

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEREMY L. ROBINSON,)
) No. 582, 2012
 Defendant Below,)
 Appellant,) Court Below: Superior Court
) of the State of Delaware in
 v.) New Castle County
)
 STATE OF DELAWARE,) Cr. ID No. 1111015589
)
 Plaintiffs Below)
 Appellee.)

Submitted: August 28, 2012

Decided: October 25, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 25th day of October 2013, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

1. Appellant Jeremy L. Robinson appeals his conviction in the Superior Court of Possession of a Firearm by a Person Prohibited (PFBPP).¹

2. Police arrested Robinson on November 22, 2011. Police patted Robinson down and found 3.4 grams of crack cocaine, \$182 in cash, and a key to a particular house under surveillance in Robinson's pants pocket. After taking Robinson into custody, Police obtained and executed a search warrant on the house. The police found a scale and plastic baggies on the kitchen counter, and a .38 Smith and Wesson revolver,

¹ A jury also convicted Robinson on charges of Drug Dealing, however, he only appeals his conviction on the charge of PFBPP.

loaded with six rounds of ammunition, in the broiler drawer of the oven.

3. The police questioned Robinson after reading him his *Miranda* rights. Robinson admitted selling drugs, but explained that he found the gun in a nearby alleyway and placed it in the oven at the house without ever using it. At trial, Robinson testified that he fabricated his statement to police regarding the gun because he wanted to avoid being charged with any murders or robberies in which the gun may have been used.

4. A New Castle County grand jury indicted Robinson on the following charges: Drug Dealing; PFBPP; and Possession of Drug Paraphernalia.² On April 10, 2012, Robinson filed a motion to suppress his statements to police regarding the handgun. After an evidentiary hearing, a Superior Court judge denied the motion on May 11, 2012. Beginning on June 5, 2012, the Superior Court held a three-day jury trial and convicted Robinson of Drug Dealing and PFBPP.

5. Immediately before trial, Robinson advised the trial judge that he intended to stipulate that he was a “person prohibited” from possessing a firearm. At trial, Robinson objected to a proposed jury instruction on the charge of PFBPP because the instruction stated that a previous felony conviction qualified him as a person prohibited. In response, the trial judge explained that he did not intend to remove the reference to Robinson’s prior felony conviction in the indictment and jury instructions unless

² The grand jury also indicted Robinson for Driving While License Suspended/Revoked, but the State voluntarily dismissed that charge before trial.

Robinson provided legal authority that specifically required a change. Robinson's trial counsel failed to provide adequate legal authority to remove the reference to Robinson's prior felony conviction.

6. Robinson then requested that, if the trial judge intended to include the prior felony conviction language in the indictment and jury instructions, a limiting instruction be given to prevent the jury from impermissibly inferring a criminal propensity. The judge orally agreed to give the limiting instruction if the reference to Robinson's prior felony conviction remained in the originally proposed jury instructions. The trial judge gave the following jury instruction for the charge of PFBPP:

In order to find the defendant guilty of possession of a firearm by a person prohibited[,] . . . you must find that all of the following elements have been established beyond a reasonable doubt: One, the defendant knowingly owned, possessed, or controlled a firearm at the time of the charged offense; in this case a handgun; two, the defendant was prohibited from purchasing, owning, or possessing or controlling a firearm *because he had been previously convicted of a felony*. The parties have stipulated or agreed that the defendant was prohibited from owning, possessing or controlling a firearm, and therefore, this element the parties agree, has been established.³

The instruction mentioned Robinson's prior felony conviction as the basis for his stipulation, but did not include the limiting instruction Robinson's attorney had requested by his attorney.

7. Robinson argues that the trial judge deprived him of a fair trial by informing the jury that he had been previously convicted of a felony. Relying on the

³ App. to Op. Br. at A19 (emphasis added).

United States Supreme Court’s decision in *Old Chief v. United States*,⁴ Robinson contends that because he stipulated to the PFBPP charge’s “person prohibited” element, the trial judge’s reference to a prior felony conviction in the jury instruction was both unnecessary and unfairly prejudicial. Robinson contends that because the judge gave the instruction informing the jury that he had been previously convicted of a felony, and did so without any further guidance to the jury through a limiting instruction addressing the relevance of his status as a convicted felon, the instruction deprived him of a fair trial.

8. When a trial judge “refus[es] to give a ‘particular [jury] instruction (that is, an instruction is given but not with the exact form, content or language requested),” we review for an abuse of discretion.⁵ We have held that “[a] defendant is not entitled to a particular instruction, but he has the right to a correct statement of the substantive law.”⁶ Thus, jury instructions must only “correctly state[] the law and enable[] the jury to perform its duty.”⁷

9. The Third Circuit Court of Appeals in *United States v. Higdon*, interpreting a similar federal gun possession statute, explained that “[a]lthough a defendant may, by stipulating that he has a prior felony conviction, prevent the jury from hearing the nature

⁴ 519 U.S. 172 (1997).

⁵ *Hankins v. State*, 976 A.2d 839, 840 (Del. 2009) (quoting *Wright v. State*, 953 A.2d 144, 148 (Del. 2008)).

⁶ *Id.* (citing *Floray v. State*, 720 A.2d 1132, 1138 (Del. 1998)).

⁷ *Brown v. State*, 49 A.3d 1158, 1160 (Del. 2012) (quotations omitted).

or underlying facts of the conviction, he may not prevent the jury from learning *the fact that he has a prior felony conviction—a ‘crucial element’ of the offense.*”⁸ Thus, “a [trial] court may not entirely exclude a stipulated fact from the jury’s consideration when that fact constitutes an element of an offense.”⁹

10. When instructing the jury of the elements of PFBPP, the trial judge accurately recited the relevant portion of the statute prohibiting “any person having been convicted . . . of a felony” from “purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm.”¹⁰ Even though Robinson stipulated that he was a person prohibited from possessing a firearm, the trial judge did not abuse his discretion because the instruction accurately stated the law.

11. Robinson’s argument that the trial judge erred by not issuing the requested limiting instruction is not wholly without merit. Because the jury instructions referenced Robinson’s “felon” status, his defense counsel requested a limiting instruction so that the jury would not infer bad character or a criminal propensity to commit the charged crime. The trial judge appeared to have granted this request, but failed to give the requested instruction explaining the limitation on the inferences the jury could properly draw from the fact of a qualifying prior felony conviction.

⁸ *United States v. Higdon*, 638 F.3d 233, 242 (3d Cir. 2011) (quoting *United States v. Chevere*, 368 F.3d 120, 122 (2d Cir. 2004) (emphasis in original)).

⁹ *Id.*

¹⁰ 11 *Del. C.* § 1448(a)(1).

12. We review a denial of a requested jury instruction *de novo*.¹¹ The *Higdon* court acknowledged “the danger of undue prejudice inherent in any attempt to inform a jury that a defendant has a prior criminal conviction.”¹² Further, that court explained that when a prior conviction is an element of the crime charged, “any prejudice result[ing] from the requirements of the statute itself . . . is best addressed by an appropriately forceful limiting instruction.”¹³

13. Although “a curative instruction will [not] always vitiate all possibility of prejudice in every case,”¹⁴ the trial judge should have issued a limiting instruction accompanying the general PFBPP jury instruction. Without a limiting instruction, the reference to Robinson’s felon status “could have unfairly predisposed the jury to convict him [of] . . . the weapon possession offense[.]”¹⁵ Therefore, the trial judge erred by failing to give a limiting jury instruction.

14. Although the trial judge erred in denying the request for a limiting jury instruction, we find that error to be harmless. An instruction referring to a prior criminal conviction “can certainly create bias that could increase the likelihood of a conviction on

¹¹ *Massey v. State*, 953 A.2d 210, 215 (Del. 2008) (citing *Lunnon v. State*, 710 A.2d 197 (Del. 1998)).

¹² *Higdon*, 638 F.3d at 243.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Bowen v. State*, 905 A.2d 746 (Del. 2006) (TABLE).

something other than evidence.”¹⁶ Here, however, the prosecution adduced sufficient evidence at trial such that a reasonable jury could have convicted Robinson without relying on an impermissible character inference. Robinson testified at trial that he was a “drug dealer”, which allowed the jury to infer association with the weapon. Further, Robinson initially admitted to the police that he had placed the gun where the police found it. Robinson also had access to the locked residence and to the oven in which he placed the gun. At trial, however, Robinson testified that he lied to the police about actually possessing the gun. While Robinson’s trial testimony contradicts his earlier admission to the police, the jury was free to reject Robinson’s alternative story. Even with the requested limiting instruction, a reasonable jury still could have convicted Robinson beyond a reasonable doubt without any impermissible propensity inferences.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁶ *Higdon*, 638 F.3d at 243.