

(2) Prior to his arrest, the Wilmington Police Department received a reliable tip from an informant that the defendant was selling crack cocaine out of his apartment located in Wilmington, Delaware. As a result, the police began to monitor activity at the defendant's apartment. During this surveillance, the police observed a woman meeting with the defendant outside the apartment. The defendant then reentered the apartment, only to reemerge a short time later to meet with the woman outside the apartment. The woman left on foot and was later stopped by the police carrying crack cocaine.

(3) The police then obtained and executed a search warrant for the defendant's apartment. Upon entering the apartment, the police encountered the defendant's brother, Ernest Manlove, who fled out the back door where he was immediately apprehended by police posted at the rear of the building. The police found the defendant located in the apartment's bathroom. Once the defendant and other persons were secured, the police utilized a drug trained police dog to search the apartment. As a result of this search, the police located crack cocaine behind the plumbing access panels located in the hallway outside the apartment's bathroom as well as marijuana in a dresser located in one of the apartment's two bedrooms.

(4) “The standard of review for a denial of a requested jury instruction is *de novo*.”¹ The defendant maintains that he was entitled to the mere presence jury instruction because it was a correct statement of the law² given the evidence in the record that there were two people in the apartment when the search warrant was executed (one of whom fled the scene), other individuals had access to the apartment on a regular basis and the drugs were not found on his person. However, a mere presence jury instruction was not required in view of all the other instructions given in this case. The trial court instructed the jury as to the defendant’s presumption of innocence and the State’s requirement to prove each and every element of the crimes charged.³ The jury instructions as a whole clearly conveyed that more than the defendant’s mere presence in the apartment was required to prove his guilt. The trial court’s refusal to provide a mere presence jury instruction did not constitute reversible error under the facts of this case.

¹ *Ayers v. State*, 844 A.2d 304, 309 (Del. 2004) (citing *Yocum v. State*, 777 A.2d 782, 784 (Del. 2001)).

² *Floray v. State*, 720 A.2d 1132, 1138 (Del. 1998) (holding that while a defendant does not have a right to a particular jury instruction he does have an unqualified right to a correct statement of the substance of the law).

³ *Hopewell v. State*, 712 A.2d 88, 95-96 (Md. Ct. Spec. App. 1998), *overruled on other grounds*, *Fleming v. State*, 818 A.2d 117 (Md. 2003).

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice

oc: Clerk (orig. +3)
xc: Hon. John E. Babiarz, Jr.
Edmund M. Hillis, Esq.
Timothy J. Donovan, Jr.
Justices (8)
D. Collins
P. Naylor
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File