IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARVIN E. FLETCHER,	§	
	§	No. 270, 2004
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0307022941A
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 2, 2005
Decided: March 16, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

O R D E R

This 16th day of March 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. The defendant-below appellant, Marvin Fletcher, appeals from a Superior Court order denying his motion for judgment of acquittal. Fletcher challenges the sufficiency of the State's evidence on all of the charges against him. Because the record shows that there was sufficient evidence to support the jury's verdict on all of the charges, we affirm the judgment of the Superior Court denying Fletcher's motion for a judgment of acquittal.

2. Fletcher and his co-defendant, Torshior Priest, were arrested after the Delaware State Police found 18.8 grams of cocaine, a digital scale, and a loaded handgun in the car in which they were riding. Fletcher and Priest were charged with numerous offenses, and were tried together.[1]

3. At trial, the State presented the testimony of Deborah Powell, who owned the car in which the drugs and gun were discovered. Powell testified that on the night in question Fletcher approached her and promised to give her cocaine if she would drive him and a friend to the Bob Evans restaurant in Dover. Powell agreed, and Fletcher got into the front passenger seat of the car, while Priest got into the back seat. At the Bob Evans restaurant, Powell and Priest waited in the car while Fletcher went inside the restaurant. Thirty or forty seconds later, Fletcher returned to the car and said "they're not here."

4. As they were leaving the restaurant parking lot, Powell failed to signal when she made a turn. A police officer who was conducting undercover surveillance in the area pulled them over. Powell testified that when the police pulled them over Fletcher told Priest "you better run." As the police were approaching the car, Powell heard her glove box open and close and she saw Fletcher fumbling with something. She also observed Priest shoving something down into the back seat cushion. When the police searched the car they found

[1] On February 16, 2005 this Court considered Priest's appeal, and scheduled the case for oral argument.

cocaine in the glove box, a digital scale in the side pocket of the passenger door, and a loaded handgun in the crevice of the back seat.

5. A jury convicted Fletcher of: (1) trafficking in cocaine, (2) possession of cocaine with intent to deliver, (3) conspiracy, (4) possession of drug paraphernalia, (5) maintaining a vehicle for keeping controlled substances, (6) tampering with physical evidence, (7) carrying a concealed deadly weapon, and (8) three counts of possession of a firearm during commission of a felony ("PFDCF"). The jury acquitted Fletcher of receiving a stolen firearm. The Superior Court denied Fletcher's acquittal motion on all the charges, and Fletcher appeals from that order.

6. Fletcher challenges the sufficiency of the State's evidence on all the charges on which he was convicted. This Court reviews the denial of a motion for acquittal *de novo*. The standard of review is whether a rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt.[2]

7. The drug charges against Fletcher required the State to prove that Fletcher "possessed" both the cocaine and the digital scale. Because the sufficiency of the State's evidence of possession is a recurring issue, it is addressed first for the sake of brevity.

[2] *Hardin v. State*, 844 A.2d 982, 989 (Del. 2004); *Seward v. State*, 723 A.2d 365, 369 (Del. 1999).

8. A person can be "in possession" of a item that is found "in or about the defendant's person, premises, belongings, vehicle, or otherwise within the defendant's reasonable control."[3] At trial, Powell testified that she did not have cocaine or a scale in her car before she gave Fletcher and Priest a ride. The State presented evidence that Fletcher was sitting in the front passenger seat of the car immediately before the police stopped the vehicle, that Powell saw Fletcher fumbling with something before the police approached the car, that Powell heard the glove box open and close, and that the police found 18.8 grams of cocaine in the glove box and a digital scale in the side pocket of the passenger side door. That evidence was sufficient to enable a jury to conclude that the cocaine and scale were within Fletcher's control. Accordingly, the State presented sufficient evidence for the "possession" element of all the drug charges.

9. Fletcher argues that the State did not present sufficient evidence that he possessed cocaine with the intent to deliver it. That argument fails because in addition to proving possession, the State presented sufficient evidence that Fletcher intended to sell the drugs. The large quantity of drugs, plus the fact that the police found a digital scale (a device commonly used to divide drugs into saleable quantities) was sufficient evidence for a jury to conclude that Fletcher was guilty of possession with intent to deliver.

[3] 16 *Del. C.* § 4701(30).

10. The State charged Fletcher and Priest with conspiring to possess cocaine with the intent to deliver it. Fletcher challenges the sufficiency of the State's evidence on the conspiracy charge. A person is guilty of conspiracy when: "intending to promote or facilitate the commission of a felony, the person . . . (2) agrees to aid another person or persons in the planning or commission of the felony; and he . . . commits an overt act in pursuance of the conspiracy."[4]

11. The State argued that possession of the cocaine with intent to deliver qualified as an overt act, and that (as discussed above) there was sufficient evidence to support that charge. There was also sufficient circumstantial evidence that Fletcher and Priest had agreed to commit the felony. At trial, the State established that Fletcher asked Powell to drive him and a friend to the Bob Evans restaurant, at which point Fletcher and Priest entered the car together. Powell had never met Priest before, so he was not riding in the car for Powell's benefit. Priest was carrying a gun, and he remained with the car while Fletcher entered the restaurant to find the party they were trying to meet. That evidence was sufficient for a jury to conclude that Fletcher and Priest had made an agreement to sell cocaine to the party whom they were trying to meet.

12. Fletcher argues that the State did not present sufficient evidence for a jury to find him guilty of trafficking in cocaine. Under 16 *Del. C.* § 4753A(a)(2), a

[4] 11 *Del. C.* § 512.

person who "is knowingly in actual or constructive possession of 10 grams or more cocaine is guilty of . . . 'trafficking in cocaine.'"[5] As previously discussed, the State presented sufficient evidence of possession, and Fletcher does not dispute that the cocaine found in the glove box weighed more than 10 grams. That evidence was sufficient to support a conviction for trafficking.

13. Fletcher next challenges the sufficiency of the evidence that he possessed drug paraphernalia. As previously discussed, the State presented sufficient evidence that Fletcher possessed the scale. A scale used or intended for use in weighing or measuring a controlled substance is included within the definition of paraphernalia.[6] The presence of the scale and the large quantity of drugs were sufficient evidence for a reasonable jury to conclude that Fletcher intended to use the scale for weighing and measuring the cocaine.

14. Under 16 *Del. C.* § 4755(a)(5), it is unlawful for any person to "knowingly keep or maintain any . . . vehicle . . . which is used for keeping or delivering [controlled substances]."[7] Ownership of a vehicle is not required under

[5] Fletcher does not dispute the fact that the police found 18.8 grams of cocaine in the vehicle.

[6] 16 *Del. C.* § 4771(c)(5).

[7] Maintaining a vehicle for keeping controlled substances is a class F felony. 16 *Del. C.* § 4755(b).

the statute. A single incident of transporting drugs in a vehicle is sufficient to convict.[8]

15. Fletcher argues that his conviction for maintaining a vehicle for keeping controlled substances cannot be reconciled with this Court's decision in *McNulty v. State*.[9] We disagree. In *McNulty*, three men were charged with maintaining a vehicle for keeping controlled substances: the owner of the vehicle, the front seat passenger who had the drugs in his possession, and McNulty, who rode in the back seat and was the only person able to identify the prospective buyer.[10] The State argued that McNulty was guilty of maintaining the vehicle under a theory of accomplice liability.

16. Rejecting that argument, this Court acquitted McNulty. This Court concluded that evidence of McNulty's presence in the car in order to identify the buyer of the drugs, without more, was insufficient to show that he aided the other two defendants in maintaining the vehicle for keeping controlled substances.

17. This case is distinguishable from *McNulty* on its facts. Unlike the defendant in *McNulty*, here the State presented evidence that Fletcher had actual possession and control over the cocaine, and that he had personally solicited

---

[8] *Watson v. State*, No. 556, 1999, 2000 WL 975959 (Del. May 24, 2000) (citing *Lonergan v. State*, No. 197, 1990, 1991 WL 57128 (Del. Apr. 3, 1991)).

[9] 655 A.2d 1214 (Del. 1995).

[10] *Id*. at 1218-19.

Powell to give him a ride to the restaurant so he could "get hooked up." Fletcher told Powell where to stop her car, and later instructed her to leave the area quickly. That evidence distinguishes this case from *McNulty*, where there was not as much evidence connecting the defendant to the control over the vehicle itself. *McNulty* does not affect Fletcher's conviction, because of significant evidence of his direct involvement in maintaining the vehicle for keeping a controlled substance.

18. Fletcher also challenges the sufficiency of the State's evidence that he tampered with physical evidence. A person is guilty of tampering when he conceals, alters or destroys evidence that he believes is about to be produced or used in a prospective official proceeding.[11] At trial, Powell testified that she saw Fletcher fumbling with something and that she heard the glove box open and close. The police found the digital scale in the side pocket of the passenger's side door, and found the cocaine in the glove box. That evidence was sufficient for a jury to conclude that Fletcher was attempting to conceal the cocaine and the scale, which could be used against him in a prospective criminal trial. Accordingly, the State presented sufficient evidence against Fletcher on that charge.

19. Finally, Fletcher argues that the State did not prove that he was in possession of the handgun found in the back seat of the car, and therefore, the evidence was not sufficient to support his conviction of three counts of PFDCF and

[11] 11 *Del. C.* § 1269(2).

one count of carrying a concealed deadly weapon. The State responds that Fletcher was properly convicted of all those charges under a theory of accomplice liability. Under 11 *Del. C.* § 271, a person is guilty of an offense committed by another person when "intending to promote or facilitate the commission of the offense, the person . . . aids, counsels or agrees or attempts to aid the other person in planning or committing it."

20. The State proved by circumstantial evidence that Fletcher agreed to aid Priest in possessing the firearm. The State showed that Fletcher and Priest were engaged in a joint criminal enterprise and conspired to sell the cocaine, that Priest rode in the vehicle after Fletcher obtained Powell's consent, that Priest remained with the vehicle while Fletcher went into the restaurant, and that Priest was in possession of the firearm while he and Fletcher were in the car. That evidence was sufficient for the jury to conclude that Fletcher and Priest had agreed that Priest would carry the gun during the criminal enterprise.

21. Fletcher contends that in order for a person to be "in possession" of a firearm, the weapon must be physically available or accessible to him during the commission of the crime.[12] Here, the State proved that the firearm was physically available to Priest during the commission of all the felonies, and the State also

[12] *Mack v. State*, 312 A.2d 319, 322 (Del. 1973).

proved that Fletcher acted as Priest's accomplice. That evidence was sufficient for the jury to find Fletcher guilty of possessing the firearm.

NOW, THEREFORE, for the foregoing reasons, the judgment of the Superior Court denying Fletcher's motion for acquittal is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice