IN THE SUPREME COURT OF THE STATE OF DELAWARE

BILLY G. JOHNSON,	§	
	§	No. 592, 2008
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of the
	§	State of Delaware in and for Sussex
v.	§	County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0611012659
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: June 17, 2009
Decided: July 13, 2009

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

O R D E R

This 13th day of July 2009, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Billy G. Johnson, the defendant below, appeals from Superior Court final judgments of conviction of Delivery of a Narcotic Substance and Second Degree Conspiracy. On appeal, Johnson claims that the Superior Court: (a) violated his right to an impartial jury trial by allowing the State to ask prejudicial questions during voir dire; and (b) erroneously denied his motion for a judgment of acquittal on the conspiracy charge. We find no merit to these arguments and affirm.

2. On September 21, 2006, Delaware State Police Detective William Crotty was working undercover for the Sussex County Drug Task Force. While driving through the Cool Spring Farms area of Milton, Delaware, Detective Crotty was flagged down by Billy Johnson. Detective Crotty stopped his vehicle and Johnson asked him what he "needed." From this question Detective Crotty inferred that Johnson was offering to sell him illegal drugs. Crotty asked Johnson for "tree," a term commonly understood to mean marijuana. Johnson responded that he could help and asked Detective Crotty for a ride around the corner. Detective Crotty agreed and followed Johnson's directions to a yellow house on Meadowview Drive. Detective Crotty gave $40 to Johnson, who then told Crotty to drive down the street and wait for him.

3. Detective Crotty parked about 100 yards away, and watched Johnson knock twice on the door of the yellow house. No one answered. Johnson then walked back to Detective Crotty's car and told him that they would have to wait. Shortly thereafter, two cars pulled up to the yellow house and two men got out. Johnson told Detective Crotty to wait, and approached the two men. Detective Crotty then observed Johnson and the two men engage in a series of hand-to-hand exchanges, after which the other men left the scene.[1]

[1] Detective Crotty could not determine what was exchanged.

3. Suspecting that Johnson had just bought drugs, Detective Crotty motioned for Johnson to return to his car. Crotty asked Johnson if he now had the marijuana he had asked for earlier. Johnson replied that to get marijuana, Detective Crotty would have to drive him and his girlfriend, Lynn Bates (who was standing outside of the yellow house) to a different part of town. Because Detective Crotty did not want to have more than one other person in his car, he asked Johnson if he could purchase crack cocaine instead of marijuana. Johnson told Detective Crotty to drive up the street and then come back.[2]

4. As Detective Crotty was driving away, he looked in his rear view mirror and saw Johnson hand something to Bates. Detective Crotty turned his car around, intending to drive back towards Johnson, but Johnson waved him away and pointed towards Bates, indicating that Crotty should go to Bates to purchase the drugs. Crotty drove up to Bates, who handed him a package containing crack cocaine, after which Detective Crotty drove away.

5. Johnson was later arrested and charged with Delivery of Cocaine and Second Degree Conspiracy. A jury convicted Johnson of both charges. This appeal followed.

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[2] Detective Crotty testified that, in his experience, drug dealers often send potential buyers away from the point of sale and hire drug runners to hand off the drugs, in order to conceal their own illegal activities.

6. Johnson claims that the Superior Court erred in allowing the State to ask certain voir dire questions that (he contends) effectively deprived him of his Sixth Amendment right to an impartial jury.[3] Before the Superior Court Johnson objected to two voir dire questions: (i) "Have you, any member of your family, any relative or close friend ever resided in Cool Spring Farms in Milton, Delaware?" and (ii) "Do you, any member of your family, any relative, or close friend currently reside in Cool Spring Farms in Milton, Delaware?" Johnson contends that these questions were unnecessarily cumulative, because the same issues were addressed by the standard voir dire question: Do you know anything about this case through personal knowledge, discussion with anyone, the news media, or any other source? Johnson further argues that the two additional voir dire questions were prejudicial, because they would lead the jury to conclude that "people from this neighborhood should not be trusted" or that "inherently bad things happen in Cool Springs"

7. "The sole purpose of voir dire examination…is to enable the judge to determine whether a prospective juror is qualified and able to render an impartial verdict upon the evidence and the law."[4] "'[Q]uestions which go beyond the ascertainment of this ultimate fact are entirely irrelevant to the voir dire

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[3] U.S. CONST. amend. VI. ("In all criminal prosecutions, the accused shall enjoy the right … to a speedy and public trial, by an impartial jury of the State … wherein the crime shall have been committed….") By not briefing his argument under the Delaware Constitution, Johnson has waived that claim. *See Ortiz v. State*, 869 A.2d 285, 290-91 (Del. 2005).

[4] *Jacobs v. State*, 358 A.2d 725, 728 (Del. 1976).

examination and are properly struck….'"[5] Determining "the scope of voir dire examination lies in the broad discretion of the trial judge, and is subject to review only for abuse of that discretion. Essential fairness is the standard."[6]

8. Johnson's argument lacks merit. The additional questions were consistent with the purpose of voir dire. That the questions may have been cumulative is not relevant—the applicable standard is whether the question would enable the judge to determine whether a prospective juror is qualified and able to render an impartial verdict. These questions satisfied that standard. Moreover, they were not prejudicial. Questioning whether a prospective juror has ever lived in the neighborhood where the crime took place is unlikely to prejudice a juror against that neighborhood or cause the juror to infer that persons from that neighborhood should not be trusted. Furthermore, evidence relating to the character of the area where the crime occurred would normally be presented during the course of the trial. Any prejudice caused by these additional voir dire questions would be no more prejudicial than that which results from such routine evidence.

9. Johnson also claims that his Second Degree Conspiracy conviction must be reversed due to insufficient evidence. Johnson argues that Bates' trial testimony—that Johnson forced her to sell drugs against her will—establishes that

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[5] *Id*. at 728 (quoting *Parson v. State*, 275 A.2d 777, 782 (Del. 1971)).

[6] *Id.* (citing *Parson*, 275 A.2d 777).

there was no voluntary agreement between the two to sell drugs. Johnson argues that under 11 *Del. C.* § 512, conspiracy cannot be proven unless it shows that both parties voluntarily agree to commit illegal conduct.[7] If Bates were forced to deal drugs, Johnson argues, then there was no agreement to sell drugs and, hence, no conspiracy. We review the denial of a motion for a judgment of acquittal *de novo*, to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could have found the essential elements of the crimes charged beyond a reasonable doubt.[8]

10. The State presented evidence, through Detective Crotty's testimony, showing that Bates acted as a willing participant in the conspiracy. Although Bates testified that Johnson forced her to sell cocaine, she also admitted that she had pled guilty to separate charges of Delivery of Cocaine and Second Degree

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[7] 11 *Del. C.* § 512 provides:

> A person is guilty of conspiracy in the second degree when, intending to promote or facilitate the commission of a felony, the person:
>
> (1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony; or
>
> (2) Agrees to aid another person or persons in the planning or commission of the felony or an attempt or solicitation to commit the felony; and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

[8] *White v. State*, 906 A.2d 82, 85 (Del. 2006) (citing *Priest v. State*, 879 A.2d 575, 577 (Del. 2005)).

Conspiracy. The jury could infer from Bates' guilty pleas that she had conspired with Johnson to sell illegal drugs. The jury was entitled to weigh Bates' guilty plea against her testimony, and could rationally conclude that her guilty plea was the more credible. Furthermore, whether Bates acted under duress is irrelevant to Johnson's culpability, because the critical element of a conspiracy charge is the voluntary participation of the defendant, not that of another actor.[9]

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

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[9] *U.S. v. Cordova*, 157 F.3d 587, 592 (8th Cir. 1988) ("To establish a drug conspiracy, the government must prove the existence of an agreement between two or more persons to violate federal narcotics law, the defendant's knowledge of the agreement, and the *defendant's voluntary participation in the agreement*.") (internal citations omitted, emphases added).