IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| LAMAR JOE, | § | |
| | § | No. 204, 2006 |
| Defendant Below, | § | |
| Appellant, | § | Court Below: Superior Court of |
| | § | the State of Delaware in and for |
| v. | § | New Castle County |
| | § | |
| STATE OF DELAWARE, | § | Cr. Id. No. 0404006562 |
| | § | |
| Plaintiff Below, | § | |
| Appellee. | § | |

Submitted: November 15, 2006
Decided: December 13, 2006

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

**O R D E R**

This 13th day of December 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Lamar Joe ("Joe"), the defendant-below, appellant, appeals from the denial by the Superior Court of his motion to dismiss the charge of Possession of a Deadly Weapon During the Commission of a Felony ('PDWDCF"). Joe contends that the Superior Court erred by not requiring the State to prove that he knowingly committed the underlying felony of Possession of a Controlled Substance within 300 Feet of a Park. We find no merit and, therefore, affirm.

2. On April 8, 2004, Joe entered a convenience store at 600 Heald Street in Wilmington. He walked to the back of the store, grabbed a bottle of soda, and

started drinking it on his way to the counter. Joe gave the owner a $100 bill to pay for the soda. The owner responded that he did not have change for the $100 bill because the store had just opened. Joe left the opened soda on the counter and walked out of the store. The owner then called the police.

3. Officers Connor and Burch arrived at the convenience store and took a description of Joe. The officers then searched the area in separate patrol cars around the 700 block of Townsend Street, where the owner believed Joe lived. Seeing someone who matched Joe's description in the 600 block of Townsend Street, Officer Connor stopped and left his vehicle. At that point Joe turned around and started walking in the opposite direction. Officer Burch then told Joe to stop and put his hands on the car. Joe complied, but before doing so, he dropped a small plastic baggy on the ground. Officer Connor picked up the baggy, and noticed the smell of marijuana. This stop occurred approximately 42 feet from the Elbert Street Playground. During a pat down search of Joe, the officers found a "push dagger" in his inside jacket pocket. Later, the officers found two additional bags of marijuana, one in the back seat of Officer Burch's patrol car after Joe had been taken into custody, and another in Joe's sock that was found during a strip search at the police station.

4. Joe was indicted for Possession of a Controlled Substance within 300 Feet of a Park, PDWDCF, Possession of a Deadly Weapon By a Person Prohibited,

Carrying a Concealed Deadly Weapon, and Theft. Joe moved to dismiss the PDWDCF count. The Superior Court denied the motion, holding:

> I've decided that in this particular case, anyway, that in light of the statutory language for possession of drugs within certain feet of a park or church or school, whatever it is, it's not a defense that he knows – in fact, he knows he's within that distance of a church or park, or anything else. So, no, he does not have to know he's committing the felony in this instance.

A jury found Joe guilty of PDWDCF and Possession of a Controlled Substance Within 300 Feet of a Recreation Area.

5. Joe advances two arguments on appeal. First, he claims that because the underlying felony, possession within 300 feet of a park, is essentially a strict liability offense, the State must prove that he had some mental guilt or awareness that his acts were criminal to be found guilty under the PDWDCF statute. Second, Joe contends that public policy dictates imposing a *mens rea* requirement onto 11 *Del. C.* § 1447. We review questions of statutory construction *de novo*.[1]

6. The crime of Possession of a Deadly Weapon During the Commission of a Felony is defined in 11 *Del. C.* § 1447(a).[2] The underlying felony of which Joe

[1] *Poteat v. State*, 840 A.2d 599, 603 (Del. 2003); *Christiana Hospital v. Fattori*, 714 A.2d 754, 756 (Del. 1998); *State Dep't of Labor v. Reynolds*, 669 A.2d 90, 92 (Del. 1995).

[2] 11 *Del. C.* § 1447(a) ("A person who is in possession of a deadly during the commission of a felony is guilty of possession of a deadly weapon during the commission of a felony.")

was convicted was Possession of a Controlled Substance in or within 300 Feet of a Park.[3]

7. Joe contends that because he was unaware that he was committing that underlying felony, he cannot also be convicted of PDWDCF under Section 1447. This argument must fail for two reasons. First, as to the underlying felony, Section 1447 is clear and unambiguous leaving no room for inserting new conditions or limitations by way of judicial construction or interpretation. As this Court stated in *Mack v. State*:

> [W]e find § 468A clear and unambiguous; there is no room for judicial construction or interpretation. In its common and ordinary usage, the unmodified word "felony" . . . means *any* crime or offense specifically designated by law to be a felony. . . . It *is beyond the judicial power to delimit the word "felony" by restricting it to non-violent or "passive" felonies only.*[4]

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[3] 16 *Del. C.* § 4768 reads, in pertinent part:

> (a) Except as authorized by this chapter, any person who illegally . . . possesses a controlled substance . . . while . . . within 300 feet of the boundaries of any such parkland, park, or recreation area . . . is guilty of a felony and shall be imprisoned for a term of not more than 15 years and fined not more that $250,000. . . .
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> * * *
>
> (c) It shall not be a defense to a prosecution for violation of this section that the person was unaware that the prohibited conduct took place in or within 300 feet of any such parkland, park or recreation area."

[4] *Mack v. State*, 312 A.2d 319, 321 (Del. 1973) (emphasis added). Section 468A was superseded by Section 1447. The Court in *Mack* recognized that due to the similarity between the two statutes, its analysis of Section 468A was also applicable to Section 1447. More recent cases analyzing Section 1447 have adopted the *Mack* Court's analysis. *See Barnett v. State*, 691 A.2d 614, 617 n.3 (Del. 1997) ("We acknowledged that because of the similarity of the two statutes, the rulings in *Mack* under Section 468A have application under Section 1447.").

8. Second, Joe's contention ignores the well-settled principle that ignorance of the law is no defense.[5] To be guilty of Section 1447, "the state is required to establish that at the time [defendant] was engaged in the designated predicate felony, [he] had a deadly weapon physically available or accessible to him."[6] There is no requirement that the defendant must also be aware that he was committing the predicate felony.

9. Joe also contends that it would violate public policy to impose such a strict penalty, a felony conviction carrying a mandatory two-year minimum, in circumstances where he was unaware that carrying a small quantity of marijuana near a park is a crime. As earlier stated, this Court has considered the meaning of the term "felony" in Section 1447 and has refused to limit its meaning to only a certain category of felonies.[7] Moreover, "there is no requirement that the weapon be used or intended for use; simple possession suffices."[8]

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[5] *Wien v. State*, 882 A.2d 183, 190 (Del. 2005); *State v. LeCompte*, 538 A.2d 1102, 1003 (Del. 1998) (holding that "No person may avoid responsibility for their acts by a claim of ignorance of the law.").

[6] *Barnett*, 691 A.2d at 617 (quotations omitted).

[7] *Mack*, 312 A.2d at 321.

[8] *Poli v. State*, 418 A.2d 985, 987 (Del. 1980) (citing the Commentary to the Criminal Code).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice