, a trial court’s evidentiary rulings are reviewed for an abuse of discretion. *Kelly v. State*, 981 A.2d 547, 549 (Del. 2009). However, alleged constitutional violations pertaining to a trial court’s evidentiary rulings are reviewed *de novo*. *Allen v. State*, 878 A.2d 447, 449 (Del. 2005).

Argument

Paulline Saunders, the Complainant, testified that the Defendant



physically beat her when she attempted to discuss with him his sexual infidelities that she had recently learned about after he had returned that night from a week-end away on a motorcycle trip. She admitted that she was upset and that her feelings were hurt at the time, but portrayed the Defendant as being at all times the physical aggressor – the most she had done was to push the Defendant’s finger away when he was pointing it at her face in anger. A9-12. She testified that when she told the Defendant that he had to leave, the Defendant angrily pulled a knife on her, called her a bitch, and then punched her and kept punching her in the face more than twenty times while she balled up her body trying to protect herself. A12-15. She admitted that she had learned about the Defendant’s infidelities when she went through his cellphone before he left for the week-end and discovered his communications with other women. She testified that she had called the other women but merely to confirm if the Defendant has been unfaithful. She admitted that she was upset and had told one of the other women that if she wanted to deal with the Defendant, she could pick up his belongings at her house. A28-29. Nevertheless, she steadfastly maintained that it was the Defendant who was angry and enraged that night, not her, and that she was attacked and beaten by the Defendant without provocation. A40-42.

The Defendant, on the other hand, claimed that during the discussion

about their relationship that night, Ms. Saunders physically attacked him by punching him in the head and that he only used enough force to defend himself from her attack by pushing her away with his hands in order to get out of the house. A99-101.

During her testimony, the Complainant portrayed herself as a non-violent, passive victim of an unprovoked attack by the Defendant. The Defendant, seeking to counter the impression that the Complainant had left with the jury, sought to introduce testimony from two of the other women that the Complainant had contacted before that night in order to show that she was angry enough to intimidate and threaten them over their relationships with the Defendant. To counter the effect of her testimony, the Defendant wanted the jury to be able to consider that if Ms. Saunders was angry enough to intimidate and threaten the other women, she would be angry and enraged enough to attack the Defendant that night and fabricate a story that he had attacked her. A75. The Superior Court, on the other hand, was disinclined against “putting a victim on trial,” and required that the defense witnesses be *voir dire*d prior to being permitted to testify in court. A75, 81.

Marjorie Wescott testified on *voir dire* that Ms. Saunders had called her about the Defendant and that the Defendant was “going to get what he

deserved....” A84. The Superior Court ruled that this testimony was inadmissible because it could not be determined what Ms. Saunders meant by saying that the Defendant was going to get what he deserved, despite the defense contention that the jury was capable of considering its significance, and that the court would not permit “putting the victim [Ms. Saunders] on trial....” A84.

Shalontay Fewes testified on *voir dire* that Ms. Saunders had called her and was very aggressive and had threatened her if she continued to see the Defendant. A86-87. The Superior Court ruled that, while Ms. Fewes could testify that Ms. Saunders was aggressive in her conversation, it was not relevant that Ms. Saunders had threatened her rival because she was not charged with terroristic threatening. A87.

Where Ms. Saunders admitted that she was upset but maintained that she was passive in her confrontation with the Defendant that night, it was critical to the Defendant that he be able to show the jury that she was angry enough about his infidelity and lack of commitment to physically attack him. That she was angry enough to physically threaten harm to other women whom she had recently learned had relationships with the Defendant corroborated her state of mind that night and belied the credibility of her claim in court that she was the passive victim of a physical attack by the

Defendant. It also would have shown bias against the Defendant and the other women and shown motivation to physically harm to others who had deceived her. *Weber v. State*, 457 A.2d 674, 680 (Del. 1983) (“a witness’ bias is never a collateral issue as contemplated by Rule 608(b) and extrinsic evidence is admissible to establish that the witness has a motive to testify falsely”). Unlike character testimony from witnesses that the Complainant was a bad person who had committed other bad acts that were not related to the charges against the Defendant and his defense at trial, the Complainant’s threats against her rivals for the Defendant’s attention were directly related to her state of mind in confronting the Defendant that night. In *Weber*, another case where self-defense was in issue, the Court explained the distinction. Where the witness’ credibility is being attacked by a party, D.R.E. 608(b)<sup>1</sup> ordinarily prohibits the admission of specific instances of a witness’ misconduct in order to attack credibility. However, the Court also explained that the rule “was intended to regulate only the use of specific instances of conduct to prove that the witness is a ‘bad person’ or is a

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<sup>1</sup> **(b) Specific instances of conduct.** Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

generally untruthful person who should not be believed.” *Weber*, 457 A.2d at 680 (internal quotation and citations omitted). But the Court further explained that “a witness’s bias is never a collateral issue as contemplated by Rule 608(b), and extrinsic evidence is admissible to establish that the witness has a motive to testify falsely.” *Id.* Following the Court’s guidance on this distinction concerning relevance, it is evident that a proffer of misconduct by the Complainant in high school or during a prior marriage in order to attack her credibility would likely not have been relevant to attack her credibility at trial while her recent threats of harm to her rivals for the Defendant’s attention would have been relevant and should have been admissible to show her angry state of mind concerning the Defendant’s infidelities and her motivation to attack the Defendant that night and his need to defend himself. In addition, her threatening behavior towards her rivals for the Defendant was admissible to rebut her contentions at trial that she was not angry or aggressive when she confronted the Defendant that night about his infidelities. *Gallaway v. State*, 65 A.3d 564 (Del. 2013) (crass video posted by the defendant on YouTube several months after his daughter’s death rebutted his contention at trial that he was upset about what he contended was her accidental death)

The Defendant had a Constitutional right to show the Complainant’s

state of mind that night through the testimony of the other women who were threatened by the Complainant. A trial court cannot place evidentiary barriers before what would be constitutionally relevant evidence to a complete defense. For example, a court cannot impose an evidentiary rule that a defendant cannot call an accomplice or codefendant “who was physically and mentally capable of testifying to events that he had personally observed, and whose testimony would have been relevant and material to the defense.” *Washington v. Texas*, 388 U.S. 14, 23 (1967). “Just as an accused has the right to confront the prosecution’s witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense.” *Id.* at 19. Similarly, judicial coercion of a defense witness from testifying denies a defendant the right to present his defense. *Webb v. Texas*, 409 U.S. 95 (1972). When a trial court prevented a defendant from trying to discredit a witness called by the defendant because that witness had previously implicated himself in the crime but recanted his admissions during his testimony on the ground that, by calling that witness, the defendant was vouching for his credibility and could not then attack it through other witnesses, the Supreme Court found that the defendant was denied the right to present witnesses in his own behalf and deprived him of due process and a fair trial. *Chambers v. Mississippi*, 410 U.S. 284 (1973).

Likewise, denying a defendant the opportunity to present defense evidence concerning the circumstances of his confession in order to show the jury that it was not voluntary and therefore unreliable deprived the defendant of a right to present exculpatory evidence and a complete defense. *Crane v. Kentucky*, 476 U.S. 683 (1986).

A distinctive characteristic of the Superior Court's evidentiary ruling in this case was its distaste for "putting a victim on trial" to the point where it would not permit "putting the victim [Ms. Saunders] on trial...." A75, 81, 84. However, "putting the victim on trial" in the sense of giving the jury reason to believe that it was Ms. Saunders who was the physical aggressor that night who intentionally attacked the Defendant, causing him to defend himself from her attack was the Defendant's core defense of self-defense at trial, in effect his only defense. To the extent that the Superior Court sought to prevent the Complainant from being put on trial, its acknowledged objective, the Superior Court inescapably and simultaneously restricted the Defendant from presenting a complete defense, which he was constitutionally entitled to present. In this context, the Superior Court's objective of not putting the victim on trial inserted an unconstitutional presumption into weighing the evidentiary question of relevance: that it was the Defendant and not the Complainant who was the criminally culpable

party. Constitutionally speaking, however, both the Defendant and the Complainant were on trial in the sense that the jury was ultimately being asked to discredit the claims of either. The Defendant, however, did not enjoy the Constitutional presumption of innocence when the Superior Court weighed the question of relevance of evidence of his proffered defense. While many evidentiary relevance issues can be resolved without constitutional concern, a resolution of an evidentiary issues where it presumed that the defendant and not the complainant is the culpable party at trial, effectively places an unconstitutional thumb on the scale in weighing an issue of relevant evidence.

Strictly speaking, this case can be likened to a defense of third party guilt and a trial court's restriction on the presentation of such evidence based on the trial court's inclined belief that the defendant was on trial, not a third party. However, in this case, the Defendant was not trying to present evidence that another party had committed the offense of attacking the Complainant, but instead that the Complainant herself had attacked him. If the defense was that someone else had attacked the Complainant, the Defendant could not be constitutionally restricted from presenting evidence to that effect. *Holmes v. South Carolina*, 547 U.S. 319 (2006). Under those circumstances, a defendant need not prove or meet a threshold of proof that



another party had committed the offense. A reasonable doubt that the defendant had committed the offense based on the proffered offense would be sufficient. Specifically, an evidentiary decision that the defendant would not be permitted to present evidence of third party guilt where the prosecution's case based on forensic evidence was very strong – in essence, where the “victim” was far more than likely the victim based on the trial evidence – would still be constitutionally impermissible because it denied the defendant his right to present a complete defense. *Id.* In this case, however, the standard applied by the Superior Court in determining relevance - that it was the Defendant who was on trial, not the Complainant - stood as a surrogate for the otherwise constitutionally impermissible weighing of evidentiary proof to determine relevance under the Sixth Amendment as shown in *Holmes*. Only in this case, the relevance determination that excluded proffered exculpatory evidence from the defense did not merely result from a weighing of evidence, but through an unconstitutional presumption of the Defendant's guilt. *Id.* at 330 (“Just because the prosecution's evidence, *if credited*, would provide strong support for a guilty verdict, it does not follow that evidence of third-party guilt has only a weak logical connection to the central issues in the case”) (emphasis in original). By not permitting the Complainant to be “put on

trial” through the introduction of evidence that she had threatened to harm her rivals for the Defendant’s attention, which was logically consistent with her aggression in attacking the Defendant and the Defendant defending himself, the Superior Court arbitrarily contravened the Defendant’s Constitutional right to present favorable evidence, even if unfavorable to the “victim,” and a complete defense: “The point is that, by evaluating the strength of only one party’s evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt. Because the rule applied by the State Supreme Court in this case did not heed this point, the rule is ‘arbitrary....’” *Holmes*, 547 U.S., at 331.

The Superior Court abused its discretion by considering an unconstitutional inference of the Defendant’s guilt and the Complainant’s innocence in determining the relevance of proffered evidence and thereby unconstitutionally deprived the Defendant of his right to present favorable evidence in his behalf and a completed defense.

CONCLUSION

For the reasons and upon the authorities cited herein, the Defendant's conviction and sentence should be reversed.

Respectfully submitted,

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DATED: December 20, 2013