IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLARENCE WORD,	§	
	§	
Defendant Below-Appellant,	§	No. 413, 2000
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. IN99-06-1635
Plaintiff Below-Appellee.	§	IN99-06-1636
	§	

Submitted: April 20, 2001
Decided: June 19, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices

O R D E R

This 19th day of June 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) In 1999, Clarence Word was indicted on charges of Possession With Intent to Deliver Heroin and Use of a Dwelling for Keeping Controlled Substances. Following a jury trial in Superior Court, Word was found guilty of both charges. On the first conviction, he was sentenced to 5 years incarceration at Level V. On the second conviction, he was sentenced to 2

years incarceration at Level V, to be suspended for decreasing levels of supervision. This is Word's direct appeal.[1]

(2) On June 17, 1999, Word, who was on probation, was placed under surveillance by the Wilmington Police Department based on a confidential informant's tip that he was storing illegal drugs at his mother's house and selling them out of Govatos, a candy store where he was employed. On that date, as Word was walking to his job at Govatos, his probation supervisor, Officer Raymond DiClementi, called to him from a parked car. Word ran into the employees' entrance to Govatos and up the stairs to the third floor, with Officer DiClementi and his partner following him and calling to him to stop. Word was out of sight for a few seconds. When he again appeared, he asked the officers what was going on. They told Word they had received a tip he was selling drugs, which he denied. Word was arrested, but no drugs were found on his person or in the immediate area. The officers then went to Word's mother's house, where Word resided, and waited until she returned home from work.

[1]Word filed a motion to proceed pro se on appeal, which, following a hearing in Superior Court, was granted by this Court on January 18, 2001.

(3) At trial, the prosecution offered testimony concerning the subsequent search of Word's bedroom and the evidence seized there. Officer Raymond DiClementi testified that, before the police officers entered Word's mother's residence to conduct the search, she orally consented to a search of her entire residence, including her son's bedroom, and showed the officers where the bedroom was located. She also subsequently signed a consent to search form. Officer DiClementi testified that six or seven bags of heroin were found in a cigar box on Word's night stand and twenty-six bags of heroin were found in the pocket of a shirt hanging in the room. He further testified that the heroin, which he identified at trial, was turned over to Detective Michael Rodriguez, another officer with the Wilmington Police Department, immediately following its discovery in Word's bedroom.

(4) Detective Henry Cannon testified that his search dog "alerted" on a cigar box on Word's night stand from which seven bags of heroin were retrieved. He identified the cigar box at trial.

(5) Detective Rodriguez testified as a fact witness and as an expert on the distribution of heroin. He stated that the search of Word's bedroom was in progress when he arrived and the cigar box containing the bags of

heroin was open on the night stand. He asked Word if there was any more heroin in the room and Word told him there was more in the shirt pocket. He was able to identify the contents of the cigar box and the contents of the shirt pocket as heroin. Detective Rodriguez turned the evidence over to Detective John Drysdale, who was also involved in the search.

(6) Detective Drysdale, an officer with the Wilmington Police Department, testified that he asked the defendant's mother to sign a consent to search form immediately after arriving at her house. Detective Drysdale also testified that, as he was standing outside Word's bedroom door, Detective Rodriguez handed him the cigar box, which he tagged as evidence and took back to the police station with him for processing.

(7) Corporal Redemptor Hidalgo, a narcotics control officer with the Wilmington Police Department, testified that the evidence seized from Word's bedroom was placed in the drug locker at the police department by Detective Drysdale. Corporal Hidalgo later retrieved the evidence and gave it to the Medical Examiner's office for analysis. When the Medical Examiner's office was finished with its analysis, the evidence was given back to Corporal Hidalgo, who placed it back in the drug locker.

(8) Dr. Kochu Madhavan, senior forensic chemist with the Medical Examiner's Office, testified that his testing of the seized material confirmed that it was heroin.

(9) The defense offered the testimony of Beulah Word, the defendant's mother. She testified that, as she and Officer DiClementi stood in her living room prior to the search, she gave verbal permission for the police to search her entire house and then later signed a consent to search form. She further stated that she directed the officers to her son's bedroom. Finally, Mrs. Word testified that she saw the cigar box being taken from the night stand and saw that there were little blue plastic bags in the box, but she did not see the police officers take any drugs out of the shirt pocket.

(10) In this appeal, Word claims that: a) the warrantless search of his bedroom violated 11 Del. C. § 4321[2], Department of Correction procedures for searches of probationers' property, and his constitutional rights, mandating suppression of the evidence of drug activity; b) the prosecutor and his defense

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[2]11 Del. C. § 4321(d) states as follows:

> Probation and parole officers shall exercise the same powers as constables under the laws of this State and may conduct searches of individuals under probation and parole supervision in accordance with Department [of Correction] procedures while in the performance of the lawful duties of their employment . . . .

counsel failed to inform him about a hearing at which an unidentified informant testified, thereby violating his constitutional rights; c) the "chain of custody" of the drug evidence against him was broken, rendering the evidence inadmissible; and d) the Superior Court abused its discretion by failing to give a curative instruction concerning testimony about his history of drug use and a previous shoplifting charge.

(11) Word's first claim of an unconstitutional search and seizure is without merit. Because Word did not object to the admission of the evidence of drug activity at his trial, this Court will review the claim under a plain error standard.[3] Searches and seizures are per se unreasonable, in the absence of exigent circumstances, unless authorized by a warrant supported by probable cause.[4] An exception to the warrant requirement, however, is for searches that are conducted pursuant to a valid consent.[5] In order to be valid,

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[3]Plain error is established by showing "material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice." *Wainwright v. State*, Del. Supr., 504 A.2d 1096, 1100, *cert. denied*, 479 U.S. 869 (1986).

[4]*Scott v. State*, Del. Supr., 672 A.2d 550, 552 (1996) (citing *Hanna v. State*, Del. Supr., 591 A.2d 158, 162 (1991)).

[5]*Id.* (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 221-22 (1973)).

a consent must be voluntary and given by a person with the authority to do so.[6]

(12) In this case, the trial testimony of Officer DiClementi, Detective Drysdale and, most importantly, Mrs. Word herself clearly established the voluntariness of Mrs. Word's initial verbal consent as well as her subsequent written consent to search her home, including her son's bedroom.[7] In light of Mrs. Word's valid consent, there is no need for us to reach Word's claim that certain statutory and regulatory procedures relating to administrative searches of probationers' property were not followed. The claim is meritless in any case, since Word has failed to show how any failure to follow such procedures deprived him of a substantial right or resulted in a manifest injustice.[8] Thus, we conclude that Word's claim of plain error in the admission of the evidence of drug activity must fail.

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[6]*Id.* (citing *United States v. Matlock*, 415 U.S. 164, 171 (1974)).

[7]*DeShields v. State*, Del. Supr., 534 A.2d 630, 642-44 (1987); *Flamer v. State*, Del. Supr., 490 A.2d 104, 116-17 (1984).

[8]*Wainwright v. State*, 504 A.2d at 1100. We also note the United States Supreme Court's ruling that probation supervision, including administrative searches of a probationer's property, permits a degree of impingement upon privacy that would not be constitutional if applied to the public at large. *Griffin v. Wisconsin*, 483 U.S. 868, 875 (1987).

(13) Also without merit is Word's claim that the failure to inform him of a hearing concerning the confidential informant violated his constitutional rights. The record reflects that Word filed a motion for disclosure of the identity of the informant, which the Superior Court denied, but does not reflect that the Superior Court held a hearing on the motion. Furthermore, because the record indicates the only information provided by the informant was the initial tip that Word was involved in selling drugs and the informant had no information that would "materially aid" the defense, there was no reason to reveal the informant's identity and the Superior Court did not abuse its discretion in so finding.[9]

(14) Word's third claim is that the prosecution did not properly establish the "chain of custody" of the evidence of drug activity and, specifically, that the discrepancy between the weight of the heroin listed on the police report and that listed on the Medical Examiner's report shows the evidence was tampered with. This claim, presented for the first time in this appeal and which we therefore review for plain error, is without merit. The proper standard for the admission of items into evidence over a chain of

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[9] *D.R.E. 509(c) (2); Wheatley v. State*, Del. Supr., 465 A.2d 1110, 1111-12 (1983).

custody objection is whether there is a reasonable probability that the evidence offered is what the proponent says it is—that is, that the evidence has not been misidentified and no tampering or adulteration has occurred.[10] In the absence of a clear abuse of discretion, any "breaks" in the chain of custody go to the weight, rather than the admissibility, of the evidence.[11] The record in this case, and in particular the trial testimony of Officer DiClementi, Detective Cannon, Detective Rodriguez, Corporal Hidalgo, Dr. Madhavan and Detective Drysdale, established to a reasonable probability that the evidence was what the prosecution said it was and that it had not been tampered with or adulterated, despite the apparent discrepancy in the reporting of the heroin's weight. Therefore, the admission of the evidence by the Superior Court did not constitute plain error.

(15) Word's final claim that the Superior Court committed plain error by failing to give a curative instruction concerning Officer DiClementi's testimony about his history of drug use and a previous shoplifting charge is also without merit. Our review of the record indicates that the testimony

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[10] *Baker v. State*, Del. Supr., No. 74, 1988, Holland, J., 1988 WL 137190 (Nov. 21, 1988) (ORDER) (citing *Tricoche v. State*, Del. Supr., 525 A.2d 151, 153 (1987)).

[11] *Id.* (citing *United States v. Gay*, 774 F.2d 368, 374 (10th Cir. 1985)).

about which Word complains was elicited by his defense counsel in the defense's case in chief. Furthermore, immediately after the testimony was elicited, the Superior Court judge had the jury removed from the courtroom in order to discuss the potentially damaging nature of the testimony with defense counsel. Word's counsel elected to clarify the testimony by eliciting additional information from the witness rather than request a curative instruction. Under these circumstances, the Superior Court did not commit plain error by permitting the trial to proceed without issuing a curative instruction sua sponte.[12]

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

[12] *Bromwell v. State*, Del. Supr., 427 A.2d 884, 892-93 (1981).