

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN M. HUNTER,)
) No. 161, 2001
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

Submitted: October 25, 2001
Decided: December 12, 2001

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

ORDER

This 12th day of December 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) A Superior Court jury convicted the appellant-defendant, Brian M. Hunter, of Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance (Cocaine), Possession of a Controlled Substance Within 1000 Feet of a School, and Distribution of a Controlled Substance Within 300 Feet of a Park or Recreation Area. This is Hunter's direct appeal.

(2) In this appeal, Hunter claims that: a) the trial judge abused her discretion by failing to sustain defense counsel's objection to the relevance of a police officer's statement, made during cross-examination, that appellant failed to

request a return of \$1,077 found in his possession along with a bag of cocaine; and
b) that the trial judge committed plain error by allowing the prosecutor to ask the question and by permitting the witness to answer it in violation of both D.R.E. 403 and Hunter's Fifth Amendment right against self-incrimination.

(3) On November 16, 1997, Wilmington Police Detective Hector L. Cuadrado was assisting other officers in a search for a robbery suspect. As part of that investigation, Cuadrado questioned Hunter, who consented to a "pat-down" search of his person. During the search, Cuadrado discovered \$1,077 in Hunter's pocket as well as a plastic bag containing crack cocaine. Wilmington police seized the money for use as evidence and for purposes of forfeiture under The Uniform Controlled Substances Act.¹

(4) At trial, during the direct examination of Detective Cuadrado,² defense counsel suggested the possibility that the \$1,077 in question were unrelated to any drug transaction. On cross-examination, the State asked Cuadrado whether Appellant made any effort to retrieve the \$1,077 that the detective confiscated at the time of Hunter's arrest. Defense counsel objected that the question was irrelevant. The trial judge overruled the objection. Detective

¹ 16 *Del. C.* § 4784(7).

² The State had originally called Detective Cuadrado during its case-in-chief. Defense counsel recalled Cuadrado to the stand during his presentation of Hunter's case. The question and answer at issue in this appeal occurred during the State's cross-examination of Cuadrado following defense counsel's direct examination in Hunter's case.

Cuadrado then testified that Hunter never requested the return of the confiscated funds.

(5) This Court will not reverse the decision of a trial court concerning the relevance of evidence absent an abuse of discretion.³ D.R.E. 401 defines relevant evidence as that which has “any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than without the evidence.” Because the ultimate purpose of admitting or excluding evidence is to assist the jury’s understanding of the underlying factual bases for its application of the law, the courts are to interpret D.R.E. 401 broadly.⁴ Thus, in *McKinney v. State*, we held that any conduct undertaken by a defendant after the commission of a crime that tends to show consciousness of guilt is relevant under D.R.E. 401.⁵ Because the Uniform Controlled Substances Act provides for the forfeiture of any money attained as a result of a drug transaction,⁶ the failure of a criminal defendant to request the return of that money could be interpreted by a jury as an indication of consciousness of guilt and any evidence offered to support that theory would be relevant and properly admitted. Hunter’s failure to request

³ *Lampkins v. State*, Del. Supr., 465 A.2d 785, 790, (1983).

⁴ See *Capano v. State*, Del. Supr., 781 A.2d 556, 586 (2001).

⁵ Del. Supr., 466 A.2d 356, 359 (1983).

⁶ 16 *Del. C.* § 4784 reads in relevant part:

(a) The following shall be subject to forfeiture to the State and no property rights shall exist in them:

...

the return of the confiscated \$1,077 falls under our broad interpretation of D.R.E. 401 because it tends to show that he was conscious of his guilt. Under the rule articulated in *McKinney*, consciousness of guilt is a “fact of consequence” to the jury’s ultimate determination of guilt or innocence, especially in light of defense counsel’s suggestion that the confiscated funds were unrelated to drug activity. Therefore, the trial court did not abuse its discretion by overruling Hunter’s objection to the admission of Cuadrado’s testimony.

(6) At trial, Appellant failed to base his objection to the question and answer at issue on either a violation of D.R.E. 403 or Hunter’s Fifth Amendment right against self-incrimination. Because these issues were not squarely present to the trial court, we review them for plain error.⁷ Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights that it jeopardizes the fairness and integrity of the trial process.⁸ Moreover, the doctrine of plain error must be limited to those defects found in the record that are so basic, serious, and fundamental in their character that they clearly deprive an accused of a substantial right or show manifest injustice.⁹

(7) Under D.R.E. 403, a trial judge should not admit evidence that has probative value if that evidence would be vastly outweighed by the prejudicial

(7) All moneys, negotiable instruments securities or any other thing of value, furnished, or intended to be furnished, in exchange for a controlled substance....

⁷ *Wainwright v. State*, Del. Supr., 504 A.2d 1096, 1100 (1986).

impact of the evidence on the jury. We have held that even in cases where a timely objection has been raised, the determination of whether evidence is unfairly prejudicial is particularly within the discretion of the trial judge.¹⁰ Given the broad latitude normally afforded the trial judge in this area, it is difficult to conclude that the judge committed plain error by refusing to bar the admission of the evidence under D.R.E. 403. Moreover, the State posed its question to Detective Cuadrado to rebut the inference suggested by defense counsel's questioning during the direct examination of Cuadrado that the money was not related to drug transactions. Once the State established that Hunter did not request the return of the confiscated funds, it did not pursue the issue further. Because this single question and answer can best be described as a miniscule part of the State's case, and given the overwhelming evidence of guilt found in the record, the trial court's failure to take *sua sponte* action did not deprive Hunter of a substantial right nor did it result in manifest injustice.

(8) Appellant's Fifth Amendment claim is subject to a similar analysis. In general, the State may not invite the jury to draw an inference of guilt based upon a defendant's decision to remain silent under that individual's Fifth

⁸ *Id.*

⁹ *Id.*

¹⁰ *Williams v. State*, Del. Supr., 494 A.2d 1237 (1985).

Amendment right against self-incrimination.¹¹ However, as noted in our discussion of relevance under D.R.E. 401, *supra*, the State's question demonstrated Hunter's failure to take the necessary actions to recover the \$1,077 seized at the time of his arrest, not an invitation for Cuadrado to comment on any invocation by Hunter of his right not to speak with the police. In addition, as in our plain error analysis of Appellant's D.R.E. 403 argument, the brief nature of the exchange and the insubstantial role that the comments played in the State's case, coupled with the overwhelming evidence of guilt, do not give rise to an error that deprived Appellant of a substantial right or resulted in manifest injustice. Because neither a substantial right nor manifest injustice were implicated by the trial judge's refusal to act, she did not commit plain error by admitting relevant testimony.

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

BY THE COURT:

/s/ Myron T. Steele
Justice

¹¹ See *Griffin v. California*, 380 U.S. 609, 85 S. Ct. 1229 (1965).

