

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DION OLIVER,	§	
	§	No. 289, 2000
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	ID #9802012783
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 10, 2001  
Decided: August 21, 2001

Before **WALSH, BERGER** and **STEELE**, Justices.

ORDER

This 21<sup>st</sup> day of August, 2001, on consideration of the briefs of the parties, it appears to the Court that:

1) Dion Oliver appeals from his convictions, following a jury trial, of trafficking cocaine, possession with intent to deliver, maintaining a vehicle, resisting arrest, possession of a firearm during the commission of a felony, possession with intent to deliver marijuana, 2 counts of reckless endangering second degree, driving without a valid license and driving without insurance. He argues that: (i) the State violated Oliver's constitutional rights by striking two African-American prospective jurors because of their race; (ii) the prosecutor's improper comments during rebuttal

summation were so prejudicial as to require a mistrial; (iii) the trial court erred in admitting hearsay evidence concerning the reason for the police stop; and (iv) the trial court erred in sentencing Oliver as an adult on all but one count of the indictment.

2) In February 1998, Wilmington Police Detective Liam Sullivan and FBI Special Agent Gordon Cobb were watching a home on Henderson Drive in Wilmington, Delaware. They had been tipped that Oliver, Abraham Farnum, and Galen Collins were carrying a large quantity of drugs and that they would be found at the Henderson Drive home. The officers saw the three men leave the home and get into a green Buick Riviera. Oliver drove, Collins sat in the front passenger seat, and Farnum sat in the back.

3) After following the car for a short distance, Sullivan and Cobb coordinated with other police units and conducted a “felony stop.” An unmarked police car pulled in front of the Riviera and two plainclothes detectives jumped out with guns drawn. At the same time, Sullivan and Cobb pulled behind the Riviera in their unmarked Ford Explorer. Sullivan and Cobb were not in uniform, but they had used their siren and flashing lights and they identified themselves as police officers as soon as they got out of the Explorer.

4) The two officers saw the Riviera's tail lights go on and dove back into the Explorer right before the Riviera backed into it. Oliver continued driving in reverse for a short distance until the Riviera hit a telephone pole. Oliver and his co-defendants jumped out of the car and started running in opposite directions. Oliver and Farnum were apprehended quickly. Collins was found later in Connecticut.

5) The officers searched the Riviera and found a brown paper bag containing 450 grams of crack cocaine and a loaded handgun on the rear floorboard behind the driver's seat. When Oliver was taken into custody and searched, the police discovered 16 bags of marijuana in his pants pocket. In a subsequent search of Oliver's house, however, the police found no contraband or other evidence.

6) Oliver claims that he was denied equal protection under the State and Federal Constitutions because the State challenged a juror on the basis of race. *Batson v. Kentucky*, 476 U.S. 79 (1986); *Dixon v. State*, Del. Supr., 673 A.2d 1220 (1996). The three co-defendants in this case were African-American, and the State used peremptory challenges to excuse two African-Americans, Cassandra Butler and William Graves. Oliver does not contest the State's explanation for its challenge of Butler – she believed that the police had planted drugs on her brother many years earlier. As to Graves, the State said that it challenged him because he did not fill out any information about himself on the Jury Services form.

7) Although the State did not accept Oliver's suggestion that Graves be asked to provide the missing personal information, we are satisfied that the State's explanation was race-neutral and credible in light of the fact that there were three African-Americans on the jury, as eventually chosen. Accordingly, we find no constitutional violation.

8) Oliver next argues that the prosecutor's egregious remarks during rebuttal summation warrant a new trial. The prosecutor told the jury that this case was about the Constitution – the right to trial by jury; the right to remain silent; the right to be presumed innocent; and the right to confront witnesses. Then the prosecutor said, “We would suggest to you, ladies and gentlemen, that one of the requirements, one of the privileges that you, anybody must do in order to enjoy these constitutional rights is to respect the law.” Oliver immediately objected and requested a mistrial, but the Superior Court only instructed the jury to disregard the prosecutor's comments.

9) Oliver is correct that the prosecutor's comments were improper. But the jury was instructed to disregard them; the comments were not central to the issues in the case; and the case was not particularly close. As a result, we conclude that it was not error to deny Oliver's motion for a mistrial. *Hughes v. State*, Del. Supr., 437 A.2d 559 (1981).

10) Next, Oliver argues that Sullivan should not have been permitted to testify about the information that led him and Cobb to be watching the house on Henderson Drive. The informant did not testify and Oliver, therefore, was unable to cross-examine on that subject. In *Caldwell v. State*, Del. Supr., 770 A.2d 522 (2001), this Court reversed a drug conviction in a case where police officers testified about information they received from another officer, who was not a witness, to the effect that the defendant probably had been involved in drug dealing. The prosecutor in *Caldwell* also vouched for the absent police officer in his opening statement, and the only “curative” instruction was a general admonition that an attorney’s statement is not evidence.

11) This case is distinguishable. First, the hearsay statement was not particularly informative or prejudicial. Sullivan merely explained that he was watching the house because of information he had received. Sullivan did not say that Oliver or any of his co-defendants were suspected drug dealers. Second, the prosecutor did not compound the problem by including the hearsay in his opening statement. Finally, the Superior Court instructed the jury that it could not consider Sullivan’s testimony as evidence that the three co-defendants were in the Henderson Drive house. We are satisfied that the testimony about Sullivan’s informant was admissible for the purpose of explaining why Sullivan was watching the house, and

that the jury was properly instructed on the limited purpose for which it was introduced.

12) Finally, Oliver argues that the trial court erred in sentencing him as an adult on all of the counts except possession of a firearm during the commission of a felony. Oliver was 17 years old when he committed the offenses. He concedes that, under 11 *Del.C.* § 1447A(e), it was appropriate to be tried and sentenced as an adult for possession of a firearm during the commission of a felony. He also acknowledges that, under 10 *Del.C.* § 921(16), it was appropriate to join the companion charges in Superior Court. Nonetheless, he argues that he should not have been sentenced as an adult on the companion charges and he should not have been subjected to the minimum mandatory sentence for trafficking cocaine. The Superior Court carefully considered these arguments and rejected them. We affirm on the basis of the Superior Court's decision. *State v. Oliver*, Del. Super., ID#98020127783, Quillen, J. (May 2, 2000).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice