

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**
WILMINGTON, DELAWARE 19801

John K. Welch
Judge

July 28, 2014

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Re: *State of Delaware v. John Mwangi*
Case No. 1303021871

**ORDER ON DEFENDANT'S MOTION FOR
CCP CRIM. R. 29(a) JUDGMENT OF ACQUITTAL**

Dear Mr. Johnson and Mr. Layton:

This is the Court's ruling on Defendant's Motion for Judgment of Acquittal as set forth in *CCP Crim. R. 29(a)* ("the Motion"). A trial was held on April 10, 2014. After the State rested its case, Defendant John Mwangi ("Mwangi") presented the instant Motion.

The primary issue before the Court in deciding the Motion is whether the State has sufficiently met its burden to prove that Brandon Lewis ("Lewis") met the statutory definition of an adult who is impaired; as this is a necessary and predicate element of the criminal offense and if not, the State has failed to set forth a *prima facie* case or set forth sufficient evidence to sustain a verdict of guilty.¹ Mwangi argues in his filings that the State failed to meet this burden: summarizing those arguments, Mwangi asserts that the State did not present evidence showing (1) the presence of a "physical or mental disability," (2) a diagnosis of such, or (3) evidence of substantial impairment that would not simultaneously define the condition of countless other citizens. The State asserts in its answering memorandum that it presented adequate

¹ See *CCP Crim. R. 29(a)*.

circumstantial evidence to deduce the presence of a “physical or mental disability.” Finally, the parties dispute the ability to interpret the *mens rea* elements of the statute in question, which I decline to address, as this Court has a well-established precedent of reading such statutes according to the plain language in which it is written.² The Court’s decision *infra* also renders that legal argument moot.

I. The Facts

This is a criminal matter in which Mwangi is charged with neglect of an adult who is impaired via failing to carry out the treatment plan devised for the impaired individual and neglect of an adult who is impaired via failing to alert the house staff that Lewis was intoxicated. Both counts derive from 31 *Del. C.* § 3902(14)(b), with the definition of an “adult who is impaired” deriving from 31 *Del. C.* § 3902(2). The facts, as I have found them following the state’s presentation at trial, are as follows.³

On May 26, 2012, Mwangi was employed by NHS Mid-Atlantic. Lewis was a resident of Mid-Atlantic’s facility in the Fox Run Apartments and was taken from that location by Mwangi that day. Mwangi brought Lewis to a pre-planned party with the approval of Lewis’ primary caregivers, and at this party Lewis consumed alcoholic beverages. The parties stipulated to evidence that Lewis had an Essential Life Plan mandating one-on-one, line-of-sight supervision; when out in the community, this changes to “arms-length” supervision. It is questionable how well Mwangi’s responsibilities were defined to and understood by him. Regardless, at the party, Lewis was out of Mwangi’s line of sight for periods of time and consumed alcohol. After returning Lewis to the apartment, Mwangi then lied to his shift replacement about Lewis’ condition. During the trial, Lewis appeared competent when testifying, and no evidence was introduced with a diagnosis or explanation of Lewis’ physical or

² *Clark v. State*, 65 A.3d 571, 577-78 (Del. 2013).

³ The Defense has not presented its case in chief.

mental disability, if any, or otherwise providing testimony or evidence why Lewis was under such close supervision.

II. The Law

To grant a Motion for Judgment of Acquittal under *Court of Common Pleas Criminal Rule 29(a)*, the moving part must demonstrate that “the evidence is insufficient to sustain a conviction of such offense or offenses.” “The Court is without power to determine weight of the evidence or where preponderance lies.”⁴ “It is only where the State has offered insufficient evidence to sustain a verdict of guilt that a motion for acquittal will be granted.”⁵ Furthermore, “...in passing upon such a motion, the evidence, together with all legitimate inferences therefrom, must be considered from the point of view most favorable to the State.”⁶

Thirty-one *Del. C.* § 3902 *et seq.* governs the proscribed conduct in this matter, and holds in relevant part that an adult who is impaired is “[a]ny person 18 years of age or over who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for the person’s own care or custody.”⁷ The infirmity of the adult in question is a predicate element of the offense that the State must prove in demonstrating a violation of § 3902. The Court finds that it is not necessary to present expert testimony of such, however, it is instead sufficient to present general evidence pointing to the impaired nature of the individual.⁸ The evidence must be presented at trial to maintain a verdict of guilty as to this element of the offense.

⁴ *State v. Biter*, 119 A.2d 894, 898 (Del. Super. 1955).

⁵ *Id.*

⁶ *Id.*

⁷ 10 *Del. C.* § 3902(2).

⁸ *Bennett v. State*, 933 A.2d 1249 (Del. 2007).

III. Discussion

Based upon the evidence presented at trial by the State, including the stipulated evidence, I find that the State has failed to meet its burden of setting forth a *prima facie* case or evidence to sustain a verdict of guilty. In passing on this Motion, the Court has concluded “the State’s evidence together with all legislative references therefrom ...in the Court’s the point of view favors the State. The State’s Memorandum in response to the Motion heavily emphasized the extent and nature of the supervision, which may considered in light of the overall picture. However, the State left open to inference that supervision of this nature would only derive from impairment on the part of Lewis, and there is no other explanation aside from deeming the supervision excessive. While it is certainly possible that impairment may necessitate this level of supervision, the facts in evidence fail to show that impairment is the critical factor for this supervision as a *prima facie* case. In short, again, looking at “the evidence, together with all legitimate inferences therefrom, . . . from the point of view most favorable to the State,”⁹ the State failed to show this necessary element at issue in order to sustain a verdict of guilty and avoid the Court entering a Motion for Judgment of Acquittal. The Court cannot guess the nature of the disability and no evidence was elicited from any State Fact witness to meet the necessary burden.

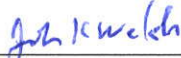
The State was not without opportunity to present this evidence. This Court heard testimony from a Special Investigator involved with the matter and from Lewis himself. At no point did the State directly or indirectly ask whether Lewis suffers from any mental or physical impairment. 31 *Del.C.* §3902(2). Likewise, the State failed to present circumstantial evidence sufficient to justify a conclusion of impairment in the absence of direct or indirect testimony. Examining these facts in the light most favorable to the State, the Court cannot conclude that this

⁹ *Biter*, 119 A.2d at 898.

oversight was harmless. Absent some form of direct testimony, or testimony of impairment adduced from necessary facts, there is no evidence which could sustain a verdict of guilty as to why Lewis was under supervision and whether, in fact, he was impaired. 31 *Del.C.* §3902(2). The Court finds that the State failed to meet its burden of setting forth a *prima facie* case or presenting evidence to sustain a verdict of guilty on this actual element of the criminal offense, and therefore the Court must grant Defendant's Motion.

Therefore, the Court enters a Judgment of Acquittal in favor of the defendant.

IT IS SO ORDERED this 28th day of July 2014.



John K. Welch
Judge

/jb

cc: Juanette West, Criminal Case Manager