IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALONZO CANNON,	§	
	§	No. 298, 2001
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	Cr.A. Nos: IS00-10-0276
	§	IS00-10-0277
Plaintiff Below,	§	IS00-10-0278
Appellee.	§	IS00-10-0279
	§	IS00-10-0280
	§	

Submitted: January 8, 2002
Decided: January 31, 2002

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 31st day of January 2002, upon consideration of the briefs of the parties it appears to the Court that:

(1) Alonzo Cannon was sentenced to eighteen years in prison for convictions for possession of cocaine with intent to deliver,[1] possession of marijuana with intent

[1] 16 *Del. C.* § 4751(a).

to deliver,[2] two counts of possession of contraband drugs within 1,000 feet of a school,[3] possession of drug paraphernalia,[4] and criminal impersonation.[5] On direct appeal, Cannon seeks a new trial and suppression of his post-Miranda statements to the police and eleven bags of marijuana and twelve bags of cocaine found in his jacket at his arrest. Cannon alleges the police gave him defective Miranda warnings and violated his Fourth Amendment rights in the warrantless seizure and search of his jacket. We find both Cannon's claims to be without merit and affirm the judgment of the Superior Court.

(2) On October 10, 2000, two probation officers and two police officers knocked on the door of 209 Little Creek Apartments in Laurel. Priscilla Barnes answered the door. The officers informed her that they were looking for Cannon, who was in violation of his parole-mandated curfew by not being at his own home after 10 p.m. The officers explained that they thought that Cannon frequently visited that apartment. Barnes told the officers that she did not think Cannon was in the

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[2] *Id.*

[3] 16 *Del. C.* § 4647.

[4] 16 *Del. C.* § 4771.

[5] 11 *Del. C.* § 907(1).

apartment but she stated, "you can come in and check if you want to because I have no reason to lie."

(3) Barnes led the officers through each of the apartment's rooms. When she found her 15-year-old daughter Marshay's bedroom door locked, she decided to open the door with a hanger. Barnes and the officers then discovered Marshay and Cannon naked and in bed together. Marshay admitted that she had snuck Cannon into the apartment and her room earlier in the evening. Cannon's clothes were at the foot of the bed and a man's jacket lay on the floor by the doorway. Officer Gary Layfield gave Cannon Miranda warnings. The officers searched the man's jacket pockets and found eleven individually wrapped bags of marijuana and twelve individually wrapped bags of cocaine. The officers then asked Cannon if he owned the jacket. Cannon initially denied owning the jacket and stated it belonged to Nate Barnes, Marshay's 15-year-old brother. Cannon ultimately admitted the jacket belonged to him.

(4) Cannon first alleges that Officer Layfield gave him defective Miranda warnings and argues that the Superior Court committed plain error[6] by failing to suppress his statements to the officers that the jacket belonged to him. At the

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[6] *Wainright v. State*, 504 A.2d 1096, 1100 (Del. 1986) ("Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.").

suppression hearing, Officer Layfield testified that he read Cannon his rights from a card with preprinted Miranda warnings. The prosecutor then asked Officer Layfield exactly what he read from his card. According to the hearing transcript, Officer Layfield began a rapid-fire recital of the individual Miranda warnings from memory. The trial judge interrupted him and told him to "slow down." Officer Layfield then resumed his recitation of the warnings but omitted the specific provision that if Cannon could not afford an attorney then one would be appointed to him. During the hearing, Timothy Jones, one of the probation officers, also testified that Officer Layfield issued Miranda warnings to Cannon at the apartment. Cannon claims that the Superior Court committed plain error by refusing to suppress his statements to police and failing to realize that Officer Layfield's testimony recounting the Miranda warnings omitted the right to appointed counsel.

(5) Both Officer Layfield and Officer Jones testified that Layfield gave Cannon Miranda warnings from a preprinted card. We find no error in the trial court's finding that Cannon was properly Mirandized and Layfield's in-court recitation of the warnings omitted one warning because he was nervous and interrupted by the trial judge. Furthermore, even if the admission of Cannon's

statements was plain error, such error was harmless because Marshay testified that the jacket belonged to Cannon.

(6) Cannon next contends the Superior Court committed plain error by failing to suppress the jacket and drugs under the Fourth Amendment as fruits of an unlawful search and seizure.[7] Although Barnes was not the official lessee of the apartment,[8] she was the adult in-charge that night and had authority to consent to the police's entry and search of the apartment.[9] Barnes opened her minor daughter's bedroom door on her own initiative. Cannon was not a resident of the apartment but rather a surreptitious guest of Marshay. The police's search of the jacket was a lawful search incident to Cannon's arrest for violating his probation.[10]

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[7] *Mapp v. Ohio*, 367 U.S. 643 (1961) (holding the Fourth Amendment prohibition against unreasonable search and seizure applies to the States through the Fourteenth Amendment).

[8] Barnes' other daughter Shawna was the lessee.

[9] *DeShields v. State*, 534 A.2d 630, 643 (Del. 1987) (quoting *United States v. Matlock*, 415 U.S. 164, 171 (1974) ("Police may conduct a warrantless search if consent is obtained from a third party who possesses 'common authority over or other sufficient relationship to the premises or effects sought to be inspected.'").

[10] *Traylor v. State*, 458 A.2d 1170, 1173 (Del. 1983) (quoting *Chimel v. California*, 395 U.S. 752, 763 (1969)) ("In order to protect himself and to prevent the concealment or destruction of evidence, an arresting officer may search the arrested person and 'the area from within which he might gain possession of a weapon or destructible evidence.'").

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice