

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	ID No. 1005002734
)	
JEFFREY W. ROSE,)	
)	
Defendant.)	

Date Submitted: May 19, 2011
Date Decided: August 15, 2011

Upon Defendant's Motion for Judgment of Acquittal:
DENIED

Andrew J. Vella, Esq. Deputy Attorney General, 820 North French Street, 7th Floor.,
Wilmington Delaware, 19801, Attorney for the State of Delaware.

Beth D. Savitz, Esq., Assistant Public Defender, 820 North French Street, Wilmington
Delaware, 19801, Attorney for the Defendant.

Jurden, J.

I. INTRODUCTION

On June 7, 2010, Jeffrey Rose (“Defendant”) was indicted by a grand jury on the following charges: Trafficking Cocaine; Possession with Intent to Deliver (“PWID”) Cocaine; Maintaining a Dwelling for Keeping Controlled Substances (“Maintaining a Dwelling”); Possession of Drug Paraphernalia; and Possession of Ammunition by a Person Prohibited.¹ On March 8, 2011, a jury convicted Defendant of Maintaining a Dwelling and Possession of Drug Paraphernalia and acquitted Defendant on Trafficking Cocaine and PWID Cocaine. In a bench trial, the Court found Defendant guilty of Possession of Ammunition by a Person Prohibited. On April 8, 2011, Defendant filed a Motion for Judgment of Acquittal pursuant to Criminal Rule 29(c), as to the Maintaining a Dwelling charge.² For the following reasons, Defendant’s Motion is **DENIED**.

II. FACTS

On May 4, 2010, police officers executed a search warrant at the Defendant’s residence, located at 806 Bennett Street, Wilmington, Delaware. Approximately 13 grams of cocaine were discovered by police outside the residence, hidden behind a piece of siding. The police recovered an additional 1.7 grams of cocaine inside a water access panel in the vestibule, located outside of the Defendant’s apartment. Inside the apartment, police found a digital scale, numerous small zip lock bags, and a white powdery substance commonly used as a cutting agent for cocaine.³ In the living room, police found an intricate surveillance system consisting of a flat-screen monitor

¹ See Indictment, Docket Item (“D.I.”) 22.

² See Defendant’s Memorandum in Support of Motion for Judgment of Acquittal (“Def. Mot.”) D.I. 33.

³ The State provided expert testimony that the items found in the Defendant’s apartment was drug paraphernalia.

connected to two exterior surveillance cameras, four two-way hand held radios, and a set of binoculars.

III. PARTIES' CONTENTIONS

Defendant argues he is entitled judgment of acquittal pursuant to Criminal Rule 29(c) because there is insufficient evidence in the record to sustain a conviction for Maintaining a Dwelling.⁴ Defendant contends that “[i]n order for [him] to be found guilty of the Trafficking and PWID Cocaine charges, the jury would have to find, beyond a reasonable doubt, that he knowingly possessed the cocaine found outside his apartment. By finding him not guilty of those charges, the jury necessarily rejected the possession element.”⁵ Defendant argues that possession is a necessary element of Maintaining a Dwelling, and because the jury found him not guilty on the possession charges, he is entitled judgment of acquittal on the Maintaining a Dwelling charge.

The State contends that the convictions should be sustained because Maintaining a Dwelling is not predicated on drug possession. While the jury did not find sufficient evidence to convict Defendant of cocaine possession, they did find that, pursuant to 16 *Del. C.* § 4755(a)(5), he knowingly used and maintained his home for the purpose of facilitating drug activity.

IV. STANDARD OF REVIEW

In deciding whether to grant a motion for judgment of acquittal, the Court must view all legitimately drawn inferences and evidence in a light most favorable to the State, and determine whether a rational fact finder could have found the defendant guilty

⁴ Super. Ct. Crim. R. 29(c).

⁵ Def. Mot. at 4.

beyond a reasonable doubt.⁶ Only where the State has offered insufficient evidence to sustain a guilty verdict will a motion for judgment of acquittal be granted.⁷

V. DISCUSSION

To secure a conviction under 16 *Del. C.* § 4755(a)(5), the State must establish that the defendant knowingly kept or maintained a dwelling “which is resorted to by persons using controlled substances . . . or which is used for keeping or delivering [controlled substances].”⁸ The “critical benchmark” for determining whether the evidence is sufficient to support a conviction for Maintaining a Dwelling is “the degree of the defendant's control or use of the [dwelling] in connection with the possession of drugs.”⁹ The State must “offer evidence of some affirmative activity by the defendant to utilize the [dwelling] to facilitate the possession, delivery, or use of controlled substances.”¹⁰

Defendant contends he can not be convicted of Maintaining a Dwelling because he was acquitted on the possession charges, which, he argues, is a necessary element of Maintaining a Dwelling. Possession of a controlled substance is not a required element of Maintaining a Dwelling. A person can be guilty of Maintaining a Dwelling without possessing drugs.¹¹ In *White v. State*, the Delaware Supreme Court found that possession of a controlled substance and Maintaining a Dwelling are two separate offenses that do not depend on each other.¹² The Court held:

Possession of [a controlled substance] is an offense involving a person who knowingly or intentionally possesses [a controlled substance]. The elements of maintaining a dwelling for the purpose of keeping controlled substances include knowingly keeping a dwelling with knowledge that

⁶ *Vouras v. State*, 452 A.2d 1165, 1169 (Del.1982).

⁷ *Id.*

⁸ 16 *Del. C.* § 4755(a)(5).

⁹ *Hopkins v. State*, 893 A.2d 922, 932 (Del. 2006).

¹⁰ *Priest v. State*, 879 A.2d 575, 576 (Del. 2005).

¹¹ *Fisher v. State*, 953 A.2d 258, 260 (Del. 2008).

¹² *White v. State*, 2007 WL 2320068, at *2 (Del. Aug. 15, 2007).

the dwelling is used for keeping controlled substances. Proof of the elements for possession of [drugs] does not prove the elements of maintaining a dwelling. Moreover, the two statutes punish two different behaviors. One punishes the possession [of] the drug, while the other punishes the use of a dwelling for possessing the drug. Possession of [a controlled substance] is not a lesser included offense of maintaining a dwelling for the purpose of keeping a controlled substance.¹³

Similarly, in *Fisher v. State*, the Court found that a possession conviction was not a lesser-included offense of Maintaining a Dwelling because each of the offenses require proof of different elements.¹⁴ In order to be guilty of possession, a person does not have to be Maintaining a Dwelling.¹⁵ In order to be guilty of Maintaining a Dwelling, the person does not have to possess drugs.¹⁶ Accordingly, possession of cocaine is not an element of Maintaining a Dwelling.¹⁷

The State produced sufficient evidence to demonstrate that Defendant knowingly used and maintained his home for the purpose of facilitating drug activity. The State provided sufficient evidence to show the Defendant resides at 806 Bennett Street, Wilmington, Delaware. In addition, the State provided sufficient evidence that the police recovered various forms of drug paraphernalia from the Defendant's apartment, including a digital scale, small zip lock baggies, and a white powdery substance commonly used as a cutting agent for cocaine. The jury convicted Defendant of Possession of Drug Paraphernalia.

Possession of Drug Paraphernalia is an affirmative activity by the Defendant to utilize the dwelling to facilitate the possession, delivery, or use of controlled

¹³ *Id.*

¹⁴ *Fisher*, 953 A.2d at 260.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *White*, 2007 WL 2320068, at *2.

substances.¹⁸ The fact that Defendant may not have possessed narcotics is not dispositive because possession is not an element of the offense. Therefore, the State provided sufficient evidence to sustain the Defendant's conviction for Maintaining a Dwelling.

CONCLUSION

For the aforementioned reasons, the Defendant's Motion for Judgment of Acquittal is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

¹⁸ *Priest*, 879 A.2d at 580.