



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

SHAWN TAYLOR, )  
)  
Defendant Below- ) No. 323, 2023  
Appellant, )  
) ON APPEAL FROM  
) THE SUPERIOR COURT OF THE  
v. ) STATE OF DELAWARE  
) ID No. 2204012723  
STATE OF DELAWARE, )  
)  
Plaintiff Below- )  
Appellee. )

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
DELAWARE IN AND FOR NEW CASTLE COUNTY

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**OPENING BRIEF**

**COLLINS PRICE & WARNER**

Kimberly A. Price, ID No. 6617  
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Dated: January 12, 2024

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## NATURE OF THE PROCEEDINGS

### *Arrest and pretrial matters*

On April 25, 2022, police arrested Shawn Taylor and charged him with Possession of a Firearm by a Person Prohibited (PFBPP), Possession of Ammunition by a Person Prohibited (PABPP), Carrying a Concealed Deadly Weapon (CCDW), and Possession of Marijuana Personal Use Quantity (civil violation).<sup>1</sup> After a preliminary hearing on May 26, 2022,<sup>2</sup> a commissioner transferred the case to Superior Court.<sup>3</sup>

On August 15, 2022, a grand jury approved an indictment charging Mr. Taylor and his codefendant Naim Abdullah as follows:

1. PFBPP (Abdullah)
2. PFBPP (Mr. Taylor)
3. CCDW (Mr. Taylor and Abdullah)
4. PABPP (Abdullah)
5. PABPP (Mr. Taylor)
6. Conspiracy Second Degree (Mr. Taylor and Abdullah).<sup>4</sup>

Naim Abdullah pled guilty to CCDW and Conspiracy Second Degree on March 8, 2023.<sup>5</sup> The Court deferred sentencing until after Mr. Taylor's case resolved.

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<sup>1</sup> A7-11.

<sup>2</sup> A12-29.

<sup>3</sup> A28-29.

<sup>4</sup> A36-39.

<sup>5</sup> A193.

On April 3, 2023, Mr. Taylor rejected a plea to PFBPP with an agreed upon recommendation of five years at Level V, which was the minimum mandatory.<sup>6</sup>

### ***Trial and verdict***

On April 27, 2023, Mr. Taylor waived his right to a jury trial and stipulated to a bench trial.<sup>7</sup> This case proceeded to a non-jury trial on May 31, 2023.<sup>8</sup>

On June 1, 2023, the Court returned a guilty verdict on the charge of PFBPP and acquitted Mr. Taylor on the charges of CCDW, PABPP, and Conspiracy Second Degree.<sup>9</sup>

### ***Sentencing***

The Court requested that the parties address whether Mr. Taylor's prior out-of-state conviction would count as a violent felony that would require a minimum mandatory sentence under Delaware law.<sup>10</sup> Both parties submitted sentencing memoranda as requested.<sup>11</sup> The State took the position that Mr. Taylor's prior conviction for Possession with Intent to Deliver (PWID) conviction was a violent felony that subjected Mr. Taylor to a five-year minimum mandatory prison sentence.<sup>12</sup> Trial counsel concurred with the State that his prior conviction was

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<sup>6</sup> A44-48.

<sup>7</sup> A55.

<sup>8</sup> A67-161.

<sup>9</sup> A162-188.

<sup>10</sup> A185-187.

<sup>11</sup> A212-276; A277-278.

<sup>12</sup> A213.

classified as a violent felony, so he faced the minimum mandatory sentence of five years of unsuspended Level V time.<sup>13</sup>

On August 18, 2023, the Superior Court sentenced Mr. Taylor to five years of unsuspended Level V time, which was the minimum mandatory.<sup>14</sup>

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<sup>13</sup> A277.

<sup>14</sup> Exhibit A; A281-282.

## SUMMARY OF ARGUMENT

### **I. THE SUPERIOR COURT JUDGE ERRED IN CONVICTING MR. TAYLOR ON INSUFFICIENT EVIDENCE OF PFBPP DESPITE ACQUITTING HIM OF HIS REMAINING CHARGES.**

Shawn Taylor waived his right to a jury trial on the charges of PFBPP, PABPP, CCDW, and Conspiracy Second Degree. The State presented three witnesses. At the close of the State's case, Mr. Taylor moved for a *Lolly/Deberry* instruction, which the Court granted. Mr. Taylor did not testify at trial.

The State's theory was that Mr. Taylor actually possessed the gun, either initially or he got it from Abdullah, and then he placed it under the driver's seat.

The Superior Court found Mr. Taylor guilty of PFBPP and not guilty of the remaining firearm charges. Based on the evidence presented, the State failed to establish beyond a reasonable doubt the offense of PFBPP and the Court erred in finding sufficient evidence for conviction. This finding of guilt is inconsistent with his acquittal on the remaining firearm offenses.

The Superior Court erred in determining the State presented sufficient evidence to convict Mr. Taylor of PFBPP as no rational factfinder could have found Mr. Taylor guilty beyond a reasonable doubt; he seeks reversal.



## STATEMENT OF FACTS

The witnesses testified as follows at trial:

### *The State's case*

#### Hunter Bordley

Trooper Hunter Bordley, the chief investigating officer, testified first. On the night of April 24, 2022, Bordley was on proactive patrol with a civilian ride-along.<sup>15</sup> While on I-495 Southbound by the Philadelphia Pike exit, Bordley stopped a gray Dodge Challenger for speeding.<sup>16</sup> Shawn Taylor was in the rear driver side seat and Naim Abdullah was in the rear passenger seat.<sup>17</sup>

When Bordley approached the car, both Mr. Taylor and Abdullah acted like they were sleeping in the back of the car.<sup>18</sup> Bordley spoke with the operator, Destiny Hand.<sup>19</sup> Hand provided expired insurance and registration, but she did not have her license with her.<sup>20</sup> Bordley ultimately requested that she exit the car after detecting an odor of marijuana.<sup>21</sup> Bordley called for back-up, which included Trooper George Justice.<sup>22</sup>

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<sup>15</sup> A72; A76.

<sup>16</sup> A73.

<sup>17</sup> A73-74.

<sup>18</sup> A74.

<sup>19</sup> A73-74.

<sup>20</sup> A76-77.

<sup>21</sup> A74-75.

<sup>22</sup> A76.

The State introduced the MVR from the traffic stop.<sup>23</sup> Bordley did not have a body-worn camera as they were not issued at the time.<sup>24</sup> Bordley did not initially see a firearm in the car.<sup>25</sup> He also did not see a gun under the driver's seat when he removed Hand from the car.<sup>26</sup>

Trooper Justice arrived and removed the front seat passenger from the car.<sup>27</sup> Bordley observed Mr. Taylor making movements in the back of the car.<sup>28</sup> He saw Mr. Taylor reaching towards the floorboard but didn't know what he was reaching for.<sup>29</sup>

Bordley described the Challenger as a two-door car that required the front seats to be pulled forward so someone could climb to the back seat.<sup>30</sup> Bordley did not see a gun when he initially removed Mr. Taylor from the car.<sup>31</sup> After he went back to the car, he saw a gun on the rear floorboard where Mr. Taylor was seated.<sup>32</sup> It was found partially under the front driver's seat.<sup>33</sup> Bordley testified that he

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<sup>23</sup> A77.

<sup>24</sup> *Id.*

<sup>25</sup> A79.

<sup>26</sup> A80.

<sup>27</sup> A80-81.

<sup>28</sup> A81.

<sup>29</sup> A82.

<sup>30</sup> A83.

<sup>31</sup> *Id.*

<sup>32</sup> A84.

<sup>33</sup> *Id.*

firearm, when found, was not visible to the ordinary person.<sup>34</sup> Bordley took photographs of the firearm, which were introduced at trial.<sup>35</sup> One of the photographs also depicted a water bottle that contained marijuana inside of it.<sup>36</sup> This water bottle was not seized by police or submitted for any forensic testing.<sup>37</sup>

Bordley testified that there were mechanisms for the power seating and wires under the driver's seat which would have prevented the gun from passing through under the seat.<sup>38</sup> The barrel of the gun was facing the front of the car and butt of the gun was facing the rear.<sup>39</sup>

At trial, Bordley identified the gun introduced as evidence as the one collected from the vehicle on April 24th.<sup>40</sup> The State also introduced the ammunition that Bordley collected.<sup>41</sup> He identified the ammunition as that which was inside of the firearm that he recovered from the car.<sup>42</sup>

Bordley submitted both the gun and ammunition for latent fingerprint processing.<sup>43</sup> He testified that no prints of value came back on the items.<sup>44</sup>

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<sup>34</sup> A96.

<sup>35</sup> A85-87.

<sup>36</sup> A86; A103.

<sup>37</sup> A105.

<sup>38</sup> A88.

<sup>39</sup> *Id.*

<sup>40</sup> A91.

<sup>41</sup> A92.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> A92-93.

Bordley interviewed Mr. Taylor and Abdullah.<sup>45</sup> The prosecutor asked if either of them claimed ownership or knowledge of the gun, and Bordley responded “no.”<sup>46</sup> Trial counsel objected to the part referring to Abdullah.<sup>47</sup> The State indicated that the defense was going to elicit testimony that Abdullah said he would accept responsibility for the gun during his initial presentment to the Justice of the Peace.<sup>48</sup> The prosecutor contended that it was not being offered for the truth of the statement, rather it was being offered to highlight the conflicting statements he made.<sup>49</sup> The Superior Court held that it had not heard Abdullah’s first statement yet, so it would consider the statement in the State’s rebuttal case, if any.<sup>50</sup>

Bordley also testified that Mr. Taylor was a person prohibited due to prior felony convictions out of Pennsylvania.<sup>51</sup>

On cross-examination, Bordley agreed that a person sitting inside the car would not have seen the gun when the driver’s seat was in the back position.<sup>52</sup> Bordley agreed that he did not see a bulge in Mr. Taylor’s clothing that would be consistent with him possessing or concealing an object when he was seated in the

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<sup>45</sup> A94.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> A94-95.

<sup>50</sup> A95.

<sup>51</sup> *Id.*

<sup>52</sup> A97.

rear of the car.<sup>53</sup> During Abdullah's initial appearance in front of the magistrate, he indicated that the firearm was his.<sup>54</sup>

Bordley did not see Abdullah lean over or hand anything to Mr. Taylor in the back seat of the car.<sup>55</sup>

### George Justice

Trooper Justice assisted Bordley with the vehicle stop on April 24, 2022.<sup>56</sup> He approached the passenger side of the car and spoke with the occupants.<sup>57</sup> He did not see Mr. Taylor or Abdullah moving abnormally in the car.<sup>58</sup> Justice did not see Abdullah lean over towards Mr. Taylor, or the back of the driver's seat, or hand anything to him.<sup>59</sup> Justice testified he did not see Mr. Taylor make any movements toward the seat in front of him.<sup>60</sup> Justice approximated that he was five to six feet from Mr. Taylor when he was removing the front seat passenger from the car.<sup>61</sup>

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<sup>53</sup> A100-101.

<sup>54</sup> A106.

<sup>55</sup> A111.

<sup>56</sup> A114-115.

<sup>57</sup> A115.

<sup>58</sup> A116.

<sup>59</sup> A117.

<sup>60</sup> A119.

<sup>61</sup> A122.

## Paul Gilbert

Paul Gilbert is a senior forensic DNA analysis with the Division of Forensic Sciences.<sup>62</sup> He received swabs taken from the gun, ammunition, and magazine and samples taken from Mr. Taylor and Abdullah.<sup>63</sup> For the samples associated with the firearm, one did not create any sort of DNA profile and the other four had insufficient amounts of amplified DNA to produce a profile that could be compared to another sample.<sup>64</sup>

Gilbert estimated that for swabs from firearms, he gets interpretable results from 10 to 15% of all samples.<sup>65</sup> This means that 10-15% of the time, there is an interpretable result that can be compared to a reference sample.<sup>66</sup>

## Hunter Bordley

The State recalled Bordley and sought to ask him about Abdullah's statement to police that was inconsistent with his later statement to the Justice of Peace taking responsibility for the gun.<sup>67</sup> The trial court found Abdullah's statement was admissible under Delaware Rule of Evidence 806 to attack his credibility.<sup>68</sup> Bordley testified that Abdullah denied knowledge of the gun during

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<sup>62</sup> A123.

<sup>63</sup> A125.

<sup>64</sup> A127.

<sup>65</sup> A129.

<sup>66</sup> A130.

<sup>67</sup> A134.

<sup>68</sup> A135.

his Mirandized interview, but later took responsibility for the gun during his arraignment.<sup>69</sup> The State rested.<sup>70</sup>

After the State rested, the prosecutor sought to reopen its case for a few additional questions.<sup>71</sup> Trial counsel did not oppose.<sup>72</sup> Bordley testified that Abdullah tried to take responsibility for the gun because he wanted Mr. Taylor to be released and bail him out.<sup>73</sup>

### *Defense case*

The defense did not move for judgment of acquittal after the State rested. The defense did not present a case and Mr. Taylor elected not to testify.<sup>74</sup> Trial counsel did make an application for a *Lolly/Deberry* instruction regarding the water bottle that was not preserved by police.<sup>75</sup> After hearing argument from the parties, the trial court decided it would consider the *Lolly/Deberry* inference when it deliberated.<sup>76</sup>

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<sup>69</sup> A136.

<sup>70</sup> A139.

<sup>71</sup> A140.

<sup>72</sup> *Id.*

<sup>73</sup> A141.

<sup>74</sup> A146-148.

<sup>75</sup> A142-143.

<sup>76</sup> A142-146.

### *Closing arguments*

The State argued that it met its burden of proof as to all four charges.<sup>77</sup> The prosecutor noted that the gun was not visible under Bordley removed Mr. Taylor from the car.<sup>78</sup> The trial judge questioned the State about the conspiracy charge and the evidence, if any, that established Abdullah's knowledge beforehand.<sup>79</sup> The State responded that both Mr. Taylor and Abdullah were seated in the back and Abdullah would have seen Mr. Taylor with the gun.<sup>80</sup> The State conceded that merely sitting next to someone who takes out a gun does not automatically make the other person a co-conspirator.<sup>81</sup> The State believed that part of the defense argument was that it was Abdullah's gun and he put it under the seat, which the prosecutor did not believe was possible based on how the gun was found.<sup>82</sup> The prosecutor contended that the Court could draw the conclusion that Abdullah handed the gun to Mr. Taylor who then put it under the driver's seat.<sup>83</sup>

The State's theory was that Mr. Taylor had the gun; either it was his or he got it from Abdullah, and then he put it under the seat in front of him.<sup>84</sup> The Court

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<sup>77</sup> A149.

<sup>78</sup> A150.

<sup>79</sup> A151.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> A151-152.

<sup>83</sup> A152.

<sup>84</sup> *Id.*



clarified the State’s theory as an either or – either the gun was Mr. Taylor’s and he put it under the seat or the gun was Abdullah’s and Mr. Taylor put it under the seat for him.<sup>85</sup> Under the latter theory, the trial judge inquired what evidence showed Mr. Taylor knew the gun was loaded with ammunition.<sup>86</sup> The State didn’t “have an answer on the ammunition” and did not know if there would be sufficient evidence of PABPP if Abdullah simply handed the gun to Mr. Taylor who then hid it for him.<sup>87</sup> The State conceded it created reasonable doubt as to the ammunition.<sup>88</sup>

In the defense closing, trial counsel highlighted the prosecutor’s various theories to undermine that the State could not create a unified theory of what happened.<sup>89</sup> Trial counsel argued that there were reasonable explanations for the movement observed, including that Mr. Taylor was leaning forward towards the marijuana contraband under the *Lolly/Deberry* inference.<sup>90</sup> The Superior Court took the matter under deliberation.

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<sup>85</sup> A152-153.

<sup>86</sup> A153.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> A156.

<sup>90</sup> A157-158.

### ***The Court's verdict***

The Court reconvened the following day to render its verdict. The Court went through several of the principles that it considered during its deliberations of the four charges.<sup>91</sup> Under Superior Court Criminal Rule 23(c), the Court rendered a general verdict as to each count, rather than specific findings.<sup>92</sup> The Superior Court found Mr. Taylor guilty of PFBPP but not guilty of CCDW, PABPP, and Conspiracy Second Degree.<sup>93</sup> The Court deferred sentencing and ordered that the parties submit sentencing memoranda addressing whether Mr. Taylor's out-of-state conviction counts as a violent felony that would require a minimum mandatory sentence under 11 *Del. C.* § 1448.<sup>94</sup>

### ***Sentencing***

Prior to sentencing, the State submitted a sentencing memorandum arguing that Mr. Taylor's PWID conviction from Pennsylvania was a violent felony resulting in Mr. Taylor facing a five-year minimum mandatory sentence for PFBPP.<sup>95</sup> In trial counsel's sentencing memorandum, he agreed that Mr. Taylor faced a five-year minimum mandatory sentence.<sup>96</sup>

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<sup>91</sup> A165-183.

<sup>92</sup> A183-184.

<sup>93</sup> A184-185.

<sup>94</sup> A185-187.

<sup>95</sup> A213.

<sup>96</sup> A277.

On August 18, 2023, the Superior Court sentenced Mr. Taylor to the minimum mandatory of five-years of unsuspended level V time.<sup>97</sup>

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<sup>97</sup> Exhibit A; A281-282.

## **ARGUMENT**

### **I. THE SUPERIOR COURT JUDGE ERRED IN CONVICTING MR. TAYLOR ON INSUFFICIENT EVIDENCE OF PFBPP DESPITE ACQUITTING HIM OF HIS REMAINING CHARGES.**

#### **A. Question Presented**

Whether the trial judge erred in finding sufficient evidence to convict Mr. Taylor of PFBPP despite acquitting him of his remaining charges. Although counsel did not move for judgment of acquittal at the Superior Court, this claim is preserved under *Williams v. State* by Mr. Taylor proceeding with a nonjury trial. This Court held that a formal motion for judgment of acquittal is not required in a bench trial and “the issue of the sufficiency of the evidence will be reviewed the same as if there had been a formal motion for judgment of acquittal.”<sup>98</sup>

#### **B. Standard and Scope of Review**

On a sufficiency of the evidence claim, this Court reviews 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.”<sup>99</sup>

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<sup>98</sup> *Williams v. State*, 113 A.3d 155, 158 (Del. 2015) (noting also that the better practice is to move for judgment of acquittal under Superior Court Criminal Rule 29).

<sup>99</sup> *Id.* (quoting *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995)) (emphasis in original).

## C. Merits of Argument

### *Applicable legal precepts*

To prove Mr. Taylor guilty of PFBPP, the State had to prove that he possessed/controlled a firearm, he was a person prohibited due to a prior felony conviction, and he acted knowingly.<sup>100</sup> Possession can be either actual or constructive. A person has actual possession when he/she knowingly has direct physical control over the item.<sup>101</sup> To establish constructive possession, there must be sufficient evidence that the defendant: “(1) knew the location of the gun; (2) had the ability to exercise dominion and control over the gun; and (3) intended to guide the destiny of the gun.”<sup>102</sup> “Mere proximity to, or awareness of [contraband] is not sufficient to establish constructive possession.”<sup>103</sup>

While the Court acquitted Mr. Taylor of CCDW, it is important to note that this offense requires the State to prove that Mr. Taylor carried a firearm, he carried it on or about his person, the weapon was concealed, he did so knowingly, and he did not have a license to carry a concealed weapon.<sup>104</sup>

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<sup>100</sup> 11 *Del. C.* § 1448(a)(1); A177.

<sup>101</sup> *Lecates v. State*, 987 A.2d 413, 426 (Del. 2009).

<sup>102</sup> *Id.* (citing *White v. State*, 906 A.2d 82, 86 (Del. 2006)).

<sup>103</sup> *Id.* (quoting *White*, 906 A.2d at 86).

<sup>104</sup> 11 *Del. C.* § 1442; A181-182.

***The trial judge erred in finding sufficient evidence to convict Mr. Taylor of PFBPP despite acquitting him of the remaining charges.***

The trial court rendered a general verdict finding Mr. Taylor guilty beyond a reasonable doubt of PFBPP and not guilty of CCDW, PABPP, and Conspiracy Second Degree.

The evidence at trial established that a gun was found under driver's seat in the rear of the car in front of where Mr. Taylor was seated. Trooper Bordley testified that he saw Mr. Taylor making movements towards the floorboard, while Trooper Justice did not see Mr. Taylor or Abdullah making any abnormal movements. Bordley could not see the gun until after the driver's seat was moved forward. No witnesses testified that they saw Mr. Taylor with the gun. The gun did not have any fingerprint or DNA matches to Mr. Taylor. Evidence established that Abdullah tried to take responsibility for the gun during his arraignment in front of the Justice of the Peace. Bordley also testified that Mr. Taylor was a person prohibited due to a prior felony conviction out of Pennsylvania.

Police failed to preserve a water bottle containing marijuana that was located next to the gun on the floor of the car. Due to this failure, the trial court considered a *Lolly/Deberry* inference during its deliberation of the charges, meaning that had the evidence been preserved, it would be exculpatory.

The Superior Court found Mr. Taylor not guilty of CCDW, PABPP, and Conspiracy Second Degree. Despite this finding, the trial judge found Mr. Taylor guilty beyond a reasonable doubt of PFBPP based upon the same evidence.

The State failed to establish that Mr. Taylor knowingly possessed the firearm. It was stipulated that Mr. Taylor was a prohibited person; thus, that was not an issue the Court needed to address. The issue was whether Mr. Taylor actually or constructively possessed the gun to establish the charge.

At most the evidence established that Mr. Taylor was merely present in a car with a gun, much like the other occupants. There was no evidence that he knew about the gun. The Court inferred that had the water bottle located next to the gun been preserved, it would have been exculpatory. The idea was that Mr. Taylor may have reaching towards the floorboard to the water bottle which contained marijuana, not the firearm. Mere presence or awareness of the gun is insufficient to establish that Mr. Taylor constructively possessed it.

The trial court found Mr. Taylor not guilty of the CCDW offense. The main difference between the PFBPP and CCDW offenses is that CCDW requires proof that the firearm was concealed. Here, the evidence at trial established that the gun was not visible before the driver's seat was moved forward when Mr. Taylor was being removed from the car. The evidence further established that Mr. Taylor was seated directly behind the driver's seat, near where the gun was located. Yet,

despite this evidence, the trial judge found Mr. Taylor not guilty of the CCDW offense but guilty of PFBPP.

The trial judge erred by ignoring these facts which establish reasonable doubt that Mr. Taylor knowingly possessed the firearm, either actually or constructively. No rational trier of fact, viewing the evidence in the light most favorable to the State, could find Mr. Taylor guilty beyond a reasonable doubt of PFBPP.



**CONCLUSION**

For the foregoing reasons, Appellant Shawn Taylor respectfully requests that this Court reverse the judgment of the Superior Court.

**COLLINS PRICE & WARNER**

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