

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARRETT D. WHEELER,	§	
	§	No. 169, 2006
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. 0506009181
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 16, 2006

Decided: August 23, 2006

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

**ORDER**

This 23<sup>rd</sup> day of August 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Garrett D. Wheeler, the defendant-below, appeals from his conviction of maintaining a vehicle for keeping controlled substances. Wheeler contends that the Superior Court erred by denying his motion for judgment of acquittal, because the State failed to present sufficient evidence to support a finding of guilt. We find that there was sufficient evidence of record to establish Wheeler's use of the car to facilitate the possession or use of controlled substances. Therefore, we affirm.

2. On June 9, 2005, while Wheeler was a passenger in the front seat of a green Ford Escort driven by Shannon Huey, Delaware State Police Corporal David

Hake, accompanied by two probation officers, began following the Escort in an unmarked car. Huey failed to activate her turn signal at least 300 feet before turning. Corporal Hake pulled the Escort over, at which point Hake recognized Wheeler as a person who was wanted by Probation and Parole. Wheeler was immediately removed from the Escort and placed into custody.

3. Corporal Hake saw a bag of marijuana in plain view in or about the passenger door handle. During a search of the car incident to arrest, Corporal Hake also found a razor blade in the center console of the car and a white chalky substance on the driver and passenger seats.<sup>1</sup> A later search of Wheeler's person at the police station revealed a burnt crack pipe.

4. At the police station, Wheeler gave a videotaped statement in which he admitted that the marijuana found in the car was his and that he was on his way to purchase cigarettes and a blunt that evening. Wheeler also admitted that he had smoked crack in the car two or three days before the arrest, had recently fixed the car's rearview mirror, and had used the car for a few days.

5. The State charged Wheeler with (1) possession of a deadly weapon during the commission of a felony, (2) maintaining a vehicle for keeping controlled substances, (3) possession of a deadly weapon by a person prohibited, (4) conspiracy second degree, (5) possession of a narcotic schedule II controlled

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<sup>1</sup> Officers suspected that the substance was crack cocaine but did not conduct an analysis.

substance (cocaine), (6) possession of drug paraphernalia, and (7) possession of a non-narcotic schedule I controlled substance (marijuana). Wheeler waived his right to a jury trial.

6. At the bench trial, Wheeler's testimony differed significantly from his videotaped statement. Wheeler testified that he admitted ownership of the marijuana only to protect Huey, who is the mother of his child. Wheeler also testified that Huey was on her way to the store to purchase baby food and that he rode along to purchase cigarettes, but not a blunt. He did not deny having been in the car before the day of his arrest, and he admitted to having fixed the car's rearview mirror.

7. Based on the evidence presented at trial, the Superior Court judge found Wheeler guilty of (1) maintaining a vehicle for keeping controlled substances, (2) possession of marijuana, and (3) possession of drug paraphernalia. Wheeler has appealed only from his conviction of maintaining a vehicle for keeping controlled substances.

8. We review *de novo* a trial judge's denial of a motion for judgment of acquittal. That standard requires this Court "to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could

find [the defendant] guilty beyond a reasonable doubt of all the elements of the crime.”<sup>2</sup>

9. Wheeler claims that the Superior Court erred by denying his motion for judgment of acquittal, because the State failed to produce sufficient evidence establishing some affirmative activity by Wheeler to use the vehicle to facilitate the possession, delivery or use of controlled substances. To support his claim, Wheeler relies on this Court’s decision in *Priest v. State*,<sup>3</sup> where we reversed a Superior Court conviction for maintaining a vehicle for keeping controlled substances. In *Priest*, the defendant was a back-seat passenger who took no part in the conversation about the drug transaction or in the transaction itself. We concluded that the defendant had not exercised the degree of control or use of the vehicle, in connection with the possession of drugs, that was required to support a finding of guilt beyond a reasonable doubt.<sup>4</sup> Wheeler claims that, even assuming *arguendo* he possessed the marijuana, his conviction for maintaining a vehicle is precluded by our ruling in *Priest*, because Wheeler had no actual control over the vehicle, and there was no evidence that he was using the car specifically to transport the marijuana.

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<sup>2</sup> *Priest v. State*, 879 A.2d 575, 577 (Del. 2005) (citing *Hardin v. State*, 844 A.2d 982, 989 (Del. 2004)).

<sup>3</sup> 879 A.2d 575 (Del. 2005).

<sup>4</sup> *Id.* at 580.

10. In *Priest* this Court recognized that “the critical benchmark for determining the sufficiency of the evidence in a maintaining a vehicle prosecution has been the degree of the defendant’s control or use of the vehicle in connection with the possession of drugs.”<sup>5</sup> That said, it is also well established that a passenger having no direct control over the vehicle can be convicted of maintaining a vehicle for keeping controlled substances.<sup>6</sup> As we have explained, the language of 16 *Del. C.* § 4775 “should be read broadly to discourage the use of a vehicle for the transportation or use of drugs.”<sup>7</sup> Thus, the State is not required to prove a defendant’s *direct* control over the vehicle, but must establish the defendant’s affirmative and knowing use of the vehicle to keep or maintain the car for illegal drug activity.<sup>8</sup>

11. Here, there was sufficient evidence to establish Wheeler’s direct involvement in maintaining the vehicle for keeping a controlled substance. During his videotaped statement to police, Wheeler admitted that the marijuana found in

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<sup>5</sup> *Id.* at 579-80.

<sup>6</sup> *See, e.g., Thomas v. State*, 2005 WL 3031636 (Del. Supr.) (front seat passenger convicted of maintaining a vehicle for cocaine located on passenger side floorboard); *Fletcher v. State*, 2005 WL 646841 (Del. Supr.) (front seat passenger convicted of maintaining a vehicle where cocaine was found in glove box, digital scale was found in side pocket of passenger door and a loaded handgun was found in back seat); *Watson v. State*, 2000 WL 975050 (Del. Supr.) (front seat passenger convicted of maintaining a vehicle where cocaine was found behind driver’s seat).

<sup>7</sup> *Thomas*, 2005 WL 3031636, at \*2 (citing *Lonegran v. State*, 1991 WL 57128, at \*5 (Del. Supr.)).

<sup>8</sup> *Priest*, 879 A.2d at 580.

the car was his, and that he was on his way to the store in the car to buy cigarettes and a blunt. That evidence alone suffices to support a conviction of maintaining a vehicle for keeping a controlled substance.<sup>9</sup> Wheeler also admitted that he had smoked crack cocaine in the car in the days before the arrest, that he had been using the car generally for a few days, and that he had used the razor found by the police to fix a mirror in the car. That constitutes further evidence of Wheeler's control and maintenance of the vehicle and his knowing use of the car for illegal drug activity.

12. The Superior Court judge, as the trier of fact, was “the sole judge of the credibility of the witnesses and responsible for resolving conflicts in testimony.”<sup>10</sup> The trial judge was, therefore, free to credit Wheeler's videotaped statement over his contradictory trial testimony, and conclude that Wheeler's presence in the car at the time was more than mere happenstance, and Wheeler was involved directly in maintaining the vehicle for keeping a controlled substance. Accordingly, there was sufficient evidence to support the Superior Court's denial of Wheeler's motion for acquittal.

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<sup>9</sup> *Id.*

<sup>10</sup> *Knight v. State*, 690 A.2d 929, 932 (Del. 1996).

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice