IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARREN DAVIS,	§	
	§	No. 98, 2013
Defendant Below-	§	
Appellant	§	Court Below: Family Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Case No. 1212012517
	§	
Plaintiff Below-	§	
Appellee	§	

Submitted: July 10, 2013
Decided: August 28, 2013

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

O R D E R

On this 28th day of August, 2013, it appears to the Court that:

(1) Defendant-below/Appellant Darren Davis[1] ("Davis") appeals from a Family Court finding of delinquency as charged of Possession of a Firearm by a Person Prohibited (Juvenile) and Possession of a Deadly Weapon with an Obliterated Serial Number. Davis makes two claims on appeal: first, that the Family Court erred in admitting a firearm into evidence; second, that no rational trier of fact could have convicted Davis even if the firearm was properly admitted. We find no merit to Davis's appeal and affirm the decision of the Family Court.

[1] Pursuant to Supreme Court Rule 7(d) the defendant has been assigned a pseudonym.

(2) In December, 2012, Corporal Smith and Officer McAndrew were watching a group of men, including 17-year-old Davis, walk down the street together. Smith and McAndrew saw Davis duck down and momentarily pass out of their view. While Davis was out of sight, the officers heard a heavy object hit the ground. The officers investigated the general area around where Davis had been and recovered the firearm that would become the basis for this case.

(3) Master Corporal Shawn Gordon arrived after Smith and McAndrew discovered the weapon to process it as evidence. The officers discovered the weapon had an obliterated serial number. Gordon placed the firearm inside the ballistic evidence officer's safe, which was then sealed and signed by both Gordon and the ballistic evidence officer.

(4) Davis's trial was held before the Family Court. Master Corporal Gordon testified at trial that the firearm being offered as evidence was the same firearm that he had placed into the evidence locker. He also identified the ballistic officer's notes on the evidence bag. Master Corporal Gordon also identified that the bag was sealed by the ballistics officer. The firearm was admitted into evidence over the defense's objection. The trial court found that firearm shared the same unique rust marking that was seen on the firearm in a picture taken at the crime scene, and that the chain of custody over the firearm was unbroken. Davis was found delinquent. This appeal followed.

(5) Davis first claims that the trial court erred in allowing the State to introduce the firearm into evidence. We review a trial judge's evidentiary rulings for abuse of discretion.[2] "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 to produce injustice."[3]

(6) The trial court compared the firearm the State put into evidence with a photo of the firearm found at the crime scene and concluded that they were the same firearm. Under Delaware Rule of Evidence 901, authentication is satisfied when:

> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims… [T]he following are examples of authentication or identification conforming with the requirements of this rule… (3) Comparison by Trier or Expert Witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.[4]

Here, the trial court found that the rust stain on the firearm in the photograph matched the rust stain on the firearm being moved into evidence.

(7) Rule 901 "does not eliminate the 'necessity of showing the chain of custody of exhibits in criminal proceedings,' which 'indirectly establishes the

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[2] *Manna v State*, 945 A.2d 1149, 1153 (Del. 2008) (*citing Pope v. State*, 632 A.2d 73, 78-79 (Del. 1993)).
[3] *Culp v. State*, 766 A.2d 486, 489 (Del. 2001) (*quoting Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994)).
[4] D.R.E. 901(a)-(b).

identity and integrity of the evidence by tracing its continuous whereabouts.'"[5] To properly establish a chain of custody, the State must: (1) "eliminate possibilities of misidentification and adulteration, not absolutely, but as a matter of reasonable probability;[6] (2) present a foundation witness who states that the instrumentality is at least like the one associated with the crime; and, (3) present evidence establishing that the instrumentality is connected to the defendant and the commission of the crime.[7]

(8) Davis objects to the firearm being admitted into evidence because he contends that the State did not properly establish a chain of custody. Davis analogizes this case to *Whitfield v. State*,[8] which involved different circumstances from those presented here.[9] In *Whitfield*, no witnesses positively identified the admitted weapon as the actual instrumentality used in the crime.[10] There was no link between the defendant and the weapon.[11] The weapon was not recovered until three-and-a-half months after the commission of the crime, and the State could not account for the weapon's whereabouts during that period.[12]

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[5] *Taylor v. State*, 777 A.2d 759, 772 (Del. 2001) (*quoting* D.R.E. 901 cmt; *Whitfield v. State*, 524 A.2d 13, 16 (Del. 1987)).
[6] *Tricoche v. State*, 525 A.2d 151, 153 (Del. 1987) (citation omitted).
[7] *Whitfield v. State*, 524 A.2d 13, 16 (Del. 1987).
[8] *Id.*
[9] *Id.*
[10] *Id* at 16
[11] *Id*.
[12] *Id*. at 17.

(9) Here, the State eliminated the probability of misidentification and adulteration to a reasonable degree with Gordon's testimony of the evidence handling procedures. Gordon testified that he took the firearm from the crime scene and placed it in a sealed container that was then opened and later resealed by a ballistics officer who ran additional tests on the weapon. The tests were noted on the re-sealed container. Also, unlike in *Whitfield*, McAndrew and Smith accounted for the firearm between the commission of the crime and discovery of the firearm. There was no evidence of improper or illegal alteration of the evidence. The trial court did not abuse its discretion by admitting the firearm into evidence.

(10) Davis also claims that no rational trier of fact could have convicted Davis. In reviewing a challenge to the sufficiency of the evidence we analyze "whether *any* rational trier of fact, viewing the evidence in the light most favorable to the state, could find the defendant guilty beyond a reasonable doubt."[13]

(11) Smith and McAndrew's testified that they saw Davis look at the officers and quickly duck below the windows of the adjacent vehicle. The officer then heard a solid, heavy object drop and then found the firearm. The officers immediately searched the area and found a firearm next to a dumpster. The firearm was recovered and catalogued. The firearm was then identified at trial. Davis argues that there is insufficient evidence with respect to Davis's alleged

[13] *Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991) (emphasis in original) (*citing Shipley v. State*, 570 A.2d 1159, 1170 (Del. 1990); *Potts v. State*, 458 A.2d 1165, 1170 (Del. 1983)).

possession of the firearm because it is only circumstantial in so far as there are no DNA, fingerprint, or GSR test results to support the State's claim. But, "for the purpose of reviewing a claim of insufficient evidence there is no distinction between direct and circumstantial evidence."[14] Viewing the evidence in a light most favorable to the State, there was adequate evidence for a rational trier of fact to find Davis delinquent of the crime charged.

(12) NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[14] *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994) (*citing Shipley*, 570 A.2d at 1170 (*citing Williams v. State*, 539 A.2d 165, 167 (Del. 1988) (*citing Holland v. United States*, 348 U.S. 121 (1954); *Henry v. State*, 398 A.2d 327, 330 (Del. 1972)))).