IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL BROCK,	§	
	§	No. 522, 2012
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. 1112008428
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 30, 2013 Decided: February 4, 2013

Before HOLLAND, BERGER and JACOBS, Justices.

ORDER

This 4th day of February 2013, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Michael Brock, the defendant-below ("Brock"), appeals from a Superior Court order sentencing him to three years of probation and a \$25,000 fine for his conviction of Possession of a Deadly Weapon By a Person Prohibited ("PDWBPP"). The State concedes that the Superior Court erred by sentencing Brock under 11 *Del. C.* § 4333(d)(2), which applies to violent felonies. The State denies, however, that Brock's \$25,000 fine was excessive. We reverse and remand for further proceedings.

- 2. In December 2011, Brock stabbed Charles James with a knife during a fight. Brock asserted a theory of self-defense and after a jury trial was convicted of PDWBPP. Brock's Presentence Report disclosed that the Violent Crimes Compensation Board ("VCCB") had paid \$25,000 to the hospital that provided medical treatment to the victim, James. The trial judge sentenced Brock under 11 *Del. C.* § 4333(d)(2) to three years of Level V incarceration, suspended immediately for three years of Level III probation. The trial judge also fined Brock \$25,000. This appeal followed.
- 3. On appeal, Brock claims that (i) his three-year probation violated 11 *Del. C.* § 4333(d)(2), and (ii) that the \$25,000 fine was an impermissible form of "restitution," and not a "fine." These claims raise two issues.
- 4. The first is whether the Superior Court erroneously sentenced Brock under 11 *Del. C.* § 4333(d)(2) because his underlying PDWBPP conviction rested solely on his possession of a knife. Because Brock did not assert this claim in the trial court, this Court will review only for plain error.³ Plain error "is limited to material defects which are apparent on the face of the record, which are basic,

¹ State v. Brock, Cr. ID No. 1112008428 (Del. Super. Aug. 24, 2012).

² *Id*.

³ See SUPR. CT. R. 8.

serious, and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."

- 5. The second issue is whether the Superior Court abused its discretion by imposing a \$25,000 fine for a PDWBPP conviction. "To disturb a sentence on appeal, there must be a showing either of the imposition of an illegal sentence or of abuse of the trial judge's broad discretion."⁵
- 6. Section 4333(d)(2) provides that "any sentence imposed for any *violent felony*" may exceed an otherwise maximum sentence of two years in the interest of public safety. A "violent felony" includes PDWBPP only if the "deadly weapon" is a "firearm or destructive weapon." A "destructive weapon", in turn, is defined as a "bomb, bombshell, firearm silencer, sawed-off shotgun, machine gun or any other firearm or weapon which is adaptable for use as a machine gun." Under these statutory definitions, a knife is not a "deadly weapon." Therefore, possessing a knife, without more, cannot constitute a "violent felony" under Section 4333(d)(2).

⁴ Baker v. State, 906 A.2d 139, 150 (Del. 2006) (citing Wainwright v. State, 504 A.2d 1096, 1100 (Del. 1986)).

⁵ Weber v. State, 655 A.2d 1219, 1221 (Del. 1995).

⁶ 11 *Del. C.* § 4333(d)(2) (emphasis added).

⁷ 11 *Del. C.* § 4201(c).

⁸ 11 *Del. C.* § 1444(a).

- 7. As noted, we review the claim for plain error. Because Brock possessed only a knife, he should not have been sentenced under Section 4333(d)(2). By sentencing Brock under Section 4333(d)(2), the Superior Court created a "material defect[]" in his sentence that "clearly show[s] manifest injustice," and constituted plain error. 10
- 8. Brock's second claim, that the \$25,000 fine was excessive, was properly raised before the Superior Court. We review the trial judge's imposition of that fine for an abuse of discretion. Brock argues that the \$25,000 fine was an impermissible form of "restitution," and not actually a "fine." The trial court imposed the \$25,000 "fine" under 11 *Del. C.* \$ 4205(k), which provides that when sentencing a defendant convicted of a felony, a court "may impose such fines and penalties as it deems appropriate." The sentencing transcript, however, makes it clear that the \$25,000 so-called "fine" was, in substance, restitution under a different label for the VCCB's \$25,000 payment to the hospital for James' medical expenses.

⁹ See SUPR. CT. R. 8.

¹⁰ Baker v. State, 906 A.2d 139, 150 (Del. 2006) (citing Wainwright v. State, 504 A.2d 1096, 1100 (Del. 1986)).

¹¹ See Weber v. State, 655 A.2d 1219, 1221 (Del. 1995).

¹² 11 *Del. C.* § 4205(k).

9. "The Superior Court has no statutory authority to order restitution to anyone other than a victim." Because no "victim" existed in this PDWBPP conviction, the trial court abused its discretion by ordering Brock to pay restitution to the VCCB.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **REVERSED** and **REMANDED** for a new sentencing proceeding.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

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¹³ *Redick v. State*, 858 A.2d 947, 953 (Del. 2004).