IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS NORWOOD,	§	No. 274, 2002
	§	
Defendant Below,	§	Court Below: Superior Court of
Appellant,	§	the State of Delaware in and for
	§	Sussex County
v.	§	
	§	
STATE OF DELAWARE,	§	Cr.A. Nos: IS01-07-0344
	§	IS01-07-0351, IS01-07-0354
Plaintiff Below,	§	IS01-07-0357, IS01-07-0360
Appellee.	§	IS01-07-0363, IS01-07-0345
	§	IS01-07-0346, IS01-07-0352
	§	IS01-07-0355, IS01-07-0358
	§	IS01-07-0361, IS01-07-0364
	§	IS01-07-0359, IS01-07-0365
	§	IS01-07-0347, IS01-07-0353
	§	IS01-07-0356, IS01-07-0362
	§	IS01-07-0366

Submitted: November 26, 2002
Decided: January 2, 2003

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

ORDER

This 2nd day of January 2003, upon consideration of the briefs of the parties, it appears to the Court that:

(1) This is the direct appeal of defendant-appellant, Thomas Norwood, from his conviction in the Superior Court of twenty drug-related charges. The Superior Court sentenced Norwood to 20 years in prison and a subsequent period of probation.

Norwood had moved unsuccessfully in the Superior Court to suppress the evidence associated with his arrest. He now seeks reversal of his convictions on the following grounds: (a) the arresting officers did not have reasonable suspicion to stop him, and his arrest was therefore illegal; (b) the Superior Court erred by allowing Officer Cook to testify as an expert witness; (c) the Superior Court erred by granting the State's motion to amend the indictment after the close of the State's case; (d) the Superior Court erred by denying Norwood's motion for judgment of acquittal on two charges; and (e) the Superior Court erred by refusing to enforce a plea agreement upon which Norwood claims to have relied to his detriment. We find Norwood's claims to be without merit and affirm the judgment of the Superior Court.

(2) On July 10, 2001, Officer John Messick was in his patrol car with another officer when he saw Norwood in front of a house under investigation. Recognizing Norwood as the subject of another drug investigation led by Detective Kimberly Cook, Messick contacted Cook and began to approach Norwood. Shortly after reaching Norwood, Messick received instructions to arrest him and he complied. Incident to the arrest, Norwood's car was towed. After the towing, the officers discovered on the ground a flashlight containing cocaine. Although the police did not see the flashlight in Norwood's possession nor did they find his fingerprints on the

flashlight, Norwood later admitted ownership. During a strip search, the police discovered additional drugs on Norwood's person.

(3) Two days before trial, Norwood filed a Motion to Confirm Plea Bargain. The State contended that the offer was available to Norwood if he assisted the police with other drug investigations. During the hearing on the motion, the State indicated that Norwood failed to provide substantial assistance to the police, although he unsuccessfully attempted to assist the police on one occasion. Notwithstanding the motion, Norwood chose to proceed with the suppression hearing and go to trial. The Court found that there was no formal plea bargain and that, even if there was, Norwood did not rely on the offer to his detriment.

(4) At trial, the Superior Court allowed Detective Cook to testify as the investigating officer and as an expert witness. Her purported expert testimony consisted of her opinion that Norwood intended to deliver the cocaine that was found at the scene and on his person. Before testifying before the jury, the Superior Court conducted voir dire, during which Cook identified the factors on which she relies to determine whether a suspect intends to distribute drugs, including weight, packaging, the amount of money a suspect has, and whether paraphernalia is found on the suspect. Cook also testified that these factors are relied upon by all members of her unit (the Special Investigation Unit consisting of fifteen detectives statewide) to

determine intent to deliver. She admitted that the methods she uses have not been subject to peer review and reliability rates are unknown.

(5) During the non-expert portion of her testimony, Cook indicated that she purchased cocaine from Norwood that was packaged in a "brown Ace Hardware envelope." This item, however, was not listed among the paraphernalia in the indictment. Instead, the indictment listed a "clear plastic bag." The Superior Court permitted the State to amend the indictment to reflect the brown envelope that Cook referred to in her testimony and police report. The Superior Court determined that the inclusion of "clear plastic bag" was a clerical error and the amendment did not prejudice the defendant.

(6) At the close of the State's case, Norwood moved for a judgment of acquittal on two counts, alleging that the State did not present sufficient evidence to prove beyond a reasonable doubt that Norwood maintained a dwelling for the keeping of a controlled substance. Based on the testimony of Officer Zolper, and Detective Cook, the Superior Court determined that a rational jury could find that there was sufficient circumstantial evidence to prove these counts and denied Norwood's motion. Norwood now appeals.

(7) Norwood's first claim is that his arrest was illegal because the arresting officers did not have reasonable suspicion to stop him. When a motion to suppress

is denied on a factual basis, this Court reviews the denial pursuant to an abuse of discretion standard.[1] A police officer may make an arrest without warrant when he has reasonable grounds to believe that the person arrested has committed a felony.[2] An arresting officer may rely on a fellow officer's judgment that reasonable grounds to arrest exist.[3]

(8) We find that Norwood's arrest was lawful and the evidence discovered pursuant to the arrest is admissible. Norwood's claim that the officers needed reasonable suspicion is mistaken, as the officer actually possessed a higher level of justification for the arrest. Messick had reasonable grounds to believe that Norwood had committed multiple felonies, based on his knowledge of Cook's investigation. There is no Fourth Amendment violation in this case.

(9) Norwood next argues that Cook's expert testimony should have been excluded because her method for determining intent to distribute was unreliable based on the criteria established in *Daubert v. Merrill Dow Pharmaceuticals*.[4] This Court reviews for abuse of discretion decisions to admit or exclude expert testimony.[5] A

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[1] *Richardson v. State*, 673 A.2d 144, 147 (Del. 1996).

[2] 11 *Del. C.* § 1904(b)(1). "Reasonable grounds to believe" is the legal equivalent of probable cause. *Thompson v. State*, 539 A.2d 1052, 1055 (Del. 1988).

[3] *State v. Cooley*, 457 A.2d 352, 355 (Del. 1983).

[4] 509 U.S. 579 (1993).

[5] *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 522 (Del. 1999).

witness may testify as an expert when she is qualified as an expert and has scientific, technical or other specialized knowledge that will assist the trier of fact to understand evidence or determine a fact at issue.[6] When determining reliability, factors illuminated in *Daubert* are meant to be helpful, not definitive, and may or may not be pertinent depending on the nature of the issue, an expert's particular expertise, and the subject of the testimony.[7]

(10) We find that the Superior Court did not abuse its discretion by admitting Detective Cook's expert opinion. The Superior Court determined that the information Cook relied upon is the type of information relied upon in her unit statewide. Failure to conform to the *Daubert* factors is not fatal in this case, as the factors and testimony do not lend themselves to peer review and reliability rates.

(11) Norwood next argues that the Superior Court erred by allowing the State to amend the indictment after the close of the State's case. This Court reviews for abuse of discretion the Superior Court's decision to grant the motion to amend.[8] The Superior Court may permit amendment of the indictment at any time before the verdict if no additional offense is charged and substantial rights of the defendant are

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[6]D.R.E. 702.

[7]*Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137, 150 (1999).

[8]*Coffield v. State*, 794 A.2d 588 (Del. 2002).

not prejudiced.[9] If the original indictment, when viewed with the amendment, is sufficiently certain and understandable to enable the defendant to prepare his defense, the defendant will not be prejudiced.[10] When a charge is not dependent on the nature of the instrument used, an amendment recharacterizing the instrument may be proper.[11]

(12) The description of the bag does not materially affect the paraphernalia charge, as it does not alter the crime charged nor the penalty attached. Whether the bag was clear plastic or brown paper would not affect the grand jury's determination on a paraphernalia charge. The description is arguably a clerical error or mistake in form and its correction caused little or no harm to Norwood.[12] We find that the Superior Court did not abuse its discretion.

(13) Norwood next claims the State did not prove that he knowingly maintained a dwelling for keeping controlled substances, entitling him to acquittal on two counts. This Court reviews de novo a denial of a motion for judgment of

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[9]Super. Ct. Crim. R. 7(e).

[10]*Coffield*, 794 A.2d at 593. In *Coffield*, this Court held that substituting a different person as the victim did not literally or effectively change the terms of the indictment.

[11]*Id*. at 592. *Cf. Harley v. State*, 534 A.2d 255 (Del. 1987). In *Harley*, this Court determined that the description of the weapon used in a crime is an essential element upon which the grand jury determined the charge of assault with a deadly weapon.

[12]*See Coffield*, 794 A.2d at 591 (finding a mere mistake in form, resulting in no substantial harm or prejudice to the defendant, should not be permitted to defeat the administration of justice).

acquittal.[13] In determining a motion for judgment of acquittal, the Superior Court must consider the evidence and all legitimate inferences in the light most favorable to the State and inquire as to whether any rational trier of fact could have found that guilt was established.[14] The Court will not distinguish between direct and circumstantial evidence.[15]

(14) Officer Zolper testified that he followed Norwood and saw him pull into the driveway of a residence on two occasions after he sold drugs to Cook. Detective Cook testified that Norwood was able to meet her within a few minutes of her call, suggesting that he lived at a location near the drug transactions. A reasonable jury could have made the logical inference that Norwood was maintaining the residence from which he seemed to be coming and going based on the officers' testimonies. We find that the Superior Court did not err by denying Norwood's motion for judgment of acquittal.

(15) Finally, Norwood claims that the Superior Court erred by failing to enforce a plea bargain that he claims to have entered into with the State and relied upon to his detriment. This Court reviews the Superior Court's refusal to enforce a

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[13] *Cline v. State*, 720 A.2d 891, 892 (Del. 1998).

[14] *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

[15] *Cline*, 720 A.2d at 892.

plea bargain for abuse of discretion.[16] The State may withdraw a plea bargain agreement at any time prior to the actual entry of a guilty plea by the defendant or other action by him constituting detrimental reliance upon the agreement.[17]

(16) We find that the Superior Court did not abuse its discretion. Norwood did not enter a guilty plea. Instead, he chose to go forward with a suppression hearing and trial. Further, Norwood has failed to demonstrate that he relied to his detriment on the offer of a plea bargain. Although he attempted to comply with the bargain he was unsuccessful thus failing to keep his part of the agreement.

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

[16] *Cf. Shields v. State*, 374 A.2d 816 (Del. 1977).

[17] *Id.* at 820.