

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEON A. CARNEY, )  
 ) No. 47, 2007  
 Defendant Below, )  
 Appellant, ) Court Below: Superior Court  
 ) of the State of Delaware in  
 v. ) and for Sussex County  
 )  
 STATE OF DELAWARE, ) Cr. ID No. 0605011039  
 )  
 Plaintiff Below, )  
 Appellee. )

Submitted: July 11, 2007

Decided: August 7, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

***ORDER***

This 7<sup>th</sup> day of August 2007, it appears to the Court that:

(1) Appellant-defendant Deon A. Carney appeals his Superior Court convictions of possession of ammunition by a person prohibited and criminal impersonation. Carney makes three arguments on appeal. First, he contends that the trial judge erred when he rejected Carney's attempt to file a motion to suppress at his final case review. Second, Carney contends the trial judge abused his discretion when he denied his motion to dismiss at the end of the State's case in chief because the evidence does not support his possession of ammunition by a person prohibited conviction. Finally, Carney contends that the trial judge abused his discretion when he imposed an unduly harsh sentence that was not in accord

with the Truth in Sentencing guidelines and was inconsistent with counsels' recommendations. After consideration of the record, we conclude that the trial judge acted within his discretion when he did not accept Carney's untimely filed suppression motion. Because there was sufficient evidence for a rational trier of fact to find each of the essential elements of possession of ammunition by a person prohibited beyond a reasonable doubt, the trial judge acted within his discretion when he denied Carney's motion to dismiss at the conclusion of the State's case. Finally, the trial judge acted within his discretion when he imposed a sentence within the statutory limits. Accordingly, we affirm.

(2) On May 11, 2006, Georgetown police executed a search warrant at Unit 505 of the Georgetown Apartments. Carney was inside the apartment when police entered. When police asked for identification, Carney had none and provided a false name and birth date. Police conducted a pat down of Carney and discovered four 9mm bullets. Once police discovered Carney's true identity, they arrested him.<sup>1</sup>

(3) A Sussex County grand jury indicted Carney on June 12, 2006, and his trial was scheduled to begin on November 29, 2006. Carney's initial case review occurred on August 7, 2006. Up until October 2006, a public defender

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<sup>1</sup> After police took Carney to the police station, officers discovered a warrant for his arrest for first degree murder.

represented Carney. In October 2006, the trial judge appointed Carney new counsel because of a conflict. Carney and his new counsel appeared at his final case review on November 20, 2006. At that review, Carney's counsel requested permission to file a motion to suppress the bullets found in Carney's possession. The trial judge denied Carney's untimely request.

(4) On November 29, 2006, a jury found Carney guilty of both possession of ammunition by a person prohibited<sup>2</sup> and criminal impersonation.<sup>3</sup> On January 19, 2007, the trial judge declared Carney an habitual offender under 11 *Del. C.* § 4214 (a) and sentenced him to ten years at Level V for the possession of ammunition by a person prohibited and one year at level V, suspended for one year at Level IV work release for the criminal impersonation. Carney appealed.

(5) First, Carney contends that the trial judge erred when he denied him the opportunity to file a motion to suppress. The trial judge explained that Carney's request was untimely:

From what I hear, and the presentations that all the information had been provided to the defense counsel . . . that no suppression motion was filed in the required times, and, therefore, the trial being scheduled for next week, I am concerned that the motion is being made for delay purposes, and it is denied.<sup>4</sup>

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<sup>2</sup> 11 *Del. C.* § 1448 (a) (1).

<sup>3</sup> 11 *Del. C.* § 907.

<sup>4</sup> The trial judge clarified his ruling the following week:

(6) We review a Superior Court judge’s decision denying Carney the opportunity to file a motion to suppress for abuse of discretion.<sup>5</sup> The Superior Court has broad discretion to “enforce its rules of procedure and pre-trial orders.”<sup>6</sup>

(7) Absent exceptional circumstances, defendants must file motions to suppress within 10 days of a defendant’s initial case review.<sup>7</sup> Here, any motion to suppress was due on August 17, 2006; ten days after Carney’s initial case review. Carney did not file the motion until November 20, 2006 at his final case review. Carney has provided no evidence of exceptional circumstances in this case. His original attorney had of all the relevant information necessary to support filing the motion. As we explained in *Barnett*, a change in counsel does not, in itself,

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The record should reflect that [initial defense counsel] represented the defendant up until the time of his initial case review on August 7, 2006. [Initial defense counsel] was not granted permission to withdraw until October 4, 2006. The State provided discovery to [initial defense counsel] on July 27, 2006. The discovery included the search warrant of the apartment where the defendant was searched by the police. At the time of the initial case review, [defense counsel] had all of the pertinent information. . . . The criminal management order requires motions sought to be pled out of time must be justified with specificity and an actual motion for leave to file out of time should be filed, which was not done here, although the Court heard counsel on the merits. . . . I confirm my ruling.

<sup>5</sup> *Barnett v. State*, 691 A.2d 614, 616 (Del. 1997).

<sup>6</sup> *Id.*

<sup>7</sup> Sussex County Criminal Case Management Plan at 6; *Barnett*, 691 A.2d at 616 (“In the absence of any exceptional circumstances, the motion to suppress had to be filed by [the required] date.”).

constitute an exceptional circumstance.<sup>8</sup> Therefore, we hold that the trial judge did not abuse his discretion when he did not permit Carney to file an untimely motion to suppress.

(8) Second, Carney contends that the trial judge abused his discretion when he denied his motion to dismiss the possession of ammunition by a person prohibited charge at the end of the State's case in chief because there was insufficient evidence to support a conviction. Specifically, Carney contends that the State did not prove that he possessed live ammunition. The trial judge denied Carney's motion, explaining that there was "nothing to indicate that there's been anything done to alter what appears to be . . . a bullet, so that it cannot discharge." We review challenges to the sufficiency of evidence to determine "whether a rational trier of fact, considering the evidence in the light most favorable to the prosecution, could find the essential elements of the offense beyond a reasonable doubt."<sup>9</sup> In doing so, we do not distinguish between direct and circumstantial evidence.<sup>10</sup>

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<sup>8</sup> *Barnett*, 691 A.2d at 616.

<sup>9</sup> *Poon v. State*, 880 A.2d 236, 238 (Del. 2005).

<sup>10</sup> *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

(9) 11 *Del. C.* § 1448 (c) prohibits the possession of ammunition by certain individuals.<sup>11</sup> The statute defines “ammunition” as “1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.”<sup>12</sup>

(10) Carney’s argument that the State failed to prove that the ammunition was live is without merit. The statute does not require the State to test fire the bullets to determine if they were live.<sup>13</sup> Trained officers testified that the ammunition appeared to be live. Lieutenant Grose testified that there was nothing that indicated that the bullets were inert. He also testified what the rounds would look like had they already been fired. Based on this evidence, a rational trier of fact could have found that the bullets were live beyond a reasonable doubt.

(11) Finally, Carney contends that the trial judge abused his discretion when he imposed an unduly harsh sentence that was in excess of the Truth in Sentencing Guidelines and against counsels’ recommendations. We review the

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<sup>11</sup> 11 *Del. C.* § 1448.

<sup>12</sup> 11 *Del. C.* § 1448(c).

<sup>13</sup> *Bryson v. State*, 840 A.2d 631, 634 (Del. 2003).

sentencing of a criminal defendant for abuse of discretion.<sup>14</sup> “[I]n reviewing a sentence within the statutory guidelines, this Court will not find error unless it is clear that the sentencing judge relied on impermissible factors or exhibited a closed mind.”<sup>15</sup> Although eligible for a life sentence as an habitual offender, the trial judge sentenced Carney to ten years at level V for the possession of ammunition by a person prohibited and one year at level V suspended for one year at Level IV work release for the criminal impersonation. The trial judge imposed the sentence based on Carney’s “record of guns, violence, [and] drugs,” and his “repeated disregard for Court orders, including [his] now second conviction for the same crime that [he was] declared an habitual offender on . . . .” The record suggests that the trial judge carefully considered Carney’s criminal history and imposed a sentence that was well within the statutory limits. Accordingly, we affirm.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>14</sup> *Fink v. State*, 817 A.2d 781, 790 (Del. 2003).

<sup>15</sup> *Id.*