

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT D. FULLERTON,	§	
	§	No. 246, 2006
Defendant-Below	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID # 0410000810
	§	
Plaintiff-Below	§	
Appellee.	§	
	§	

Submitted: December 12, 2006

Decided: March 8, 2007

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

***ORDER***

This 8<sup>th</sup> day of March 2007, it appears to the Court that:

(1) Defendant-Appellant Robert D. Fullerton appeals his Superior Court conviction of Possession of a Deadly Weapon by a Person Prohibited and Possession of Alcohol by an Underage Person. Fullerton makes three arguments on appeal. First, he contends that the trial court should have excluded the specific reason why police were conducting an investigation the night of Fullerton's arrest. Second, he contends that the prosecutor's use of this statement during closing arguments exceeded the limitations placed upon the evidence by the trial judge.

Finally, he contends that the trial court erred by not granting his motion for judgment of acquittal. We find no merit in Fullerton's arguments and affirm.

(2) On October 2, 2002, Officer Grajewski of the New Castle County Police Department responded to a complaint of "shots fired." It was quickly determined that the suspected shooter drove a small red vehicle with beads hanging from the rearview mirror. Officer Grajewski found a vehicle matching this description parked in front of 8 Stanton Avenue. Grajewski was granted permission to enter the home.

(3) While inside, Grajewski saw Robert Fullerton sitting on a bed in a bedroom. When Grajewski entered the room, Fullerton stood up and dropped six .32 caliber bullet casings onto a dresser positioned next to the bed. After obtaining permission to search the room, Grajewski found a .32 caliber revolver directly under the mattress where Fullerton was sitting. Grajewski also noticed that Fullerton's speech was slurred and he smelled like alcohol.

(4) Fullerton was only 16-years-old at the time of the commission of the offenses. A reverse amenability motion was filed on December 14, 2005 but was withdrawn on October 4, 2004. A Superior Court jury found him guilty of Possession of a Deadly Weapon by a Person Prohibited ("PDWPP") and Possession of Alcohol by an Underage Person. Following the verdict, Fullerton

filed a Motion for a New Trial and a Motion for Judgment of Acquittal. Both motions were denied by the Superior Court.

(5) Fullerton first argues that the trial judge should have excluded the explanation for the police investigation that evening. Specifically, he argues that the complaint, “shots fired,” should have been excluded pursuant to D.R.E. 403. We review the admission of such statements for abuse of discretion.<sup>1</sup>

(6) Prior to trial, the State revealed that it intended to elicit testimony from Officer Grajewski that he was investigating a complaint of “shots fired.” Defense counsel moved *in limine* to exclude such testimony and argued that Grajewski should explain his presence by testifying that he was simply “investigating a complaint.” The trial court denied Fullerton’s motion. In doing so, the court explained:

I don’t believe it’s unreasonable for the State to be able to tell the jury why the police were responding to this particular area, and that they were responding to investigate a report that “shots fired” at this address, and they contacted the person at the address who identified the car, and based upon the identification of the car they proceeded to look for it and found the car, and the case went from there.

Obviously, the details that Ms. Fagan gave cannot be introduced, and without her being present to give those details would be inappropriate to be given to the jury. But I will allow the State to put it in an appropriate context as to why the police responded to that particular area.

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<sup>1</sup> *Williams v. State*, 494 A.2d 1237, 1241 (Del. 1985).

(7) While “the preferable practice [is] to permit the State to introduce background evidence limited to a statement that the police were present based ‘upon information received,’”<sup>2</sup> statements that explain the purpose of the police officer’s presence can be admissible at trial.<sup>3</sup> “In criminal cases, an arresting or investigating officer should not be put in the false position of seeming just to have happened upon the scene; he should be allowed some explanation of his presence and conduct.”<sup>4</sup> The admissibility of such evidence, however, is subject to D.R.E 403. That is, if the statement is unduly prejudicial to the Defendant, the officer should only be permitted to testify that he was acting “upon information received.”

(8) The police in this case were responding to a complaint about shots being fired and were given a description of the potential shooter’s vehicle. The statement in this case provided the context for the officer’s presence at the home as well as his actions while inside. The complaint explains why the officer was inside the residence looking for a gun and, more specifically, why the officer searched the room for a gun after witnessing the Defendant drop spent casings on the dresser.

(9) Unlike *McNair*, where the reason for the police officers presence was a tip from a confidential informant identifying the defendant as carrying illegal drugs, the statement in this case did not directly implicate the defendant. It was

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<sup>2</sup> *McNair v. State*, 703 A.2d 644 (Del. 1997) (TABLE).

<sup>3</sup> *Johnson v. State*, 587 A.2d 444, 448 (Del. 1991).

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

within the trial judge's discretion to admit the statement because its probative value was not substantially outweighed by the danger of unfair prejudice.

(10) Fullerton next argues that the prosecutor used the complaint beyond the limitations set by the trial judge. We review the trial court's denial of Fullerton's motion for a new trial for abuse of discretion.<sup>5</sup>

(11) Fullerton's argument is unsupported by the record. Despite his assertions to the contrary, there is nothing in the record to suggest that the prosecutor was precluded from making an argument based upon the evidence admitted. The trial court addressed this argument and explained that the prosecutor did not violate any order of the trial court.<sup>6</sup>

(12) Fullerton finally contends that the trial court erred by denying his Motion for Judgment of Acquittal. We review the denial of this motion to determine "whether, after viewing the evidence in the light most favorable to the prosecution, [including all reasonable inferences to be drawn therefrom,] any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."<sup>7</sup> Conflicting testimony does not require a motion for judgment

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<sup>5</sup> *Durham v. State*, 867 A.2d 176, 178 (Del. 2005).

<sup>6</sup> The trial court stated, "Consistent with the Court's ruling, details concerning what the victim had stated to the police were not presented to the jury and the jury was simply told that the police responded to a "shots fired" complaint and obtained a description of the vehicle and its occupants."

<sup>7</sup> *Dixon v. State*, 567 A.2d 854, 857 (Del. 1989).

of acquittal to be granted because “[t]he jury is the sole judge of a witness' credibility and is responsible for resolving conflicts in testimony. . . . [I]t is within the jury's discretion to accept one portion of a witness' testimony and reject another part.”<sup>8</sup>

(13) In his original motion, Fullerton argued that the jury verdict was against the weight of the evidence. While Fullerton denied having any knowledge that a gun was underneath the mattress he was sitting on, the resident of the home, who was also in the bedroom at the time of the search, denied possession of the gun. A jury could reasonably resolve this conflict in evidence against Fullerton. Furthermore, the officer witnessed Fullerton drop six .32 caliber casings on the dresser, the same caliber as the revolver which was found. The Superior Court did not err when it denied Fullerton's motion for a judgment of acquittal.

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

BY THE COURT:

/s/Henry Dupont Ridgely  
Justice

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<sup>8</sup> *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982).