

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARTIN FOUNTAIN,	§	
	§	No. 462, 2003
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Kent County
	§	Cr. I.D. No. 0209005515
Plaintiff Below,	§	
Appellee.	§	

Submitted: June 8, 2004  
Decided: August 18, 2004

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

ORDER

This 18<sup>th</sup> day of August, 2004, on consideration of the briefs of the parties, it appears to the Court that:

1) Martin Fountain appeals from his convictions, following a jury trial, of two counts of delivery of cocaine, numerous related drug offenses, and one count of unauthorized use of food stamps. He argues that the trial court erred in: (1) admitting into evidence certain cocaine found in another person's possession; (2) admitting into evidence a videotape of two alleged drug transactions; and (3) denying his motion for judgment of acquittal.

2) On September 9, 2002, Dover Police Officers were conducting video surveillance of South New Street, a known open air drug market. Detectives Jason Pires and David Boney used a video camera mounted approximately 200-250 feet from where Fountain was doing business. The detectives saw Fountain make two apparent drug deliveries within ten minutes. In both incidents, a man handed something to Fountain, who put it in his right front pants pocket. Then Fountain spit several small objects out of his mouth into his hand, gave one of the objects to the man, and replaced the remaining objects in his mouth.

3) Immediately after the first transaction, Pires and Boney contacted a third detective, Jeffrey B. Matthews, who was patrolling nearby. They told Matthews where the unknown man was heading, but Matthews was unable to locate him. In the second transaction, the man, later identified as Howard Snipes, placed the object he received from Fountain in his left front pants pocket. Pires and Boney again contacted Matthews, who stopped Snipes as he came around the corner from South New Street to West Division Street. Matthews found a packet of crack cocaine, and nothing else, in Snipes' left front pants pocket. The officers arrested Fountain approximately 10 - 15 minutes after Snipes, but found no cocaine. Fountain did have \$68 in cash and \$30 in Food Stamp coupons in his right front pants pocket.

4) Fountain argues that the trial court abused its discretion by admitting the cocaine found on Snipes into evidence. Snipes never testified that he bought the cocaine from Fountain, and the detectives could not identify Snipes' cocaine as being the object that Fountain handed to Snipes during the purported drug transaction. Thus, Fountain contends that the cocaine should have been excluded because the State failed to authenticate it.

5) The requirement that evidence be authenticated or identified before being admissible "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."<sup>1</sup> In other words, "[t]he State was required to eliminate possibilities of misidentification and adulteration, not absolutely, but as a matter of reasonable probability."<sup>2</sup> Here, the State met its burden through evidence that: i) officers saw Fountain hand a small object to Snipes; ii) they also saw Snipes put the object in his left front pants pocket; and iii) when Snipes was arrested, moments later, the only item in his left front pants pocket was the crack cocaine.

6) Fountain next argues that the trial court erred in admitting the videotape of the two purported drug transactions that led to his arrest. Since the videotape did not reveal what substances changed hands in the two transactions, Fountain claims that

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<sup>1</sup>D.R.E. 901(a).

<sup>2</sup>*Tricoche v. State*, 525 A.2d 151, 153 (Del. 1987).

the videotape was not relevant. If relevant, he says that the prejudicial effect of the videotape outweighed any probative value.

7) This argument, like the argument about the admissibility of the cocaine, ignores the timing and sequence of events. The videotape, alone, might be a record of some innocuous and legal transaction. When combined with the evidence that Snipes was arrested moments later with cocaine, however, the videotape tends to establish that Fountain was engaged in drug transactions. The trial court carefully considered both the relevance of the videotape and the question of whether its probative value outweighed its prejudicial effect. We are satisfied that the trial court acted well within its discretion.

8) Finally, Fountain argues that the trial court erred in denying his motion for judgment of acquittal. Such a motion must be denied unless, viewing the evidence in the light most favorable to the State, no rational juror could have found Fountain guilty beyond a reasonable doubt.<sup>3</sup> Fountain maintains that, as to the first transaction with the “unknown black male,” there is no evidence that the substance he received from Fountain was crack cocaine. We disagree. The videotape shows two transactions, occurring within 10 minutes of each other, where Fountain spit objects out of his mouth, handed one to the other person, and received something in exchange.

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<sup>3</sup>*Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

The fact that the second transaction involved the sale of crack cocaine (as established by Snipes' arrest and the seizure of the cocaine), could lead a reasonable juror to conclude that the first transaction also involved the sale of crack cocaine.<sup>4</sup>

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

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<sup>4</sup>*Cf. Tilghman v. State*, 199 WL 486621 (Del. Supr.).