

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAFAYETTE E. MILLER,	§	
	§	Nos. 564, 2004 and 10, 2005
Defendant Below,	§	(Consolidated)
Appellant,	§	
	§	Court Below: Superior Court of
v.	§	the State of Delaware in and for
	§	New Castle County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 0403022047
Plaintiff Below,	§	
Appellee.	§	

Submitted: June 22, 2005

Decided: July 12, 2005

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

ORDER

This 12th day of July 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. The defendant-below appellant, Lafayette Miller, appeals from his conviction, by a Superior Court jury, of three weapons possession charges and three misdemeanor drug offenses. Miller argues that the Superior Court erred in refusing to declare a mistrial because (he contends) a juror made improper comments that tainted the deliberations of the remaining members of the jury panel. Miller also argues that the evidence was not sufficient to support his conviction of the weapons possession charges. Because the State did not abuse its

discretion in denying Miller's motion for a mistrial, and because there was sufficient evidence to support Miller's convictions, we affirm.

2. Miller was arrested on March 26, 2004 after the Wilmington police executed a warrant to search an apartment rented by Miller's girlfriend, Serita Williams. In one of the bedrooms in the apartment, the police found a vial of marijuana and some papers bearing Miller's name. Elsewhere in the house, the police found drug paraphernalia, a bag containing a shotgun and a handgun, and ammunition for both guns.

3. At trial, Serita Williams testified that the drug paraphernalia, the guns, and the ammunition belonged to Miller. She stated that she had seen Miller put the handgun under the pillow in the bedroom that they shared, and that he kept the shotgun near the back door when he was selling drugs. The guns and ammunition were found in a bag directly behind the house. Williams testified that Miller sold drugs, and that he usually conducted his drug sales from the back door of her apartment.

4. During Williams' testimony, the trial judge ordered a recess. At that time, a juror told some of the other members of the jury panel that she empathized with Williams, because she had been in a similar situation when her former fiancé sold drugs while they were living together. That juror stated that:

I said man, that is something else . . . where you end up living with someone, and he was doing drug trafficking in my car, he ended up

using my brother's name to get a ticket, my brother had to end up appearing in court, so that's why it caused a lot of uproar in my household. . . . I mean, it's something that has happened but it wasn't to the point—it was just you can identify with the situation. . . . It just that this was the facts have been presented it like this all could have been my situation.

5. The juror's statements were immediately brought to the attention of the trial judge, who interviewed the juror on the record and then removed her from the panel. The trial judge also interviewed the remaining jurors, and asked each member of the panel whether they could put the juror's comments to one side, and consider the case fairly and impartially. Each member of the panel responded affirmatively to that question, and based on those answers the judge denied Miller's motion for a mistrial.

6. The jury convicted Miller of two counts of Possession of a Deadly Weapon by a Person Prohibited, one count of Possession of Ammunition by a Person Prohibited, one count of Possession of a Narcotic, one count of Possession of Drug Paraphernalia, and one count of Possession of a Nonnarcotic. Miller was sentenced to a mandatory minimum sentence of six years in prison, a sentence from which Miller appeals.

7. Miller raises two claims of error on appeal. He first argues that the Superior Court abused its discretion by denying his motion for a mistrial based on the juror's improper comments. Second, he contends that there was not sufficient evidence to support his convictions for the weapons-related charges, because the

State did not prove that the weapons were physically accessible to Miller at the time of his arrest.

8. This Court reviews the Superior Court's denial of a motion for a mistrial for abuse of discretion.¹ That Court has broad discretion to determine the appropriate remedy for cases of alleged juror misconduct.² Therefore, "a trial judge should grant a mistrial only where there is a 'manifest necessity' or the 'ends of public justice would be otherwise defeated.'"³

9. Miller argues that the juror's improper statements tainted the entire jury panel. He contends that the State's case hinged on Serita Williams' testimony, and that because the juror's comments bolstered her credibility, he was thereby denied his constitutional right to an impartial jury.⁴ Miller's argument fails however, because he has not shown that he was actually prejudiced by the juror's comments, and because the circumstances were not so egregious and inherently prejudicial as to raise a presumption of prejudice.

¹ *Flowers v. State*, 858 A.2d 328, 332 (Del. 2004) (citing *Taylor v. State*, 685 A.2d 349, 350 (Del. 1996)).

² *Lovett v. State*, 516 A.2d 455, 475 (Del. 1986) ("The Trial Judge has very broad discretion in deciding whether a case must be retried or the jurors summoned and investigated due to alleged exposure to prejudicial information or improper outside influence.").

³ *Steckel v. State*, 711 A.2d 5, 11 (Del. 1998) (quoting *Fanning v. Superior Court*, 320 A.2d 343, 345 (Del. 1974)).

⁴ U.S. CONST. Amend. VI; DEL. CONST. Art. I, § 7.

10. In cases of juror misconduct, a defendant is entitled to a new trial only where the circumstances are so egregious as to be inherently prejudicial, or where the defendant can show that the misconduct caused actual prejudice.⁵ Miller has not met either standard. This Court has found egregious circumstances to be inherently prejudicial where the jury members were made aware of information, not introduced at trial, that related to the facts of the case or the character of the defendant.⁶ Where the juror misconduct did not involve the communication of information outside the evidence presented at trial, this Court has held that there was no inherent prejudice in the juror's misconduct.⁷ Here, there was no inherent prejudice because the jurors did not hear outside information relating to the facts of

⁵ *Caldwell v. State*, 780 A.2d 1037, 1059 (Del. 2001); *Massey v. State*, 541 A.2d 1254, 1257 (Del. 1988).

⁶ See, e.g. *Flonnory v. State*, 778 A.2d 1044 (Del 2001) (Jury received information from an outside source that the defendant had participated in another murder); *Hughes v. State*, 490 A.2d 1034, 1043-44 (Del. 1985) (jurors were aware of the defendant's prior conviction for the same offense).

⁷ See, e.g., *Durham v. State*, 867 A.2d 176, 179-80 (Del. 2005) ("In order to prevail on a sleeping-juror claim, the defendant must show that prejudice resulted from the juror ignoring 'essential portions of the trial.'"); *Caldwell v. State*, 780 A.2d at 1059 (no inherent prejudice when juror on panel failed to reveal that she was good friends with a deputy attorney general who was not trying the case); *Capano v. State*, 781 A.2d 556 (Del. 2001) (no prejudice as a result of conversation between jurors on separate cases); *Massey v. State*, 541 A.2d at 1257 (juror who was under the influence of drugs and alcohol was not inherently prejudicial to defendant); *Sheeran v. State*, 526 A.2d 886, 897 (Del. 1987) (one juror's allegations that she was unfairly pressured into a verdict by two other jurors were not egregious circumstances warranting a new trial).

the case. All the jury heard was one juror express her sympathy for a third party witness.

11. A defendant who cannot show that circumstances of a juror's misconduct were inherently prejudicial, may still be entitled to a new trial if he can show actual prejudice. Here, however, Miller made no showing that the juror's comments actually prejudiced the jury. The trial judge immediately dismissed that juror from the panel, and individually questioned the remaining members of the jury to determine that they could remain impartial. In addition, the fact that the jury acquitted Miller of one charge, and was unable to reach a verdict on three other charges, suggests that the remaining members of the panel were able to be impartial fact finders.⁸

12. Because the juror's improper comments were not inherently prejudicial, and because Miller made no showing of actual prejudice, the Superior Court did not abuse its discretion in denying Miller's motion for a mistrial.

13. In his second claim of error, Miller argues that the State did not present sufficient evidence to support his convictions of two counts of Possession of a Deadly Weapon by a Person Prohibited and one count of Possession of Ammunition by a Person Prohibited. When a defendant challenges the sufficiency

⁸ The jury acquitted Miller of the charge of possession of a stolen firearm, and the jury was unable to reach a verdict on the charges of possession of a firearm during the commission of a felony, maintaining a dwelling for keeping controlled substances, and conspiracy.

of the evidence to support a conviction, this Court reviews the evidence to determine whether a rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt.⁹ Rulings involving statutory interpretation are reviewed *de novo*.¹⁰

14. Under 11 *Del. C* § 1448(a), a “prohibited person” is forbidden from “purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State.” Although Miller stipulated that he was a “prohibited person” for purposes of the statute, he contends that there was insufficient evidence to support his conviction under Section 1448(a), because the State did not prove that the weapons and ammunition were physically available and accessible to him at the time of his arrest.

15. Although this issue is one of first-impression for this Court, Miller’s argument fails because the statute contains no requirement that a defendant be in actual possession of the weapons at the time of his arrest. Miller bases his argument on cases that require proof of physical accessibility to sustain a conviction of Possession of a Weapon During the Commission of a Felony (“PWDCF”). Unlike the statute defining the crime of PWDCF, Section 1448(a)

⁹ *Hardin v. State*, 844 A.2d 982, 989 (Del. 2004); *Seward v. State*, 723 A.2d 365, 369 (Del. 1999).

¹⁰ *Jackson v. Multi-Purpose Criminal Justice Facility*, 700 A.2d 1203, 1205 (Del. 1997); *State v. Lewis*, 797 A.2d 1198, 1199 (Del. 2002).

contains no requirement of temporal possession. The PWDCF statute prohibits weapon possession *during* the felony.¹¹ In contrast, Section 1448(a) makes it a crime for a prohibited person to possess a weapon or ammunition *at any time*. Therefore, under Section 1448(a), the State need only prove that a defendant possessed or controlled a weapon at some point, not necessarily at the time of his arrest. That conclusion is supported by cases in other jurisdictions, holding that proof of physical accessibility at the time of arrest is not required in order to sustain a conviction for possession of weapons or ammunition by a person prohibited.¹²

16. Here, the State met its burden by presenting evidence that the guns and ammunition had been in Miller's possession at some time before his arrest. The State presented the testimony of Miller's girlfriend, which proved that the weapons belonged to Miller, that he kept them in his possession and physically accessible

¹¹ 11 *Del. C.* § 1447 (Possession of Deadly Weapon During Commission of a Felony); 11 *Del. C.* § 1447A (Possession of a Firearm During Commission of a Felony).

¹² See, e.g., *U.S. v. Brown*, 125 Fed. Appx. 51, 52-53 (7th Cir. 2005) (sufficient evidence to support a conviction of possession of a firearm by a convicted felon, where defendant was arrested outside his apartment, and upon searching the apartment police found handgun in dresser drawer and rifle and ammunition in closet of bedroom); *U.S. v. Broadie*, 116 Fed. Appx. 452 (4th Cir. 2004) (sufficient evidence to support conviction of possession of a firearm by a convicted felon even though no gun was found at the time he was arrested. When the police responded to a call that a gun had been discharged, defendant admitted that he had possessed a shotgun in the apartment but had moved it, and police found unspent rounds in defendant's bedroom that matched a freshly fired round found on the sidewalk outside the apartment); *U.S. v. Williams*, 110 Fed. Appx. 638 (6th Cir. 2004) (sufficient evidence to support conviction of possession of a firearm by a convicted felon, even though defendant lacked knowledge of the gun's precise location at the time of his arrest. Defendant admitted that he borrowed the gun from a friend, and the gun was found in his apartment.).

while he was selling drugs, and that the weapons were found in a location where he was known to conduct drug sales. That testimonial evidence from Miller's girlfriend was sufficient for a rational trier of fact to find Miller guilty beyond a reasonable doubt.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice