

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REGINALD JACKSON,)
) No. 206, 1999
 Defendant Below-)
 Appellant,) Court Below: Superior Court of
) the State of Delaware in and for
 v.) New Castle County
)
 STATE OF DELAWARE,) Cr. A. No. IN98-01-0943
) Cr. ID No. 9801007022
 Plaintiff Below,)
 Appellee.)

Submitted: August 15, 2000
Decided: September 13, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices.

ORDER

This 13th day of September, 2000, upon consideration of the briefs of the parties, it appears to the Court that:

1. Reginald Jackson appeals the Superior Court's admission of testimonial evidence by a Wilmington police officer during Jackson's trial for Attempted Murder First Degree, Robbery First Degree and two counts of Possession of a Firearm During the Commission of a Felony. Jackson claims that the officer's testimony was inadmissible hearsay and the Superior Court erred as a matter of law in not rejecting the testimony.

2. Jackson made no specific objection to the detective's testimony. Consequently, the standard for review by this Court of the Superior Court's admission of the detective's testimony, absent an objection on Constitutional grounds, is plain error. *Wainwright v. State*, Del. Supr., 504 A.2d 1096 (1986). Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process. *Dutton v. State*, Del. Supr., 452 A.2d 127, 146 (1982).

3. Jackson argues that he has standing to contest the admission of the fact that the detective overheard his comments and the detective's testimony about his statement at trial because he had a possessory interest and a legitimate expectation of privacy in his statement. *Rakas v. Illinois*, 439 U.S. 128 (1978); *Thomas v. State*, Del. Supr., 467 A.2d 954 (1983). Jackson contends that the detective violated his expectation of privacy and that the Superior Court erred in admitting the testimony about Jackson's out-of-court statement.

4. The State contends that Jackson's failure to object to the alleged constitutional violation, as provided by D.R.E. 103(a)(1) results in a forfeiture of his claim absent plain error. Del. Supr. Ct. R. 8.

Since Jackson failed to object on constitutional grounds to the detective's testimony, any review of the testimony must be done under a plain error standard.

Under the plain error standard of review, .the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process. . . . Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.

Wainwright, 1100 at 8.

5. In the present case, the main evidence against Jackson was not the testimony by the detective, but rather the direct testimony of the victim, Mills, and the eyewitness, Allen. Direct testimony by the injured party upon which the charges are based and an eyewitness clearly establishes that the jury would have convicted Jackson with or without the detective's testimony. *Robertson v. State*, Del. Supr., 596 A.2d 1345, 1355 (1991) (holding that the standard of review for assessing insufficiency of evidence claim is whether any rational trier of fact, viewing evidence in light most favorable to the State, could find defendant guilty beyond a reasonable doubt).

6. Assuming *arguendo* that Jackson correctly raised a constitutional objection, based on his Fourth Amendment right to freedom from unlawful searches and seizures, the detective's testimony about the conversation in jail does not violate any constitutional rights. Jackson claims that the detective listening to his conversation constituted an

unreasonable search and seizure in violation of his Fourth Amendment rights. A search and seizure does not violate an individual's Fourth Amendment rights if the intrusion is reasonable. *Lido Social Club v. State*, Del. Supr., 86 A.2d 859 (1952). Jackson argues that the listening in on his conversation constituted an unreasonable search and seizure because the conversation was not listened to for institutional security purposes, which he argues is the only allowable search and seizure in a prison under *Bell v. Wolfish*, 441 U.S. 520 (1979).

7. We are not persuaded that the holding in *Wolfish* should be extended as Jackson suggests. *Wolfish* holds that a prisoner or a pretrial detainee has a diminished expectation of privacy and that room searches and body-cavity searches of detainees do not violate their Fourth Amendment rights. *Id.* at 557-58. Jackson's speech and the fact that the detective overheard it does not rise to the level of a violation of a constitutional right because it was voluntary speech that does not fall within any reasonable or even rational expectation of confidentiality. There is no expectation of privacy between inmates in a detention or correctional facility. *United States v. Clark*, 22F.3d 799 (8th Cir. 1994).

8. Given the direct testimony of an eyewitness and the victim, no plain error resulted from admitting the detective's testimony because

Jackson's conviction was supported by other substantial evidence. The Fourth Amendment does not protect Jackson's conversations in a detention facility or prison.

NOW, THEREFORE, IT IS ORDERED, for all the reasons stated above, the Superior Court is **AFFIRMED**.

BY THE COURT:

s:\Myron T. Steele

Justice