IN THE SUPREME COURT OF THE STATE OF DELAWARE

WANDA I. GARCIA,	§	
	§	No. 220, 2006
Defendant Below-Appellant,	§	
	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID #0504013989
	§	
Plaintiff Below, Appellee.	§	

Submitted: September 11, 2006
Decided: October 31, 2006

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

O R D E R

(1) Appellant Wanda I. Garcia appeals her conviction in the Superior Court of Use of a Dwelling for Keeping a Controlled Substance.[1] Garcia presents two arguments to this Court, both of which relate to the admission of evidence showing that Garcia was present during a prior police search of her home. First, she contends that the evidence was irrelevant and unduly prejudicial. Second, she contends that the trial court erred by failing to conduct a *Getz* analysis. We find no merit in either of Garcia's arguments and affirm.

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[1] 16 *Del. C.* § 4755(a)(5).

(2) Garcia lived at 1712 W. 4th Street with her boyfriend, Nago Ortiz, and her son. Around April 7th or 8th, 2005, a confidential informant told the Wilmington police that a Mexican male was selling drugs at Garcia's address. After receiving the tip, the police arranged for an informant to make a controlled purchase of drugs from Ortiz.

(3) The police then executed a search warrant on April 18, 2005. They found $52 on Ortiz and other cash in various parts of the house. They also found 3.3 grams of cocaine in the rafters of the basement, Ziploc bags of various sizes and color, and a black digital scale. During the search, Ortiz, Garcia and her son waited outside on the porch with a detective. The detective heard Garcia say to Ortiz, "Whatever they find put it on me, I'll say it's mine."

(4) Garcia was indicted for Possession with Intent to Distribute a Controlled Substance, Use of a Dwelling for Keeping Controlled Substances, Conspiracy Second Degree, and Misdemeanor Possession of Drug Paraphernalia. At trial, Garcia testified that she did not know that there were drugs present in her home. "I don't know what was happening in my house because sometimes -- most of the time I'm not at my house. . . . [b]ecause I work every day."[2] She also denied telling Ortiz to tell the police that whatever they found belonged to her.

[2] Garcia testified through an interpreter.

(5) Before cross-examining Garcia, the prosecutor requested a sidebar conference and the following conversation occurred:

> Mr. Martyniak: Before I engage in this line of questioning I don't know -- speaking to the officer, the defendant's last response was: She wasn't home very often so she had no idea what's going on in her house. There have been four -- Well, several search warrants that have been issued on this residence and she was home for at least one of the other ones. The question doesn't go to her guilt, but rather that she does in fact know what's going on in her house.
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> Mr. Manning: Your Honor, I'd have to object: One, these other search warrants seem very collateral to this case; and two, bringing up the fact there may have been other search warrants indirectly implies that she's involved in some ongoing activity and is guilty, and there's this 404(b) evidence issue and it's very collateral to this case.
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> The Court: This witness has professed ignorance that anything unlawful is going on at this residence. If she was present and subject to three previous search warrants that certainly goes to her credibility. The objection is overruled.

The prosecutor then asked Garcia if she was present during any other prior police search. Garcia answered that she was present at a 2003 search. On re-direct, she stated that she was never charged with a crime resulting from that search.

(6) Garcia was convicted of one count of Use of a Dwelling for Keeping Controlled Substances. A mistrial was declared as to the other counts because the jury could not reach a unanimous verdict. Garcia was sentenced to two years Level V imprisonment, suspended for one year of Level II supervision and a $1,000 fine.

(7) We review the admission of the statement for abuse of discretion.[3] "An abuse of discretion occurs when 'a court has . . . exceeded the bounds of reason in view of the circumstances, [or] . . . so ignored recognized rules of law or practice so as to produce injustice.'"[4] Evidence is relevant when it has a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[5] Evidence that impeaches a witness's credibility is relevant and admissible so long as it is not prohibited by another rule.[6]

(8) Garcia argues that evidence establishing her presence at a prior search of her home was irrelevant and unduly prejudicial in violation of D.R.E. 402 and 403 and therefore, should not have been admitted. Garcia testified that, because she was not at home very often, she had no knowledge that there were drugs in her house. She also denied telling Ortiz to blame her if the police found anything in the house. Once she took the stand, Garcia's credibility became an issue. The evidence that she was present at a prior search of her home was relevant because it

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[3] *Lampkins v. State*, 465 A.2d 785, 790 (Del. 1983) ("A decision whether to admit testimony as relevant is within the sound discretion of the Trial Judge and will not be reversed absent a clear abuse of that discretion.").
[4] *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994) (citing *Firestone Tire & Rubber Co. v. Adams,* 541 A.2d 567, 570 (Del. 1988)).
[5] D.R.E. 401.
[6] *Weber v. State*, 457 A.2d 674, 680 (Del. 1983); *Baumann v. State*, 891 A.2d 146, 148-49 (Del. 2005)

contradicted her testimony that she was clueless about the activities going on in her house.

(9) Under D.R.E. 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ."[7] The evidence in this case was probative on the issue of Garcia's credibility. It directly undermined Garcia's assertion that she did not know about possible unlawful activity being conducted in her home. The prosecutor asked if she was home during any other execution of a search warrant there. He did not ask about the reasons for the search nor did he inquire as to whether any contraband was found. Garcia herself testified that she was not charged with any crime as a result of the search. We find no abuse of discretion by the Superior Court in its decision to allow this contradiction evidence about her presence during a prior search.

(10) Garcia next argues that the Court improperly failed to apply *Getz*[8] before admitting the evidence. We review the trial court's decision to not apply *Getz* for abuse of discretion.[9] D.R.E. 404(b) states that evidence of a defendant's uncharged bad acts is not admissible to show conformity therewith. However, Rule 404(b) "does not preclude a party opponent from presenting rebuttal evidence that a party has given false testimony to a jury about his own conduct which is at

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[7] D.R.E. 403.
[8] *Getz v. State*, 538 A.2d 726 (Del. 1988).
[9] *Baumann*, 891 A.2d at 150-51.

issue in the case.[10] In *Baumann*, the defendant was accused of stalking and harassment. He testified on his own behalf and claimed that he "always tried to treat the ladies very nicely. . . . I always try to be very nice."[11] Then, in an effort to impeach the defendant, the prosecutor asked if he had a prior conviction for violating a Protection of Abuse Order. This Court held that the trial court did not abuse its discretion in not conducting a *Getz* analysis.[12]

(11) Here, as in *Baumann*, Garcia opened the door by testifying that she was clueless as to what was occurring in her home when she was at work. The prosecutor properly sought permission to question her about the prior search outside the presence of the jury. The evidence of the prior search was admitted solely to rebut Garcia's testimony and not to show that she had any predisposition for criminal activity. While the court in *Baumann* read a limiting instruction to the jury, defense counsel in this case specifically requested that no jury instruction be given for strategic reasons.[13] We conclude that the trial judge did not abuse his discretion by allowing the evidence to be admitted without first performing a *Getz* analysis.

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[10] *Id.* at 149.
[11] *Id.* at 147.
[12] *Id.* at 150-51.
[13] Defense counsel stated before closing arguments: "I don't want a limiting instruction. I don't want to draw the jury's attention to this . . . ."

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice