IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE I. GUARDARRAMA, JR.,	§	
	§	No. 129, 2006
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. A. Nos. IN05-02-1089
	§	IN05-05-1339W
Plaintiff Below,	§	IN05-02-1093
Appellee.	§	IN05-02-1093

Submitted: September 20, 2006
Decided: October 17, 2006

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

O R D E R

This 17th day of October 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Jose I. Guardarrama, Jr. ("Guardarrama"), the defendant-below appellant, appeals from a Superior Court order denying his motion for judgment of acquittal. Guardarrama contends that the Superior Court erroneously denied his motion because: (a) the jury's verdicts were fatally inconsistent; (b) the Superior Court abused its discretion by deciding the motion after the State failed to file a response to Guardarrama's motion for a judgment of acquittal; and (c) the exclusion of the defendant's mother from the courthouse violated the defendant's

constitutional right to a public trial. Because we find Guardarrama's claims to be devoid of merit, we affirm.

2. On February 8, 2005, the Wilmington Police Department executed a warrant to search a two-story residence located at 134 Lower Oak Street in the City of Wilmington. When the police knocked on the front door, Ashley Lafferty ("Ashley") answered. Walter Lafferty (Ashley's brother) and her ex-boyfriend, Guardarrama, were the only other persons present in the house when police arrived. Lafferty and Guardarrama came downstairs in about 30 seconds.

3. The police went upstairs, and in the second floor rear bedroom they found: (a) a clear plastic bag containing 12.09 grams of crack cocaine in the top drawer of a nightstand beside the bed; (b) several small clear ziplock plastic bags, Guardarrama's state ID and a letter addressed to the defendant in the same drawer; (c) several small plastic bags on the floor along with a box of sandwich bags; and (d) a box of clear plastic sandwich bags on a dresser. This rear bedroom belonged to Ashley, but police noted that male clothing was lying on the bedroom floor. The police also found a clear plastic bag containing 17 smaller plastic bags of crack cocaine on the outside roof immediately adjacent to the bedroom window. The weight of the cocaine found on the outside roof totaled 1.7 grams. At the police station, the police also recovered two small baggies containing 0.97 grams of crack cocaine from Guardarrama's pants pocket.

4. Ashley was originally a co-defendant. Under a plea bargain agreement with the State, Ashley had entered the drug diversion program by the time of co-defendant Guardarrama's trial, and she testified as a prosecution witness at that trial. Ashley testified that: (a) the bag of crack cocaine discovered in the drawer of the nightstand belonged to Guardarrama; (b) the cocaine found outside her bedroom window belonged to her brother, Walter Lafferty; (c) she had previously seen Guardarrama package drugs in the plastic bags found by the police in her bedroom; (d) Guardarrama purchased cocaine from a "black guy," then resold it; and (e) Ashley had never seen Guardarrama smoke crack cocaine.

5. Ashley's testimony must be contrasted with the testimony of Detective Thomas Looney, who observed that in his experience a drug seller would usually have 5 to 20 grams of the product, while a user would, at best, be in possession of a gram and a half. Under this experiential standard, Detective Looney testified that the 0.97 grams of crack cocaine packaged in two bags and found in the accused's pants pocket *may or may not* have been possessed for the purpose of resale rather than personal consumption.

6. On March 21, 2005, Guardarrama was indicted on six charges. The jury returned a verdict of not guilty to the charge of trafficking in cocaine. The jury found Guardarrama guilty, however, of: (a) possession with intent to deliver

cocaine, (b) maintaining a dwelling for the use of drugs, and (c) possession of drug paraphernalia.

7. After the jury verdict, Guardarrama filed a post-trial motion for judgment of acquittal, arguing that his acquittal of the trafficking cocaine charge was fatally inconsistent with his three convictions on the remaining charges.[1] The Superior Court rejected Guardarrama's arguments for two reasons. First, even if the jury did not link the crack cocaine discovered in the nightstand and on the roof with Guardarrama, the defendant still had two bags of cocaine in his pants pocket when he was searched at the police station. That third cocaine stash, together with the other evidence, was a sufficient evidentiary basis to convict Guardarrama of the other three drug offenses. Second, and alternatively, the acquittal of Guardarrama on the cocaine trafficking charge can be attributed to jury lenity.

[1] The defendant's reasoning will be discussed in more detail later.

8. In this case, it is undisputed that the standard of review for the first and third claims of error is *de novo*.[2] Because the second claim presents a question of law, it is also subject to *de novo* appellate review.[3]

9. The defendant argues that there are fatal inconsistencies between his convictions of possession with intent to deliver cocaine and his acquittal of trafficking in cocaine. Under Delaware law, conviction for possession with intent to deliver cocaine requires proof of intent; while a conviction for trafficking in cocaine requires proof of the quantity possessed. Three elements are common to both crimes: (a) the substance is cocaine; (b) the defendant possessed the cocaine; and (c) the defendant knew that the substance he possessed was cocaine.[4]

10. Because Ashley testified that the cocaine outside the bedroom window belonged to her brother, Walter Lafferty, the only evidence of record relating to

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[2] This Court reviews *de novo* a denial of a motion for judgment of acquittal. *Priest v. State*, 879 A.2d 575, 577 (Del. 2005) (this Court reviews *de novo* the trial judge's denial of the defendant's motion for judgment of acquittal to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt of all the elements of the crime.). Claims of constitutional violations are subject to *de novo* review. *Washington v. State*, 836 A.2d 485, 487 (Del. 2003) (a claim of infringement of constitutional rights is reviewed *de novo*.).

[3] *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

[4] To establish trafficking in cocaine, the State must show that: (1) the substance is cocaine; (2) the defendant was in actual or constructive possession of cocaine; (3) the defendant knows that it is cocaine; and (4) defendant must possess at least 10 grams or more of cocaine. To prove the crime of possession with intent to deliver, the State must establish four elements beyond a reasonable doubt: (1) the substance is cocaine; (2) the defendant must know it is cocaine; (3) the defendant must possess the cocaine actually or constructively; and (4) the defendant must intend to deliver the cocaine. 16 *Del. C.* §§ 4751(a), 4753A(a)(2).

Guardarrama's convictions was: (a) the cocaine found in the drawer ("drawer cocaine"); and (b) two baggies of crack cocaine from Guardarrama's pocket ("pocket cocaine"). The drawer cocaine and the pocket cocaine weighed 12.09 grams and 0.97 grams respectively. Because only the weight of the drawer cocaine satisfies the statutory quantity requirement to convict for trafficking in cocaine, the prosecution relied on the drawer cocaine as the basis to charge Guardarrama with trafficking in cocaine. The jury found Guardarrama not guilty of that charge, however.

11. Attacking his convictions on the remaining charges, Guardarrama claims that he either did not possess the drawer cocaine, or that he did not know the drawer cocaine was cocaine, or both. Both elements are necessary to sustain a conviction of possession with intent to deliver cocaine. Guardarrama argues that because the jury acquitted him of trafficking in cocaine, at least one of these two elements was found not to have been established. Therefore, Guardarrama concludes, the drawer cocaine cannot be used to support a conviction for possession with intent to deliver cocaine.

12. Even if that reasoning is valid, that still leaves the 2 baggies of pocket cocaine as a basis to convict. Because the jury found the defendant guilty of

possession with intent to deliver cocaine, the issue becomes whether Guardarrama possessed the two baggies in his pocket with intent to deliver.[5]

13. The State demonstrated an intent to deliver the pocket cocaine. It was for the jury to reconcile the conflicting testimony given by Ashley and Detective Thomas Looney. The jury "is free to reject all or part of any witness's testimony [and] need not believe even uncontroverted testimony. An appellate court will not substitute its judgment for the [jury]'s assessments in these areas."[6]

14. Where "an appeal is grounded on a claim that the evidence was insufficient to convict, the standard of review is whether a *rational* finder of fact, viewing the evidence in the light most favorable to the State, could find guilt beyond a reasonable doubt."[7]

15. There is ample evidence to support the jury's conclusion that the two baggies of drugs found in Guardarrama's pants pocket were possessed with an intent to deliver. That evidence is as follows: Ashley testified that she had seen Guardarrama: (a) buy drugs from a "black guy," (b) package crack cocaine by

[5] The defendant did not contest these two elements on appeal. In fact, Ashley testified that when she and Guardarrama were being transported to the Wilmington police station, Guardarrama asked her to take responsibility for the drugs that the police discovered. Also Ashley testified that Guardarrama wrote her letters from prison imploring her to confess that the crack cocaine discovered at her residence belonged to her, not the defendant. This evidence proves that the defendant knew he possessed cocaine rather than other substances.

[6] *Poon v. State*, 880 A.2d 236, 238 (Del. 2005).

[7] *Wood v. State*, 836 A.2d 514, 514 (Del. 2003).

breaking it off and putting it into the smaller baggies discovered by the police and (c) resell the crack cocaine. Moreover, Ashley had never seen Guardarrama smoke crack cocaine, nor did she identify him as a drug user, and the police did not discover any paraphernalia for contraband drug consumption during their execution of the search warrant.

16. Second (and alternatively), the Superior Court held that the inconsistent verdicts are explainable as the product of jury lenity. This Court has upheld convictions that are part of arguably logically inconsistent judgments of acquittal on the basis of jury lenity.[8] As the Superior Court stated, "if the jury based its conviction of possession with intent to deliver on the 12.9 grams yet acquitted on trafficking, it could have done so believing the three year mandatory minimum was too harsh. This is lenity, and does not make the verdicts inconsistent." The defendant does not challenge that holding on appeal. On either basis, the claim that the jury verdicts were fatally inconsistent lacks merit.

17. Guardarrama's second argument is that by not granting summarily his motion for acquittal, which the State did not formally oppose, the Superior Court abused its discretion. Superior Court Civil Rule 59(b) is made applicable to

[8] *Whitfield v. State*, 867 A.2d 168, 175 (Del. 2004). *See also Garvey v. State*, 873 A.2d 291, 296 (Del. 2005) (holding when supported by sufficient evidence, arguably inconsistent jury findings will not be disturbed if they are the product of jury lenity).

criminal cases by Superior Court Criminal Rule 57(d).[9] Relying on Superior Court Civil Rule 59(b), the Superior Court held that the defendant's motion for judgment of acquittal was timely filed, but that the State failed to file a response within 10 days.[10] Nonetheless, the Superior Court observed that the State's failure to file a response does not relieve the Court of its independent duty to examine the merits of the defendant's motion. The defendant's *implicit* argument is that because the

[9] Superior Court Criminal Rule 57(d) provides: "In all cases not provided for by rule or administrative order, the court shall regulate its practice in accordance with the applicable Superior Court civil rule or in any lawful manner not inconsistent with these rules or the rules of the Supreme Court." Super. Ct. Crim. R. 57(b).

[10] Superior Court Rule of Civil Procedure 59(b) provides in pertinent part:

> The motion for a new trial shall be served and filed not later than 10 days after the entry of judgment, or the rendition of the verdict, if pursuant to Rule 58, the Court has directed that the judgment shall not be entered forthwith upon the verdict, the motion to be accompanied by a brief and affidavit, if any. The motion shall briefly and distinctly state the grounds therefor.
>
> If the motion is not accompanied by affidavits, the opposing party, within 10 days after service of such motion, may serve and file a short answer to each ground asserted in the motion, accompanied by a brief, if the opposing party desires to file one.
>
> If the motion is accompanied by affidavits, the opposing party has 10 days after such service within which to serve and file that party's answer and opposing affidavits and brief, if any….
>
> The Court shall determine from the motion, answer, affidavits and briefs, whether a new trial shall be granted or denied or whether there shall be oral argument on the motion. A copy of the motion, answer, affidavits and briefs shall be furnished forthwith by the respective parties serving them to the Judge involved.

Super. Ct. Civ. R. 59(b).

State failed to file a response, his motion should have been granted by default, and that by not doing so, the trial court erred as a matter of law.

18. Read as a whole, Superior Court Civil Rule 59(b) is plainly intended to authorize the trial court to determine from the record "whether a new trial shall be granted or denied or whether there shall be oral argument on the motion." The primary purpose of that Rule is to empower the Superior Court to exercise independent judgment on the merits of the parties' arguments and to determine whether their motions will prevail under the applicable substantive law.

19. The defendant cites no authority for his contention that the Superior Court abused its discretion by considering his claims on the merits, even though the motion was not formally opposed. Manifestly the trial court had the discretion to address the merits of an even unopposed motion for judgment of acquittal, if only to prevent a miscarriage of justice and to avoid undoing a conviction that was lawfully obtained. Therefore, this Court will not disturb the trial court's decision to deny a motion for judgment of acquittal.

20. At trial, the prosecutor raised the possibility of witness intimidation of Ashley by Guardarrama's mother, Ana Guardarrama. The prosecutor established that Ana Guardarrama had delivered a letter to Ashley. After reading the letter and considering the portions Ashley regarded as intimidating, the trial judge excluded the defendant's mother from the courtroom, and also from the courthouse, while

Ashley testified. The following day Ana was allowed back into the courthouse to give testimony.

21. Guardarrama claims that the exclusion of his mother from the courtroom violated his constitutional right to a public trial guaranteed by the Sixth Amendment to the United States Constitution. The constitutional right to a public trial is designed to ensure fairness to the defendant, maintain public confidence in the criminal justice system, provide an outlet for community reaction to crime, ensure that judges and prosecutors fulfill their duties responsibly, encourage witnesses to come forward, and discourage perjury.[11] That right is not unqualified, however. In appropriate cases, it must give way to other fundamental rights, such as "the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information."[12]

22. The right to public trial can be abridged only on a showing of a compelling or overriding state interest. The U.S. Supreme Court has held that closure of the proceeding must be narrowly tailored to advance that interest, taking into account alternatives short of closure.[13] The trial courts have been repeatedly cautioned to exercise their discretionary powers sparingly and only after balancing

[11] *Waller v. Georgia*, 467 U.S. 39, 46 (1984); *Press-Enterprise Co. v. Superior Ct.*, 464 U.S. 501, 508-09 (1984).

[12] *Waller*, 467 U.S. at 45.

[13] *Id.*

the right to a public trial with the need to protect witnesses.[14] Specifically, trial courts must apply a four-part test in order to determine whether a courtroom may be closed over a defendant's objection: (a) the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced; (b) the closure must be no broader than necessary to protect that interest; (c) the trial court must consider reasonable alternatives to closing the proceeding; and (d) the trial court must make findings adequate to support the closure.[15]

23. In this case, the manner in which the Superior Court closed the courtroom *partially* to Ana Guardarrama satisfies all four prongs of the applicable test. Ashley was 19 years old at the time of trial. She received several letters from Guardarrama while he was in prison. One of those letters was delivered to her at her workplace by Guardarrama's mother. The prosecutor established that Ashley felt threatened when she read this letter, because the specific threat "or else" was written at the top of the letter. The connection of the defendant's mother to that threat was clear. It therefore was reasonable for the trial court to find that Ashley would have been fearful about testifying in the presence of the defendant's mother. Lastly, the Superior Court closed the proceedings to the defendant's mother only temporarily, because she was permitted to return to the courtroom to testify the

[14] *People v. Nieves*, 90 N.Y.2d 426, 429-30 (N.Y. 1997).

[15] *Waller*, 467 U.S. at 48.

following day, after Ashley had completed her testimony. Therefore, the intentional exclusion of the defendant's mother from the courtroom during the trial did not violate his right to a public trial.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice