



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANZARA BROWN,	§	
	§	No. 603, 2013
Defendant-Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware, in
v.	§	and for Kent County
	§	Cr. ID. No. 1205025968A
STATE OF DELAWARE,	§	
	§	
Plaintiff-Below,	§	
Appellee.	§	

Submitted: May 28, 2014
Decided: June 9, 2014

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

ORDER

This 9th day of June 2014, after hearing oral argument and upon consideration of the record in this case, it appears to the Court that:

(1) In this appeal, the appellant, Anzara Brown, seeks to overturn a final judgment of conviction against him for various charges arising from his May 31, 2012 arrest, including drug dealing (16 *Del. C.* § 4752(1)) and aggravated possession (16 *Del. C.* § 4752(3)). In his initial briefs on appeal, Brown argued that the Superior Court erred when it admitted certain evidence — bags containing white substances which the State alleged was the crack cocaine and powder cocaine that had been seized from Brown (the “Drug Evidence”) — because the State had failed to meet its burden to adequately prove the chain of custody of that evidence.¹

¹ Brown’s Opening Br. at 15.

(2) Brown objected to the admission of the Drug Evidence in the Superior Court and argued that there were discrepancies between the weights and descriptions of the white substances as recorded by the arresting officer and as recorded by the forensic examiner at the Office of the Medical Examiner. The arresting officer who seized the Drug Evidence, the officer who field tested the Drug Evidence, and the forensic examiner who analyzed the Drug Evidence all testified at trial, and the Superior Court found that their testimony, when taken together, satisfied the State's burden to demonstrate an adequate chain of custody. The forensic examiner testified that the disparity in the weight could be explained by the fact that the scales used by the police are calibrated differently than those in the Office of the Medical Examiner, and by the fact that the police officers weighed the Drug Evidence with the bags but that she weighed it without the bags.² The forensic examiner also testified that sometimes powder cocaine clumps together and appears to be chunky, so it could be initially mistaken for crack cocaine, which would explain the differences in the way the Drug Evidence was described by the arresting officer.³ The Superior Court credited the testimony of the forensic examiner and determined that the Drug Evidence was admissible.⁴

(3) Before oral argument on this appeal was scheduled, news reports revealed that there was an investigation into possible improprieties at the Office of the Medical Examiner. On March 7, 2014, based solely on these news reports and without any attempt to relate the investigation to this case, Brown moved to remand the case to the

² State's Answering Br. at 28.

³ Appendix to State's Answering Br. at B167-70.

⁴ Brown's Opening Br. at Ex. E.

Superior Court.⁵ We denied Brown's motion to remand on April 7, 2014 because of the absence of any record evidence, or even allegations, of facts related to this specific case.⁶

(4) On May 27, 2014, the day before oral argument in this appeal, the Court received a letter from the State informing the Court that Brown's conviction and sentence for aggravated possession (16 *Del. C.* § 4753(3)) should be vacated because it should have been merged with another charge for drug dealing (16 *Del. C.* §4752(1)). The State also noted that there is a scrivener's error in Brown's sentencing order that needs correction.

(5) Then, at oral argument on May 28, 2014, defense counsel informed the Court for the first time that the State had notified defense counsel on May 22, 2014 that the employee of the Office of the Medical Examiner who logged in the Drug Evidence, James Woodson, had been suspended because of allegations of impropriety related to his handling of evidence.⁷ After oral argument, the Court directed its clerk to have the State formally supplement the record with information about Woodson's involvement in this case. By that time, it had become public knowledge that Woodson had been indicted on the day before oral argument and arrested on the day of oral argument for charges that included trafficking in cocaine (16 *Del. C.* § 4753A(a)(2)); theft of a controlled substance (16 *Del. C.* § 4756(a)(6)); and tampering with physical evidence (11 *Del. C.* § 1269)) during the period between April 11, 2011 and June 1, 2011, which was before Woodson logged in the Drug Evidence whose admissibility Brown challenged.

⁵ Brown's Motion to Remand to Superior Court (Mar. 7, 2014).

⁶ Order (Apr. 7, 2014).

⁷ Oral Argument at 2:33, *available at* http://courts.delaware.gov/supreme/oralargs/video/2014-05-28_603,_2013_Brown_v_State_of_Delaware.mp4.

(6) As the State acknowledged at oral argument, Brown had suggested below that the person who logged in the evidence should have been required to testify before the Drug Evidence was admitted.⁸ But the Superior Court noted that 10 *Del. C.* § 4331 “provides that the chain of custody is the seizing officer, the packaging officer, and the medical examiner representative who did the test.”⁹ The Superior Court’s ruling was a common sense interpretation of § 4331, which limits the chain of custody to include only those “who actually touched the substance and not merely the outer sealed package in which the substance was placed by the law-enforcement agency before or during the analysis of the substance.”¹⁰

(7) Each of the people who the State conceded had actually touched the Drug Evidence — the arresting officer, the officer who performed the field test, and the forensic examiner who performed the analysis — testified at trial to establish the chain of custody. Because it is ordinarily the case that a person who only logged in evidence, like Woodson, would not actually touch the substances inside the packages and because there was no hint at that time that Woodson had a propensity to do so contrary to accepted procedures, there was no basis under § 4331 to require Woodson’s testimony to establish the chain of custody. In other words, the Superior Court found that Woodson was not

⁸ Oral Argument at 22:45, *available at* http://courts.delaware.gov/supreme/oralargs/video/2014-05-28_603,_2013_Brown_v_State_of_Delaware.mp4; *see also* Appendix to State’s Answering Br. at B161 (“Also, we have not heard any evidence as of yet about how the exhibits got from Troop 3 to the medical examiner’s office . . .”).

⁹ Appendix to State’s Answering Br. at B175.

¹⁰ 10 *Del. C.* § 4331(c).

required to testify to establish the chain of custody because the record was devoid of any evidence that Woodson might have actually touched the Drug Evidence.

(8) But the State's indictment of Woodson indicates that the State itself now believes that Woodson had opened sealed evidence packages at the Office of the Medical Examiner and actually touched the substances inside them on other occasions. If Woodson engaged in similar behavior in this case, then that would potentially make his testimony necessary to establish the chain of custody for the Drug Evidence.

(9) When questioned by the Court regarding whether this new development in the case should be considered now or be the subject of a post-conviction petition under Superior Court Criminal Procedure Rule 61, the State argued that it should be the subject of a post-conviction petition. But the State also refused to unequivocally concede that Brown would face no procedural bar to a post-conviction petition at a later time.¹¹

(10) Superior Court Criminal Procedure Rule 33 provides that:

The court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice. . . . A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. . . .¹²

Remanding this case to allow Brown to present a motion under Rule 33 is warranted in view of the unusual new evidence that has emerged. That evidence was not available to defense counsel, and therefore was also not available to the Superior Court, when the motion to exclude the Drug Evidence was presented.

¹¹ Oral Argument at 24:45, *available at* http://courts.delaware.gov/supreme/oralargs/video/2014-05-28_603,_2013_Brown_v_State_of_Delaware.mp4.

¹² Super. Ct. Crim. R. 33.

(11) Given that the State has already asked this Court to vacate Brown's conviction and sentence for a charge that should have been merged, it is prudent that Brown be permitted to present a motion for a new trial on the basis of this new evidence of possible misconduct by Woodson, who logged in the Drug Evidence used to convict Brown. The State's equivocation regarding whether Brown would be procedurally barred under Rule 61 from pressing this argument in a post-conviction motion based on the new evidence if this Court affirmed his conviction at this time illustrates the utility of that approach because it avoids uncertainty that might cause unfairness and inefficiency.

NOW, THEREFORE, IT IS ORDERED that this appeal is STAYED and this case is REMANDED to the Superior Court to: (i) vacate Brown's conviction and sentence for aggravated possession and correct the scrivener's error in the sentencing order; and (ii) permit Brown to present a motion under Rule 33 for a new trial on the grounds of newly discovered evidence. The Superior Court shall issue a progress report on the status of this case on September 15, 2014 and every 60 days thereafter until the matter is returned from remand. Jurisdiction is retained.

BY THE COURT:

/s/ Leo E. Strine, Jr.
Chief Justice