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

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| **SHAWN TAYLOR,** | ) | |
| | ) | |
| Defendant – Below, | ) | |
| Appellant, | ) | |
| | ) | |
| **v.** | ) | **No. 323, 2023** |
| | ) | |
| **STATE OF DELAWARE,** | ) | |
| | ) | |
| Plaintiff – Below, | ) | |
| Appellee. | ) | |

ON APPEAL FROM THE FAMILY COURT
OF THE STATE OF DELAWARE

# STATE'S ANSWERING BRIEF

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DATE: February 14, 2024

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## NATURE AND STAGE OF THE PROCEEDINGS

On August 15, 2022, a New Castle County grand jury indicted Shawn Taylor ("Taylor") and his codefendant Naim Abdullah ("Abdullah"), charging Taylor with one count each of Possession of a Firearm By A Person Prohibited ("PFBPP"), Carrying a Concealed Deadly Weapon ("CCDW"), Possession of Ammunition By a Person Prohibited ("PABPP"), and Conspiracy Second Degree. A1; A196-99. On March 8, 2023, Abdullah pled guilty to CCDW and Conspiracy Second Degree. A195; A200-01. On June 1, 2023, after a two-day trial, a Superior Court judge found Taylor guilty of PFBPP and acquitted him of the remaining charges. A4. The court sentenced Taylor to fifteen years incarceration suspended after serving five years, followed by two years of Level 3 probation. Ex. A to Op. Brf. Taylor has appealed. This is the State's Answering Brief.

## SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The State presented sufficient evidence for a reasonable fact finder to find Taylor guilty of PFBPP. Police observed Taylor reaching toward the floorboard prior discovering the firearm on the floorboard in the location where Taylor was reaching, which was in front of where he had been seated in the car. The trial judge's acquittal on the CCDW charge does not demonstrate that the court ignored evidence or that the State failed to present sufficient evidence for a rational fact finder to convict Taylor of PFBPP.

## STATEMENT OF FACTS

On April 24, 2022, Trooper Hunter Bordley of the Delaware State Police was on patrol conducting traffic enforcement on I-495 in New Castle County, Delaware, when he stopped a Dodge Challenger that was travelling at 85 m.p.h. in a 65 m.p.h. speed zone. A72-73. The traffic stop was captured on Trooper Bordley's MVR. State's Trial Exhibit 1. According to Trooper Bordley, there were four people in the car - the driver, Destiny Hand ("Destiny"), an unidentified female front seat passenger, and Taylor and Abdullah, who were both seated in the rear of the car and appeared to be sleeping. A73-74. Trooper Bordley spoke with Destiny, obtained her license and vehicle information, and eventually asked her to step out of the car because he "detected the odor of marijuana emanating from the car." A74-75. At that point, Taylor and Abdullah appeared to be awake. A75-76. After Trooper Bordley asked Destiny to exit the car, she told him the group were driving from I-95 and that they "were around people" who had been smoking marijuana but denied possessing any marijuana. State's Trial Exhibit 1.

Trooper George Justice was also at the scene of the traffic stop. A80. While he was attempting to get the front seat passenger out of the car, Trooper Bordley observed Taylor, who was still seated in the rear driver's side seat, "making movements in the back of the vehicle." A81. Taylor was "reaching" toward the floorboard, and Trooper Bordley "rapidly walked up on the left side [of the car] and

attempted to get [Taylor] out of the vehicle quickly." A82. Abdullah was not making any movements while seated in the rear of the car. A93. After Trooper Bordley removed Taylor from the car, he returned to the car and saw a firearm partially under the driver's seat on the rear floorboard, where Taylor had been seated.[1] A84. State's Trial Exhibits 2-4. The firearm was loaded. A88. Once Trooper Bordley saw the gun, he alerted the other officers present, calling for them to place all the occupants of the car into handcuffs. A84; State's Trial Exhibit 1. Taylor was a person prohibited from possessing a firearm by virtue of felony convictions in Pennsylvania. A95; State's Trial Exhibits 8-9. Abdullah was likewise prohibited from possessing a firearm. A95-96.

Trooper Bordley collected the loaded firearm and submitted the firearm and ammunition for fingerprint processing – no prints of value were returned. A92-93. The firearm was also swabbed for DNA, however there was insufficient DNA material present on the swabs for comparison to the buccal swabs taken from Abdullah and Taylor. A93; A127; A131; State's Trial Exhibit 5.

[1] There was a water bottle on the floorboard next to the firearm, which contained a brownish liquid and what appeared to be the remnants of a burnt marijuana cigarette. A86. The police did not collect the water bottle and the trial judge inferred that it would not have incriminated Taylor and would have tended to prove him not guilty under *Lolly v. State,* 611 A.2d 956 (Del. 1992) and *Deberry v. State*, 457 A.2d 744 (Del. 1983). A170.

When interviewed by the police, Taylor and Abdullah denied any knowledge of the firearm discovered in the car. A94-95; A133; A136. However, when Trooper Bordley presented Taylor and Abdullah to the Justice of the Peace Court for their initial appearance, Taylor told the court that Abdullah wanted to take responsibility for the firearm. A112; A136. According to Trooper Bordley, Abdullah told the court that the firearm was his. A106. After his initial appearance before the Justice of the Peace Court, Abdullah continued to try to take responsibility for the firearm "so that [] Taylor could get out of all charges and would be able to bail [Abdullah] out." A141.

## ARGUMENT

### I. THERE WAS SUFFICIENT EVIDENCE TO CONVICT TAYLOR OF PFBPP.

#### Question Presented

Whether there was sufficient evidence presented at trial, when viewed in the light most favorable to the State, upon which a rational trier of fact could find Taylor guilty of PFBPP.

#### Standard and Scope of Review

This Court reviews a sufficiency of the evidence claim *de novo* 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."[2] Deference is given to the "trier of fact's factual findings, resolution of witness credibility, and drawing of inferences from proven facts."[3]

#### Merits of the Argument

Taylor argues that the State presented insufficient evidence to prove that he "knowingly possessed the firearm."[4] He contends the State only established that he was "merely present" in a car with a gun (at his feet), and the fact that the trial judge

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[2] *Wright v. State*, 25 A.3d 747, 751 (Del. 2011) (quoting *Farmer v. State*, 844 A.2d 297, 300 (Del. 2004)).
[3] *Id.* (quoting *Morgan v. State*, 922 A.2d 395, 400 (Del. 2007)).
[4] Op. Brf. 19.

acquitted him of CCDW demonstrates that the court ignored facts which established reasonable doubt as to the PFBPP charge. Taylor's argument is unavailing.

To prove that Taylor was guilty of PFBPP, the State was required to demonstrate beyond a reasonable doubt that Taylor:

> (1) is a prohibited person prohibited from possessing a firearm; and
>
> (2) he knowingly possessed, purchased, owned or controlled a deadly weapon or ammunition for a firearm.[5]

When viewed in the light most favorable to the State, the evidence presented in Taylor's case demonstrates that a rational trier could have concluded beyond a reasonable doubt that Taylor knowingly possessed the firearm found on the floorboard where he had been seated. At trial, Taylor stipulated that he was a person prohibited from possessing a firearm and the State offered into evidence certified copies of his felony convictions from Pennsylvania.[6] On appeal, Taylor does not contend that the State failed to prove the "prohibited" element of PFBPP beyond a reasonable doubt. Rather, he argues that the State failed to satisfy the "possession" element of PFBPP.

The State can satisfy the "possession" element of PFBPP by demonstrating actual or constructive possession of a firearm. "To prove actual possession, the State must establish that the defendant 'knowingly ha[d] direct physical control over [the

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[5] 11 *Del. C.* § 1448.
[6] A148-149. State's Trial Exhibits 8-9.

item] ... that amounts to a conscious dominion, control and authority.' The State must establish 'more than proximity to, or awareness of [the item].'"[7] "To prove constructive possession of a firearm, the State must show that the defendant: (i) knew the location of the gun; (ii) had the ability to exercise dominion and control over the gun; and (iii) intended to exercise dominion and control over the gun. Constructive possession may be proven with circumstantial evidence. Establishing PFBPP does not require evidence that the weapon was physically available and accessible to the defendant at the time of arrest."[8]

Here, the State presented sufficient evidence for a reasonable fact finder to determine that Taylor possessed the firearm found on the floorboard. The evidence adduced at trial demonstrated:

> -Taylor was seated in the rear driver's side of a car Trooper Bordley stopped for speeding. A72-74. Taylor and Abdullah initially appeared to be feigning sleep. A74.
>
> - After removing Destiny from the car, Trooper Bordley saw Taylor reaching down toward the floorboard. A82. Trooper Boardely did not observe Abdullah make any movements while seated in the rear of the car. A93. Trooper Justice, who was standing at the passenger side of the car, likewise did not observe Abdullah engage in any

[7] *Carroll v. State*, 2017 WL 1223564, at *2 (Del. Mar. 27, 2017) (quoting *Thomas v. State*, 2005 WL 3031636, at *2 (Del. Nov. 10, 2005)).
[8] *Bessicks v. State*, 2017 WL 1383760, at *2 (Del. Apr. 13, 2017) (citing *Lecates v. State*, 987 A.2d 413, 420-21, 426 (Del. 2009)).

> "abnormal" movements or otherwise lean toward Taylor or hand him anything. A116-117.
>
> - Trooper Bordley removed Taylor from the car and when he returned to the car, he saw a firearm on the rear floorboard where Taylor had been seated. A84.
>
> -The firearm was partially under the front driver's seat. A84. There were "mechanisms for the power seating and a bunch of wires" beneath the driver's sear that would have prevented the driver from passing the gun under the seat toward the rear passenger. A88.

The State circumstantially proved that Taylor possessed the firearm found on the floorboard. The location of the firearm – on the floorboard, partially under the driver's seat, and at Taylor's feet when he was seated in the car, supports the conclusion that Taylor knew the location of the gun and had the ability to exercise dominion and control over the gun. Trooper Bordley's observation of Taylor reaching down toward the floorboard, where the gun was located, supports the conclusion that Taylor intended to exercise dominion and control over the gun.

Taylor argues that the water bottle found next to the gun on the floorboard coupled with the trial judge's *Lolly/Deberry* inference support the proposition that the evidence demonstrated "that Mr. Taylor may have [been] reaching towards the floorboard to the water bottle which contained marijuana, not the firearm."[9] However, as the trial judge correctly recognized, "this inference does not

[9] Op. Brf. at 19.

necessar[ily] establish that Mr. Taylor should be found not guilty."[10] The fact that Taylor posits an alternative theory of innocence regarding the water bottle is of no moment. "The State need not produce evidence that is 'consistent *solely* with the reasonable hypothesis of guilt.' . . . [A]n alternative explanation of the facts that is consistent with innocence does not mandate a finding of insufficient evidence."[11]

Taylor also argues that his acquittal of CCDW demonstrates that the trial judge ignored "facts which establish reasonable doubt that [he] knowingly possessed the firearm."[12] The fact that the trial judge rendered a seemingly inconsistent verdict is not dispositive of Taylor's sufficiency of the evidence claim.[13] When the indicted charges are based upon different statutes with separate, distinct elements, as was the case here, the sufficiency analysis does not change.[14] Thus, the relevant inquiry remains "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime[s] beyond a reasonable doubt.'"[15]

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[10] A170.
[11] *Morales v. State*, 696 A.2d 390, 394 (Del. 1997) (quoting *Williams v. State*, 539 A.2d 164, 167 (Del. 1988) (other citation omitted)).
[12] Op. Brf. at 20.
[13] *See Cannon v. State*, 1994 WL 35383, at *2 (Del. Feb. 3, 1994) (trial judge's acquittal on criminal trespass charge did not impact sufficiency analysis on theft and receiving stolen property charges for which Cannon was convicted).
[14] *Id.*
[15] *Id.* (quoting *Davis v. State*, 453 A.2d 802, 803 (Del. 1982) (other citation omitted)).

Taylor also appears to argue that the trial judge's acquittal on the CCDW charge, when viewed in light of the evidence presented on concealment, demonstrates that the State failed to meet its burden of proving the "possession" element of PFBPP. He conflates the PFBPP and CCDW statutes. Taylor concedes, "the main difference between the PFBPP and CCDW offenses is that CCDW requires proof that the firearm was concealed."[16] However, CCDW also differs from PFBPP because CCDW does not have a "possession" element. "Under 11 *Del C.* § 1442, a person is guilty of CCDW 'when the person carries concealed a deadly weapon upon or about the person without a license....' Whether a weapon is 'about the person' is determined by considering whether the weapon was immediately available and accessible to the person."[17] As noted above, the analysis of whether a defendant possessed a deadly weapon (or firearm) under PFBPP requires proof that the defendant: knew the location of the gun; had the ability to exercise dominion and control over the gun; and intended to exercise dominion and control over the gun. "Possession" and "carrying" are distinct from one another, thus the proof required to establish each element is different. When a defendant is convicted of CCDW and PFBPP, the sufficiency analysis involves consideration of different elements and

[16] Op, Brf. at 19.
[17] *Smith v. State*, 2015 WL 1422427, at *2 (Del. Mar. 26, 2015) (citing 11 *Del. C.* § 1442; *Gattman v. State*, 14 A.3d 502, 504 (Del. 2011)).

thus a separate determination of "possession" on the PFBPP charge.[18] Here the court's acquittal on the CCDW charge does not mean that the State failed to present sufficient evidence for the trial judge to convict Taylor of PFBPP.

Trooper Bordley testified that the firearm was not visible to the ordinary person and that in order to see it, he had to move Taylor and move the seat forward.[19] The photographs of the interior of the car admitted into evidence, however, depict the firearm partially under the driver's seat.[20] According to Trooper Bordley, for a person to exit the rear seat of the car, which is a two-door sedan, the front seat has to be pulled forward.[21] That is what Trooper Bordley did when he removed Taylor from the car.[22] When Trooper Bordley returned to the car, he saw the firearm on the floorboard partially under the driver's seat.[23] The trial judge could have determined that the State had not satisfied the "concealed" element of CCDW given its location and partial concealment.

The trial judge's verdict can alternatively be attributed to lenity. Under the rule of lenity, an inconsistent verdict will not be disturbed as long as the State presented sufficient evidence to establish that a rational fact finder could have found

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[18] *Id.*
[19] A96.
[20] State's Trial Exhibits 2-4.
[21] A83.
[22] A83.
[23] A84.

the defendant guilty beyond a reasonable doubt.[24] Such was the case here insofar as the State presented sufficient evidence for a reasonable trier of fact to convict Taylor of PFBPP.

[24] *Tilden v. State,* 513 A.2d 1302, 1307 (Del. 1986).

## CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION**

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Time New Roman 14-point typeface using Microsoft Word 2016.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 2,223 words, which were counted by Microsoft Word 2016.

*/s/ Andrew J. Vella*
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