

INTRODUCTION

The convictions in this case are the result of two burglaries that took place in Newark, Delaware on August 24, 2013 and August 31, 2013. Each burglary resulted in the same three charges against the Defendant: two counts of Burglary Second Degree, two counts of misdemeanor Theft, and two counts of Unlawful Use of a Debit Card.

Following a jury trial, Defendant was found guilty on all counts. After making an oral motion at the close of the State's case, Defendant timely filed the instant motion on November 5, 2014. The only issue presented by Defendant's motion is whether the State adduced sufficient evidence at trial to prove beyond a reasonable doubt that Defendant was guilty of the charges stemming from the August 24th burglary.

After reviewing the evidence presented at trial, this Court has determined that the State presented sufficient evidence to the jury during the trial such that the jury could determine that Defendant was guilty of the August 24th burglary beyond a reasonable doubt. Accordingly, Defendant's motion for judgment of acquittal is **DENIED.**

FACTS and PROCEDURAL HISTORY

Defendant went to trial on all counts on October 28, 2014. The Court denied Defendant's oral motion for judgment of acquittal as to the three counts that

stemmed from the August 24th burglary. On October 30, 2014, Defendant was found guilty on all counts, including both the August 24th and August 31st burglaries.

The evidence at trial established that in both burglaries, the victims were female University of Delaware students who were present and outside of their residences at the time of the burglaries. Wallets were stolen in both burglaries. Stolen debit cards from each burglary were used at the same Exxon gas station in Newark immediately following each burglary. The truck that the Defendant admitted he drives was seen on surveillance video in the area of both burglaries around the time of the crimes. The residences that were burglarized are approximately 500 feet apart.

The only differences between the two burglaries were that: (1) during the August 31st burglary, the female victim walked inside her home while the Defendant was inside and (2) a laptop was taken during the August 24th burglary. The victim of the August 31st burglary, who caught the Defendant in the act, identified the Defendant and picked him out of a lineup. Further, during a video interview of the Defendant, which was presented to the jury, Defendant confessed to the August 31st burglary and stated that he did not remember whether he committed the August 24th burglary.

DISCUSSION

The only issue presented by Defendant's motion is whether the State adduced sufficient evidence at trial to permit a jury to find Defendant guilty of the charges stemming from the August 24th burglary beyond a reasonable doubt (one count of each Burglary Second Degree, Misdemeanor Theft, and Unlawful Use of a Credit Card).

Motions for judgment of acquittal are governed by Superior Court Criminal Rule 29. To determine whether to grant a motion for judgment of acquittal, this Court must determine whether the evidence presented, when "viewed in a light most favorable to the prosecution[,] established that a rational fact finder could have found the defendant guilty beyond a reasonable doubt" ¹ "In making this determination, [t]he fact that most of the State's evidence [is] circumstantial is irrelevant; the Court does not distinguish between direct and circumstantial evidence."²

In this case, the evidence established that the defendant was caught in the act during the August 31st burglary, and he confessed to that burglary. That burglary took place approximately one block from the location of the August 24th burglary. During the video interview with police, Defendant confessed to the August 31st

¹ *Tilden v. State*, 513 A.2d 1302, 1307 (Del. 1986) (citing *Jackson v. Virginia*, 443 U.S. 307 (1979)).

² *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995) (internal citations omitted).

burglary, but stated that he did not remember committing the August 24th burglary, which, we note, is a far cry from an outright denial, a response, one supposes, the jury was looking for.

Although the only direct evidence consists of surveillance footage showing the Defendant's car in the area of the crime, there was certainly sufficient circumstantial evidence for a jury to infer that Mr. Tucker was guilty of the August 24th burglary. "Delaware law allows the State to convict an individual solely on circumstantial evidence. We treat circumstantial evidence the same as testimonial evidence, and draw inferences from that evidence."³

Defendant cites *Monroe v. State*⁴ to support the argument that the prosecution has failed to provide sufficient evidence of Mr. Tucker's guilt. In *Monroe*, the defendant was convicted of burglarizing a store.⁵ The only evidence of guilt that the State offered in that case was the fact that the defendant's fingerprint was found on the outside of the store's broken plexiglass door, along with several other unidentified prints.⁶ The Court remanded the case for an entry

³ *Vincent v. State*, 996 A.2d 777, 779 (Del. 2010).

⁴ *Monroe v. State*, 652 A.2d 560, 562 (Del. 1995).

⁵ *Id.*

⁶ *Id.*

of judgment of acquittal and expressly limited its holding to the facts of that case.⁷

The State provided substantially more evidence in Mr. Tucker's case.

We think the following evidence, viewed in a light most favorable to the prosecution, is sufficient to allow a jury to find the Defendant guilty beyond a reasonable doubt:

1. The state provided a video confession in which Mr. Tucker confessed to the August 31st incident and stated that he did not remember the August 24th incident.
2. When asked why he remembered the August 31st incident but not the August 24th incident, Mr. Tucker stated that it was because the victim walked in the house while he was still inside on August 31st.
3. The same *modus operandi* was employed in both incidents: the female victims were present outside their homes during the incidents, wallets were stolen in both incidents, debit cards from each burglary were used at the same Exxon gas station in Newark immediately following both incidents, the incidents took place approximately one block from each other, both burglaries took place during the day, and the truck that Mr. Tucker admitted he commonly drives is seen in surveillance footage at around the time of both incidents.

⁷ *Id.* at 567.

CONCLUSION

Accordingly, for all the reasons stated, Defendant's motion for judgment of acquittal is **DENIED**.

IT IS SO ORDERED.

/s/ Charles E. Butler
Judge Charles E. Butler