



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.)	

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

REPLY BRIEF

COLLINS PRICE & WARNER

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Dated: February 29, 2024

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Appellant Shawn Taylor, through the undersigned counsel, replies to the State's Answering Brief as follows:

ARGUMENT

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

The Opening Brief argued that the trial judge erred in finding Mr. Taylor guilty of PFBPP despite acquitting him of the other offenses, like CCDW. The State failed to prove beyond a reasonable doubt that Mr. Taylor knowingly possessed the firearm recovered from the vehicle.

In its Answering Brief, the State argues that it presented sufficient evidence for the trial judge to determine that Mr. Taylor possessed the gun found on the floorboard of the car.¹ It contends that it “circumstantially proved” that Mr. Taylor possessed the gun.² The State highlights the location of the gun (under the driver's seat of the car by Mr. Taylor's feet) and Bordley's observation of Mr. Taylor reaching towards the floorboard to support its conclusion that Mr. Taylor “intended to exercise dominion and control over the gun.”³

To prove that Mr. Taylor actually possessed the firearm, the State was required to establish that he knowingly had direct physical control over the gun.

¹ Ans. Br. at 8.

² *Id.* at 9.

³ *Id.*

The State failed to meet this burden. Mere proximity to, or awareness of, the firearm is insufficient to establish actual possession.⁴

Here, the State failed to present sufficient evidence that Mr. Taylor knowingly had direct physical control over the gun. At trial, the evidence established that the car was not registered to Mr. Taylor. Mr. Taylor was merely a passenger in the car. Although police observed him reaching towards the floorboard in the general area where the gun (and water bottle) were located, there was no DNA or fingerprints linking Mr. Taylor to the gun. Not only was there no forensic evidence connecting Mr. Taylor to the gun, but his codefendant, Naim Abdullah, made statements claiming ownership of the firearm. No one testified that they saw Mr. Taylor with the gun. The State failed to establish that Mr. Taylor actually possessed the firearm.

The State can also try to prove that Mr. Taylor constructively possessed the gun. This requires that there be sufficient evidence that he “(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.”⁵

The State presented no evidence to establish that Mr. Taylor knew the location of the gun or intended to guide the destiny of it. The State’s evidence

⁴ *Carroll v. State*, 2017 WL 1223564, at *2 (Del. Mar. 27, 2017) (“The State must establish ‘more than proximity to, or awareness of [the item].’”).

⁵ *Lecates v. State*, 987 A.2d 413, 426 (Del. 2009).

established that a gun was found in the rear of the car under the driver's seat in the area where Mr. Taylor was seated. According to Bordley, the gun was not visible until the front seat was moved forward to allow Mr. Taylor to exit the rear of the car. Bordley also testified that he saw Mr. Taylor reaching towards the floorboard but did not know what he was reaching towards.

On the floorboard next to the gun was a water bottle containing marijuana. Police failed to recover this water bottle. The trial court considered a *Lolly/Deberry* inference as to this evidence. This meant that the trial court inferred that had the evidence been preserved, it would have been exculpatory. The defense argument was that Mr. Taylor may have been reaching towards the water bottle since it contained marijuana, rather than reaching towards the firearm. Mr. Taylor's mere proximity to, or his awareness of, the gun in the car does not establish beyond a reasonable doubt that he actually or constructively possessed it.

The State further alleges in its Answering Brief that Mr. Taylor conflated the PFBPP and CCDW statutes in its Opening Brief.⁶ The CCDW statute provides that "a person is guilty of carrying a concealed deadly weapon when the person carries concealed a deadly weapon upon or about the person without a license to do so..."⁷ It is undisputed in this case that the gun was not *upon* Mr. Taylor's person.

⁶ Ans. Br. at 11.

⁷ 11 *Del. C.* § 1442.

The question here was whether the firearm was sufficiently accessible to Mr. Taylor to have been carried *about* his person. Whether a deadly weapon is “about the person should be determined by considering the immediate availability and accessibility of the weapon to the person.”⁸ The issue at trial was whether the firearm was sufficiently accessible to Mr. Taylor to have been carried *about* his person.

When evaluating the accessibility of a deadly weapon, this Court has established the following three *Dubin* factors that should be considered: “(1) whether the defendant had to change [his] position appreciably to reach the weapon, (2) whether the defendant could reach the weapon while driving, and (3) the amount of time it would take for the defendant to reach the weapon, if the defendant were provoked.”⁹

Here, it is inconsistent for a rational trier of fact to find that Mr. Taylor knowingly possessed the gun for PFBPP while also finding that it was not about his person for CCDW. Thus, if a rational trier of fact found insufficient evidence to convict Mr. Taylor of CCDW, then it should similarly find insufficient evidence for a PFBPP conviction.

⁸ *Gallman v. State*, 14 A.3d 502, 504 (Del. 2011) (quoting *Dubin v. State*, 397 A.2d 132, 134 (Del. 1979)).

⁹ *Id.* at 504-505 (citing *Dubin*, 397 A.2d at 135).

The State lastly contends that the verdict in this case can be attributed to lenity. In *Tilden v. State*, this Court held that “the controlling standard for testing a claim of inconsistent verdicts is the rule of *jury* lenity now approved coupled with the sufficiency of evidence standard.”¹⁰ An important difference between the present case and *Tilden* is that *Tilden* involved jury lenity after a jury trial and Mr. Taylor’s case involved a bench trial.¹¹ The concept of jury lenity often arises in cases involving inconsistent verdicts in jury trials, not bench trials.¹² As such, the concept of lenity in bench trials does not appear to exist.

In light of the *Lolly/Deberry* inference and the other evidence, the State failed to establish beyond a reasonable doubt that Mr. Taylor knowingly possessed (either actually or constructively) the firearm. As such, when viewing the evidence in the light most favorable to the State, no rational trier of fact could find Mr. Taylor guilty beyond a reasonable doubt of PFBPP.

¹⁰ *Tilden v. State*, 513 A.2d 1302, 1307 (Del. 1986) (emphasis added).

¹¹ *Id.*

¹² *See Tilden*, 513 A.3d at 1302; *Whitefield v. State*, 867 A.2d 168 (Del. 2004); *Priest v. State*, 879 A.2d 575 (Del. 2005).

CONCLUSION

For the foregoing reasons, as well as those set forth in the Opening Brief, Appellant Shawn Taylor respectfully requests that this Court reverse the judgement of the Superior Court.

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