

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| KASHAWN WESTON, | § | |
| | § | No. 433, 2003 |
| Defendant Below, | § | |
| Appellant, | § | |
| | § | |
| v. | § | Court Below: Superior Court |
| | § | of the State of Delaware |
| STATE OF DELAWARE, | § | in and for Sussex County |
| | § | |
| Plaintiff Below, | § | Cr. I.D. No. 0301003687 |
| Appellee. | § | |

Submitted: April 27, 2004
Decided: July 2, 2004

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices.

ORDER

This 2nd day of July, 2004, upon consideration of the briefs of the parties, it appears to the Court that:

1) Kashawn Weston appeals his convictions, following a jury trial, of possession of a firearm by a person prohibited, possession of cocaine, endangering the welfare of a child, maintaining a dwelling used for keeping controlled substances, and other related drug charges. He argues that the trial court erred in: (i) denying his motion for judgment of acquittal; (ii) failing to merge the possession of cocaine charge with the maintaining a dwelling charge; and (iii) imposing an excessive sentence.

2) On January 6, 2003, a task force consisting of probation officers and State Police officers searched the mobile home where Weston resided along with his girlfriend, Angelina Levan, her son, Robert Levan, and her baby daughter, Carliyah Jackson. As probation officers Mark Dawson and Eric Reuther approached the front door, Weston opened the door and asked “Day-Day”? Dawson knew that Day-Day was a person who lived in the neighborhood. He replied that it was probation. Weston then shut and locked the door. The probation officers heard people running around inside the residence, and, after banging on the door for about a minute, Angelina’s mother, Joannie Chambliss, opened the door.

3) The task force found a total of nine people in the home, including Weston, who was in the living room/kitchen area, and Angelina, who was in the master bedroom. In their room-by-room search the officers found: (1) ammunition and a starter pistol in a tote bag in the master bedroom; (2) ammunition in several shoes in the master bedroom closet; (3) four bundles of money totaling \$3455 in a shopping bag in the spare bedroom; (4) a loaded .357 Magnum handgun in the heating vent in the child’s bedroom; (5) a digital scale and a knife with white residue on it in the kitchen; (6) plastic baggies containing residue in the kitchen trash can; and (7) wet crack cocaine in the strainer and drainpipe of the kitchen sink.

4) At the time of the search, Weston admitted that he shared the master bedroom with Angelina, but denied knowledge or ownership of the ammunition, gun, money or drugs. The evidence at trial established that Weston did not have any contraband on his person at the time of the search and his fingerprints were not on the weapon or ammunition.

5) Weston argues that, viewing the evidence in the light most favorable to the State, no rational juror could have found the essential elements of several of the crimes he was charged with beyond a reasonable doubt.¹ We disagree. Weston had been residing in the residence for approximately one month, sharing the master bedroom with Angelina. Weston's response to the announcement that probation officers were at the front door, combined with the number of non-residents found in the home, the drug residue found in the kitchen, the cocaine that had been washed down the sink, and the packets of money, provided ample circumstantial evidence that the task force had interrupted a drug deal and that Weston was knowingly maintaining a dwelling used for keeping or delivering controlled substances.²

¹*Barnett v. State*, 691 A.2d 614, 618 (Del. 1997). In this appeal, Weston does not contest the sufficiency of the evidence with respect to his convictions of possession of cocaine, possession of a firearm during the commission of a felony, or possession of drug paraphernalia.

²*See: Potts v. State*, 458 A.2d 1165, 1167-68 (Del. 1983).

Weston's admission that he resided in the master bedroom, likewise, provided sufficient evidence to support a finding that he constructively possessed the ammunition found in the master bedroom closet and the gun, loaded with some of the same type of ammunition, which was readily accessible in another bedroom. With respect to the charge of endangering the welfare of a child, the evidence established that Angelina's daughter was present at the time of the search and a reasonable juror could infer that Weston knew she was there. Thus, he endangered the welfare of a child by committing drug offenses knowing that Angelina's daughter was present in the home.³

6) Weston next argues that the trial court should have merged the maintaining a dwelling charge with the possession of cocaine charge for sentencing purposes. In support of this contention he cites *Williams v. State*,⁴ where this Court found that an indictment charging the defendant with two counts of possession of cocaine violated the multiplicity doctrine of the Double Jeopardy Clause of the United States and Delaware Constitutions. The *Williams* decision is inapposite, as it addressed multiple charges under the same statute. Here, Weston was charged under two different

³11 *Del.C.* § 1102(a)(6).

⁴796 A.2d 1281 (Del. 2002).

statutes⁵, for different crimes with different elements.⁶ His multiplicity argument lacks any merit.

7) Finally, Weston argues that the trial court abused its discretion in imposing too harsh a sentence. He contends that the trial court had a closed mind because the court commented, “[Y]ou are twenty-one, you have been in jail, you are out of control, and you need to be in jail.” It is settled law that this Court will not disturb a trial court’s sentence if it is within statutory limits “unless it is clear that the sentencing judge relied on impermissible factors or exhibited a closed mind.”⁷ Here, the trial court properly considered Weston’s criminal history, and found that Weston had “a history of violent offenses,” and a “pattern of drugs and weapons in [his] background.” There is no evidence that the trial court considered impermissible factors, had a closed mind, or otherwise abused its discretion.

⁵16 *Del. C.* §4753 and 16 *Del. C.* §4755

⁶ A person is guilty of possession of cocaine, in violation of §4753, when he knowingly possesses, uses or consumes a controlled substance. A person is guilty of maintaining a dwelling, in violation of §4755, when he knowingly keeps or maintains a dwelling which is resorted to by people using controlled substances.

⁷*Weston v.State*, 832 A.2d 742, 746 (Del. 2003).

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

BY THE COURT:

/s/ Carolyn Berger
Justice