IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| JEROME O. BAXTER, | ) | |
| | ) | No. 492, 2000 |
| Defendant Below, | ) | |
| Appellant. | ) | Court Below: Superior Court |
| | ) | of the State of Delaware in |
| v. | ) | and for New Castle County |
| | ) | |
| STATE OF DELAWARE, | ) | Cr. No. IN99-08-1074 through 1079 |
| | ) | |
| Plaintiff Below, | ) | |
| Appellee. | ) | |

Submitted: October 16, 2001
Decided: January 3, 2002

Before **HOLLAND**, **BERGER**, and **STEELE**, Justices

***O R D E R***

This 3rd day of January 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

1. Jerome O. Baxter appeals Superior Court convictions of Possession with Intent to Deliver a Non-Narcotic Controlled Substance, Use of a Vehicle for Keeping a Controlled Substance, Possession of a Firearm During the Commission of a Felony, and Possession of Drug Paraphernalia.

2. In this appeal, Baxter argues that: a) the trial judge erred in refusing to recuse herself from presiding over the bench trial that followed her denial of Appellant's Motion to Suppress Evidence; b) there was insufficient factual evidence to support Appellee's expert's opinion regarding Intent to Deliver; and c)

the police officer unconstitutionally exceeded the permissible scope of the vehicle search and the evidence thereby collected should have been suppressed.

3. Because we believe the trial judge acted appropriately and ruled correctly on all three assertions, we AFFIRM.

4. We review the trial judge's denial of Appellant's motion to recuse herself under an abuse of discretion standard. As defense counsel did not object to Appellee's expert's qualifications, this Court reviews for plain error. Claims of constitutional violations are reviewed *de novo*.

5. On August 2, 1999, Trooper Jack Tsai of the Delaware State Police pulled Baxter over for speeding. Upon shining his flashlight into the vehicle, Trooper Tsai saw a box of handgun ammunition on the rear floorboard. In response to Tsai's questioning regarding the ammunition, Baxter withdrew from beneath the front passenger seat a fully loaded handgun and gave it to Tsai. Tsai then searched the vehicle's passenger area, finding cigarette rolling papers and what he suspected was a marijuana "roach." He then searched the trunk of the vehicle and seized a backpack with a ziplock bag containing approximately one pound of marijuana.

6. Following a suppression hearing on July 5, 2000, the trial judge denied Baxter's request to suppress the evidence seized from the vehicle. Before

the bench trial, the trial judge also overruled defense counsel's objection to her presiding over both the suppression hearing and the trial.

7. In denying Baxter's motion that she recuse herself, the trial judge noted, "this Court has in times previous had a suppression hearing prior to and has conducted the trial. Although, [I grant it] usually is not a non-jury trial." "Canon 3C(1) of The Delaware Judges' Code of Judicial Conduct states, in part, that disqualification due to personal bias or prejudice is required when the impartiality of the judge might *reasonably* be questioned."[1]

8. Baxter argues that the trial judge's credibility determination against him at the suppression hearing disqualified her from also being the trier of fact. This Court has held, however, that bias is not established simply because the trial judge "has made adverse rulings during the course of a prior proceeding."[2] In addition, inconsistent with a theory that she could not be objective, the trial judge found Baxter *not* guilty of carrying a concealed deadly weapon, indicating that the State did not meet its burden of proof on an element of that offense. Accordingly, the trial judge did not abuse her discretion by presiding over both the suppression hearing and the trial.

[1] ***In re Wittock,*** Del. Supr., 649 A.2d 1053, 1054 (1994).
[2] ***Id.*** (citing ***Weber v. State,*** Del. Supr., 547 A.2d 948, 952 (1988)).

9. Baxter appears to present two arguments regarding the State's expert witness. In order to testify in the form of an opinion, a witness must 1) be qualified as an expert, 2) have scientific, technical, or specialized knowledge, and 3) be prepared to present opinion evidence based upon facts that assist the trier of fact in its ultimate determination.[3] The question of whether there was sufficient factual evidence to support the expert's opinion is solely within the discretion of the trial judge. Sufficient facts exist in the record to support the trial judge's conclusion that the expert's opinion should be admitted. The officer was 1) qualified as an expert, 2) had specialized training and knowledge of drug dealing, and 3) assisted the trier of fact by providing information regarding personal use of versus intent to deliver drugs. Whether a trial judge properly concludes that a witness may offer an opinion as an expert is reviewed as an abuse of discretion. Here, the witness's qualifications as an expert were presented and, following *voir dire* examination, defense counsel did not object. Therefore, any review would be subject to a plain error analysis. Under any analysis the trial judge had a sufficient bases to qualify the witness as an expert.

10. Tsai properly stopped the defendant initially for speeding. Tsai observed ammunition in plain view and when questioned about it, the defendant immediately gave the Trooper a gun. The defendant argues that the search of the

[3] **D.R.E.** 702.

vehicle should have terminated when Tsai secured his own safety and should not have become an extended search for contraband. However, in a factually similar case, this Court found that "[u]pon learning of the concealed [weapon], the officers had probable cause to conduct a probing search of *all compartments and containers* within the vehicle, *including the trunk,* which may have concealed other weapons."[4] It was reasonable for the officer to search for additional weapons after Baxter pointedly demonstrated that he possessed a handgun. This fact alone sufficiently establishes probable cause to search the *entire* vehicle. The discovery of the cigarette rolling papers and what appeared to be a marijuana "roach" simply embellished the already established probable cause for the search. The trial judge appropriately denied the defendant's motion to suppress the evidence seized during this search.

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

BY THE COURT:

/s/ Myron T. Steele
Justice

[4] ***Ledda v. State,*** Del. Supr., 564 A.2d 1125, 1129 (1989) (emphasis added) (citing ***United States v. Ross,*** 456 U.S. 798 (1982)).