

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, DE 19801-3733  
Telephone (302) 255-0669

August 31, 2012

Daniel G. Simmons, Deputy Attorney General  
Department of Justice  
Carvel State Office Building, 6<sup>th</sup> Floor  
820 North French Street  
Wilmington, DE 19801

Beth D. Savitz, Esquire  
Assistant Public Defender  
Carvel State Office Building, 3<sup>rd</sup> Floor  
820 North French Street  
Wilmington, DE 19801

RE: *State v. Edgar O. Sanchez*  
*ID # 1107024230*

**Verdict on Severed PFBPP Charge – *Not Guilty*.**

Dear Counsel:

Consistent with common practice, Defendant went before a jury on reckless endangering and related charges, while the court heard a severed, possession of a firearm by a person prohibited charge. The jury found Defendant not guilty. Now, the court must decide the severed charge.

Because of how the case was presented, the jury's verdict could only reflect reasonable doubt as to identity. That means under this case's facts, as a matter of law, the court is precluded from now finding Defendant guilty of the PFBPP charge. In this situation, a guilty verdict on the PFBPP would be fatally inconsistent with the jury's verdict and, therefore, invalid.

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The State argues correctly that in theory a defendant can be found not guilty of crimes involving a weapon, yet guilty of a related PFBPP. For example, a jury might doubt whether a defendant was the shooter, yet be satisfied he was nonetheless present and possessed a firearm. Or, the evidence might show a defendant was present and armed when an incident began, but his whereabouts became unclear as shooting started. And so on. Those sorts of inconsistencies are common.<sup>1</sup> The outcome here, however, turns on how this particular case was put to the jury. Bluntly, this was entirely a “Who done it?”

The trial focused little on what happened. It was all but agreed that on July 25, 2011, someone recklessly fired a handgun into an apartment occupied by four people. Instead, the trial focused almost entirely on whether the State proved beyond a reasonable doubt that Defendant was present. As to the shooter’s identity, the State offered sketchy eyewitness identifications, which it bolstered with circumstantial evidence of motive and opportunity. The defense, however, laboriously challenged the State’s evidence and presented evidence casting doubt on motive and opportunity. The defense obviously succeeded, as the jury found Defendant not guilty of firing the shots. In light of the evidence and arguments presented, there simply is no reasonable way to view the jury’s verdict otherwise.

Nevertheless, the State argues in conclusory fashion:

A rational trier of fact could have concluded beyond a reasonable doubt that Defendant Sanchez possessed a firearm, but he did not commit [the other crimes].

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<sup>1</sup> See, e.g., *State v. Williams*, 2007 WL 687198, at \*2 (Del. Super. Mar. 2, 2007) (Silverman, J.) (“[T]he evidence against Williams tied him to the incident's beginning . . . . But, as the confrontation moved around the corner where the victim was shot, the evidence [weakened].”), *aff'd*, 947 A.2d 1123 (Del. 2008) (TABLE).

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The State, however, does not support that conclusion with a scenario based on the evidence.

The court does not recall defense counsel's arguing in closing that the State failed to prove any element of the offenses other than identity. As to identity, the defense focused on weaknesses in the eyewitness testimony, motive, opportunity and the other things pertinent to an incorrect identification defense. As the court recalls, the State did not argue anything but identification in its rebuttal. That is why the court views the verdict as only reflecting reasonable doubt about identification.

Because the jury had reasonable doubt about Defendant's identity as the shooter, it would be inconsistent for the court to find that the State proved beyond a reasonable doubt that Defendant was at the scene, merely armed and not a participant in the shooting. Hence, a conviction for PFBPP would be inconsistent and invalid.<sup>2</sup>

The State relies on several Delaware cases supporting its argument that conviction on the PFBPP charge is consistent with Defendant's acquittal on other charges, primarily *Wescott v. State*.<sup>3</sup> *Wescott*, and the State's other authorities, however, merely allow the jury to acquit on one set of charges and the court to convict on a severed weapons offense when there is a reasonable way to reconcile those potentially inconsistent verdicts.<sup>4</sup> Here, a guilty verdict here is irreconcilable.

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<sup>2</sup> See *Galloway v. State*, 809 A.2d 653 (Md. 2002).

<sup>3</sup> 2009 WL 3282707, 981 A.2d 1173 (Del. 2009) (TABLE).

<sup>4</sup> See *id.* at \*5 (PFBPP conviction after bench trial safe because "[t]he jury [in first trial] could have inferred that Wescott possessed a gun, and even fired a gun at the party, but did not have the intent to kill or injure required to convict him of attempted murder in the first degree or assault in the first degree."); See also *Williams*, 2007 WL 687198, at \*2 (Conspiracy conviction safe because "Williams's co-conspirator . . . was convicted of committing [the] overt act."), *aff'd*, 947 A.2d 1123 (Del. 2008) (TABLE).

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As explained above, the State's further argument that "the jury did NOT make a finding about a fact common and central to the PFBPP charge[,]” is incorrect. Identity is an element common to all crimes. Therefore, the verdict means the jury made an adverse finding about a fact common to all the indicted charges.

Having concluded that the jury doubted Defendant was the shooter and there is no consistent way to find Defendant was nonetheless present and armed, it follows *a fortiori* that Defendant cannot be found guilty of PFBPP. The court will not assess the identification evidence on its own as the jury's verdict, under the circumstances, precludes that as a matter of law.

For the foregoing reasons, the Prothonotary **SHALL** enter a verdict of **NOT GUILTY** on the outstanding Possession of a Firearm by Person Prohibited charge.

**IT IS SO ORDERED.**

Very truly yours,

/s/ Fred S. Silverman

FSS: mes  
oc: Prothonotary (Criminal)