

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY**

THE STATE OF DELAWARE,	)	
	)	
v.	)	
	)	
	)	No. C.R. 1601013862
PORCHIA SHERMAN,	)	
	)	
Defendant.	)	

Submitted April 19, 2016  
Decided May 26, 2016

*Haley A. Workman, Esq., Deputy Attorney General*  
*Alicia A. Porter, Esq., Assistant Public Defender*

**DECISION ON DEFENDANTS' MOTION FOR NEW TRIAL**

On April 12, 2016, Defendant Porchia Sherman filed a motion for a new trial under Court of Common Pleas Criminal Rule 33, arguing that a new trial is warranted in the interest of justice. For the reasons discussed below, Defendant's motion for a new trial is **DENIED**.

**Procedural History and Facts**

On April 5, 2016, this Court tried by bench and convicted Defendant of Theft Under \$1,500, in violation of 11 *Del. C.* § 841(a). The Court found the following from the weight of credible evidence: Ms. Donna Mitchell has worked as the property manager of the Hickory Tree Apartments in Selbyville for the past 20 years. On November 30, 2015, Ms. Mitchell arrived at her office in the Hickory Tree Apartments Community Center around 8:00am. The Community Center has two entrances: a front entrance into the lobby and an outdoor entrance into the laundry room. A bell sounds whenever the front entrance is opened.

That morning, Ms. Mitchell placed her purse underneath her desk. Shortly thereafter Ms. Mitchell left her office to deliver a maintenance request to the maintenance shop, located approximately one minute from her office, inside the laundry room. When Ms. Mitchell returned a few minutes later, she found Defendant, a Hickory Tree tenant, inside her office “crouching” near the copier. Defendant told Ms. Mitchell she needed to use the computer lab. Ms. Mitchell walked Defendant to the computer lab down the hall, and then returned to her office. Several minutes later, Ms. Mitchell noticed her wallet was sitting on top of her purse with money sticking out. Ms. Mitchell testified she thought this was odd because she did not usually leave her wallet in this manner.

Approximately ten minutes later, Ms. Mitchell left her office to deliver another maintenance order to the maintenance shop. Upon returning a few minutes later, Ms. Mitchell saw Defendant was again in her office, bent over next to the copier. Defendant told Ms. Mitchell she needed a pen, and thereafter left the Community Center. Around this time, Ms. Mitchell says two other tenants, Ms. Billy Joe Robinson and Mr. John Truitt, entered the Community Center. She says the three of them had a brief exchange either in her office or in the lobby. About five minutes later, Ms. Mitchell discovered her wallet was missing. Ms. Mitchell estimates about 20 minutes elapsed from the time she first left her office unattended to the time she noticed her wallet missing, and that all of this occurred within an hour of arriving at work.

The only people Ms. Mitchell saw in the Community Center that morning were Defendant, Mr. Truitt, Ms. Robinson, tenant Linda Holland, and tenant Kimberly Webb, Defendant’s mother. She believes Ms. Holland was in the laundry room and that Ms. Webb was in the computer lab. Ms. Mitchell did not think anyone could have entered through the laundry room unnoticed while she was in the maintenance shop because the

entrant would have had to walk past the maintenance shop. Nor does Ms. Mitchell believe anyone entered through the front door while she was away from her office. Ms. Mitchell said it would be possible to hear the front doorbell ring from inside the maintenance room, though it would be faint and thus potentially missed.

Corporal Albert, the responding officer, spoke with Defendant several hours after the theft. Defendant told the officer she used the computer and the pen to complete a loan application, and that she had gone to the loan service center that day. Corporal Albert verified this. Furthermore, the officer did not find evidence of Ms. Mitchell's wallet or the contents of the wallet near the loan center nor did he find any evidence in Defendant's vehicle during a consented search. Defendant also told the officer she saw a woman alone in Ms. Mitchell's office. Defendant did not know the woman's name, but provided a description. The officer did not investigate this allegation.

Mr. Truitt, Ms. Robinson, Ms. Holland, and Ms. Webb also testified. Mr. Truitt and Ms. Robinson testified they met with Ms. Mitchell for several minutes in her office prior to Ms. Mitchell discovering her wallet was stolen. Mr. Truitt testified Defendant entered Ms. Mitchell's office, said she was going to use the computers, and then left. He also testified Ms. Holland was in the laundry room, and that he didn't see anyone else in the Community Center. Ms. Robinson did not know Defendant, but recalls seeing a woman in "fuzzy" slippers enter Ms. Mitchell's office while she and Mr. Truitt were speaking with Ms. Mitchell. Ms. Webb testified Defendant was wearing fuzzy slippers and a nightshirt with no pockets, pants or undergarments that morning. Ms. Holland's testimony was about events that occurred subsequent to the theft.

It is clear from witness testimony that Ms. Mitchell and Defendant had known each other for many years and had a fairly close relationship.

Defendant filed this motion for a new trial on April 12, 2016. The State filed its opposition to the motion on April 19, 2016.

### **Discussion**

Court of Common Pleas Criminal Rule 33 states in relevant part:

The Court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice. If trial was by the Court without a jury the Court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.

The trial court has discretion to grant or to deny a motion for a new trial, and its decision is reversible only where there is a clear abuse of discretion.<sup>1</sup> The fact finder is “the sole judge[] of the degree of credit to be given to the testimony and ... the determination of the credibility of witnesses is not within the province of the reviewing court.”<sup>2</sup> It is not an abuse of discretion for a trial court to deny a defendant’s motion for a new trial in a case where the fact finder considered conflicting testimony, and chose to credit one account over another.<sup>3</sup>

Defendant argues a new trial is required in the interest of justice.<sup>4</sup> In support of this proposition, Defendant recounts “undisputed evidence” presented at trial. Defendant does not explain how or why this evidence is undisputed or why this evidence warrants a new trial. The Court is left to infer Defendant’s argument is that the Court’s verdict was against the weight of the evidence.

The State makes several arguments in favor of denying Defendant’s motion for a new trial, including that; (1) Defendant’s motion should be denied for its failure to assert

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<sup>1</sup> *Hutchins v. State*, 153 A.2d 204, 206 (Del. 1959) (citations omitted).

<sup>2</sup> *Id.* at 207.

<sup>3</sup> *Id.*

<sup>4</sup> Defendant’s Motion for a New Trial, ¶ 2.

the ground(s) upon which Defendant seeks a new trial; and (2) the Court's verdict does not go against the weight of the evidence, therefore it should not be disturbed.

The Court will not deny Defendant's motion for failing to explicitly assert the ground upon which she believes a new trial is warranted. The purpose of a motion for a new trial is to provide the court an explanation about why its verdict should be set aside.<sup>5</sup> In this case, the Court believes it has been given proper notice of the ground Defendant asserts, given the organization and factual specificity of Defendant's motion.

As to Defendant's claim that the verdict rendered was against the weight of the evidence, Defendant appears to argue that because certain evidence and testimony presented to the Court was not contradicted by other evidence, the Court could not have found Defendant guilty. The Court sat as the fact finder in this case, and therefore was the "sole judge" of the testifying witness' credibility and of the weight to be given to the evidence presented. Defendant's claim regarding "uncontradicted" evidence ignores the fact that the Court does not have to weigh proffered witness testimony and evidence equally. In this case, the Court found some witnesses more credible than others, and some evidence more probative than the rest.

In this case, there was discord in the witness' testimony about where people were located within the Community Center and at what times they were present. Given the conflicting testimony, the Court made certain credibility determinations, in considering all the factors a trier of fact must apply in evaluating weight and credibility. The Court found Ms. Mitchell's testimony to be the most credible. Ms. Mitchell did not appear to be biased against Defendant or have any motive to offer untrue testimony; Ms. Webb, Ms. Mitchell, and Ms. Holland indicated Ms. Mitchell shared a close relationship with her tenants, including Defendant, whom she has known for approximately ten years.

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<sup>5</sup> *State v. Ruiz*, 2002 WL 1265533, at \*4 (Del. Super. June 4, 2002) (citing 58 AM.JUR.2D *New Trial* § 501 (1989)).

Defendant posits someone else stole the wallet. However, no witness testified in Court to seeing anyone other than those discussed, *supra*, in the Community Center during the time frame when the theft occurred. Defendant's other arguments are unpersuasive as well, given the strength of the circumstantial evidence to link Defendant to the theft. The wallet was taken during a short window of time. Moreover, there were few opportunities within that time frame for the theft to have occurred. Ms. Mitchell testified she left her office two or three times for only a few minutes each time. On two occasions when Ms. Mitchell returned, she found Defendant alone, standing in an unusual manner. The evidence offered by Defendant did not raise reasonable doubt for the trier of fact.

### **Conclusion**

For these reasons, the Court's verdict after trial was not against the great weight of evidence. The Court was, and remains firmly convinced of the Defendant's guilt beyond a reasonable doubt. The Defendant's motion for a new trial is **DENIED**.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

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Kenneth S. Clark, Jr., Judge