

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TONY TUCKER,	§	
	§	No. 203, 2012
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 1007006563
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 19, 2012
Decided: October 1, 2012

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

ORDER

This 1st day of October 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Tony Tucker, the defendant-below (“Tucker”), appeals from his conviction of one count of Possession of Deadly Weapons by Persons Prohibited (“PDWBPP”) under 11 *Del. C.* § 1448, after a Superior Court bench trial. On appeal, Tucker argues that a jury’s prior acquittal of his Possession of a Firearm During Commission of a Felony (“PFDCF”) charge under 11 *Del. C.* § 1447A, collaterally estops the trial court from finding him guilty of PDWBPP. We disagree and affirm.

2. In July 2010, the Delaware State Police arrested Tucker and charged him with committing two robberies approximately one month earlier. In March 2011, a jury convicted Tucker of Conspiracy in the Second Degree and Robbery in the First Degree, and acquitted Tucker of, among other charges, PFDCF. After a separate bench trial, the Superior Court found Tucker guilty of one count of PDWBPP.

3. Tucker's sole claim of error on appeal is that collateral estoppel under 11 *Del. C.* § 208, and the Delaware Constitution's prohibition against double jeopardy, preclude the trial court from adjudicating him guilty of PDWBPP after his jury acquittal of PFDCF. We review a claim alleging the denial of a constitutional right *de novo*.¹

4. We previously decided this issue in *Godwin v. State*,² where this Court held that a defendant's conviction for PDWBPP was not collaterally estopped by his prior jury conviction for PFDCF. We explained that:

The jury could have rationally based its verdict on the ground that [the defendant] did not possess the [weapon], or that he did not commit the felony, or that he did not possess the [weapon] during the commission of the felony. Thus, whether the jury specifically decided the possession issue in [the defendant's] favor is unknown.³

¹ *Norman v. State*, 976 A.2d 843, 857 (Del. 2009).

² 903 A.2d 322, 2006 WL 1805876, at *1, 4 (Del. 2006). "Although *Godwin* was abrogated by our recent decision in *Lecates v. State*, . . . *Godwin* is still good law regarding its collateral estoppel analysis." *Wescott v. State*, 981 A.2d 1173, 2009 WL 3282707, at *4 n.14 (Del. 2009).

³ 903 A.2d 322, 2006 WL 1805876, at *4 (Del. 2006).

5. Tucker has failed to distinguish his case from *Godwin*, which is on point here. Because a jury could have rationally decided to acquit Tucker of PFDCF on a ground other than possession, collateral estoppel does not operate to bar the trial court from later convicting Tucker of PDWBPP. The evidence against Tucker included a credible co-defendant who testified to Tucker's possession of a revolver during one of the robberies, witness descriptions, video surveillance, and physical evidence. Viewing that evidence in the light most favorable to the prosecution, the trial court properly found Tucker guilty of PDWBPP beyond a reasonable doubt.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice