IN THE SUPREME COURT OF THE STATE OF DELAWARE

o. 241, 2012
ourt Below – Superior Court
the State of Delaware,
and for New Castle County
D. No. 1007021554

Submitted: September 12, 2012 Decided: October 26, 2012

Before HOLLAND, BERGER and RIDGELY, Justices.

ORDER

This 26th day of October, 2012, it appears to the Court that:

1) The defendant-appellant, Robert Williams ("Williams"), appeals from his Superior Court conviction and sentence for Possession of a Firearm During the Commission of a Felony. Williams raises one claim in this direct appeal. Williams contends that the Superior Court erred in denying his Motion for Judgment of Acquittal regarding his conviction for Possession of a Firearm During the Commission of a Felony, because the State failed to prove that the items Williams possessed met the statutory definition of a firearm.

- 2) We have concluded that the record does not support Williams' argument. Therefore, the judgment of the Superior Court must be affirmed.
- 3) Williams was indicted on four counts of Possession of a Firearm During the Commission of a Felony, three counts of Robbery in the First Degree, Assault in the Second Degree, and two counts of Conspiracy in the Second Degree.
- 4) At trial, the State presented a number of witnesses who testified that Williams used a gun during the robberies. One of the victims testified as follows:
 - Q: Do you remember what the gun looked like?
 - A: What I saw was dark and it was blue. Kind of dark blue, I would say.
 - Q: When you saw the gun, where was it pointed?
 - A: Towards me.

The State also introduced evidence that Detective Laster recovered two guns, along with a magazine and bullets. During a redacted police interview, Williams referred to having a gun on his person during the events in question.

5) After a two-day trial, a jury found him guilty of two counts each of Robbery in the First Degree and Possession of a Firearm During the Commission of a Felony, and one count each of Conspiracy in the Second

Degree, and Assault in the Third Degree.¹ Williams moved for a judgment of acquittal on grounds that the State failed to prove beyond a reasonable doubt that the guns used during the robberies met the definition of the firearm. The Superior Court denied the motion.

6) "When ruling upon a motion for acquittal, the trial judge must consider the evidence and all legitimately drawn inferences from the point of view most favorable to the State." "The motion is to be granted only when the State has presented insufficient evidence to sustain a verdict of guilt."

Firearm is defined in title 11, section 222(12) of the Delaware Code as follows:

"Firearm" includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. It does not include a BB gun.⁴

7) In *Poon v. State*, this Court held that "recovery and testing of a weapon to determine if it is operable is not required" to establish that a weapon is a "firearm" under section 222.⁵ In *Fortt v. State*, this Court held that eyewitness testimony alone is sufficient to convict the defendant of

¹ Only the firearm conviction is at issue in this appeal.

² *Vouras v. State*, 452 A.2d 1165, 1169 (Del. 1982).

Id.

⁴ Del. Code Ann. tit. 11, § 222(12).

⁵ Poon v. State, 880 A.2d 236, 239 (Del. 2005).

possession of a firearm during the commission of a felony.⁶ In *Fortt*, this Court stated that based solely on witness testimony "a rational trier of fact could find the 'gun' possessed by the robber was a 'firearm' as that term is defined [in the statute]."⁷

- 8) The jury in this case had far more to rely on than the juries in *Poon* or *Fortt*. Guns were recovered, and the jury was given the opportunity to inspect the weapons. Furthermore, the jury heard testimony from eyewitnesses that the defendant used a "gun." Williams referred to "pull[ing] the gun out" in his statements to police, and two handguns were recovered. The jury also had the testimony of Matthew Bradley, who admitting to hiding the guns in his room for Williams.
- 9) Williams characterizes the State's case as proving the existence of a gun by mere appearance. However, the record reflects that the jury had other evidence to rely upon to rationally determine beyond a reasonable doubt that the object in question was a gun, as defined by title 11, section 222(12) of the Delaware Code. Williams claims that the State never introduced evidence to prove the object was "designed to discharge a projectile." But, as established by our holdings in *Poon* and *Forte*, such evidence is not absolutely necessary for a jury to determine the presence of a

⁶ Fortt v. State, 767 A.2d 799, 802-03 (Del. 2001).

⁷ *Id.* at 803 (internal citations omitted).

firearm. The record reflects that, based on the evidence presented at trial, a rational trier of fact could find beyond a reasonable doubt that Williams was guilty of Possession of a Firearm During the Commission of a Felony.

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

BY THE COURT:

/s/ Randy J. Holland Justice