

reasonable doubt. Determining witness credibility solely is the province of the jury, and – except in rare circumstances not present here – the Court may not disturb those determinations through a judgment of acquittal. Accordingly, the motion is denied.

FACTUAL BACKGROUND

2. Allen and his co-defendant, Jeremy Clark, were indicted on January 4, 2016 on charges of Home Invasion, Robbery First Degree, Assault Second Degree, Burglary Second Degree, four counts of Possession of a Firearm During the Commission of a Felony, and Conspiracy Second Degree.¹ The charges stemmed from an incident that took place on July 15, 2015 at a home in Wilmington, Delaware. Clark and Allen were not tried at the same time because Allen was not arrested until after Clark's trial. In September 2016, a jury found Clark not guilty of all the indicted charges. On November 20, 2018, after a five-day trial, a jury convicted Allen of all the charges against him. Allen filed a timely motion for judgment of acquittal.²

¹ Allen also was indicted for Possession of a Firearm by a Person Prohibited ("PFBPP"). The PFBPP charge was severed into a "B" trial, and the parties and the Court anticipated that the "B" case would be tried in front of the same jury immediately after the "A" case. Trial, however, took longer than anticipated, and trying the "B" case before that jury would have required asking the jurors to return for a sixth day, which also was the day before Thanksgiving. The Court therefore excused the jury and, unless the State dismisses the PFBPP charge, Allen will be tried at a later date before another jury on that charge.

² Allen's original motion also alternatively sought a new trial. Allen later withdrew the request for a new trial. See Reply Mem. in Supp. of Mot. for J. of Acquittal (hereinafter "Reply Br.") 5.

3. At trial, the State presented evidence that Clark and Allen forced their way into a residence on July 15, 2015 and committed various crimes in the residence before fleeing. Troy Williams testified for the State that he was at home alone on July 15, 2015 at approximately 1:00 p.m. when he heard a knock on his front door. From the window, Williams saw a man at the front door holding a pizza box and wearing a Yankees baseball cap. Williams also saw a white Chevrolet sedan with a New York license plate parked in his driveway.³ Believing the person at the door was a delivery man who came to the wrong address, Williams opened the door. The individual outside then displayed a firearm and attempted to force his way into the home. Williams resisted, but had trouble maintaining his footing because pizza had spilled onto the floor during the struggle. The individual outside ultimately gained entry with the assistance of a second man.⁴

4. Williams testified the two assailants forced him to the floor at gunpoint and duct taped his legs together and his hands behind his back.⁵ One of the assailants then guarded Williams at gunpoint while the other searched the home. When Williams attempted to move, the guard struck Williams in his head

³ *State v. Andrew Allen*, I.D. No. 1510018545A (Trial Transcript) (hereinafter “Trial Tr.”) (Nov. 15, 2018) 11-14.

⁴ *Id.* at 15-18.

⁵ *Id.* at 19-22.

and ear with the firearm.⁶ The two assailants searched the home and repeatedly demanded Williams tell them where his drugs and money were hidden.⁷ During the search, Williams overheard portions of a phone conversation between the assailants and a third individual, who Williams perceived was giving the two assailants instructions. The two assailants also threatened to wait until Williams' wife returned home from work, insinuating that Williams would reveal the location of his drugs and money once his wife's safety was in jeopardy.⁸

5. The threats about his wife prompted Williams to attempt to fight back. After persuading his guard to move him from the floor to a chair, Williams broke free of the duct tape that was binding him and grabbed a gun that one of the men had left lying on the desk.⁹ The gun, however, would not fire, and Williams continued to struggle with the two assailants before breaking free and running upstairs.¹⁰ Williams then retrieved a revolver hidden in his bedroom, started running back downstairs, and began firing at the two assailants, who were running out of the house.¹¹ One of Williams' shots embedded in the floor of the entryway.¹²

⁶ *Id.* at 24-27.

⁷ *Id.* at 25-26.

⁸ *Id.* at 29-31.

⁹ *Id.* at 33-38

¹⁰ *Id.* at 37-42.

¹¹ *Id.* at 42-44.

¹² *Id.* at 52-53.

6. Williams believed it was possible another of the shots hit one of the assailants.¹³ He observed the two assailants flee to the white Chevrolet that he previously saw in his driveway, at which point the car quickly drove away.¹⁴ After the men fled, Williams first called his wife at work and told her to come home immediately. Williams then called his close friend. Approximately 10-15 minutes after the two assailants left, Williams called the police.¹⁵ After police and an ambulance arrived, Williams received medical attention for the injuries caused when he was struck with the gun and during his struggle to get away from the two assailants.¹⁶

7. The defense cross-examined Williams to cast doubt on his credibility. Williams acknowledged he previously was convicted of a felony drug-related offense and lost his job as a Chester City firefighter as a result.¹⁷ Williams again admitted during cross-examination that he was not forthcoming with police about the fact that he fired a gun at the fleeing assailants, explaining he was hesitant to be truthful because he knew he was not supposed to possess a firearm as a result of his past felony conviction. Williams testified it was not until approximately six weeks after the incident that he told police he fired at, and likely hit, one of the

¹³ *Id.* at 54.

¹⁴ *Id.* at 44-46.

¹⁵ *Id.* at 47-49.

¹⁶ *Id.* at 54-55.

¹⁷ *Id.* at 162.

assailants.¹⁸ The defense also questioned Williams regarding his finances, specifically his wherewithal to maintain his lifestyle exclusively on income from his rental properties and his wife's job. Williams' testimony revealed that he paid off the mortgage on his home in five years and he owned various other rental properties that he managed. Williams and his wife also owned four vehicles and had a pool installed at their home.¹⁹ The defense suggested to the jury that the only possible explanation was that Williams was dealing drugs to supplement his legal sources of income.²⁰

8. Although Allen's pending motion focuses exclusively on Williams' credibility, Williams' testimony was not the State's only evidence. The jury also heard evidence during the State's case regarding the Delaware State Police investigation. Detective Timothy Harach of the Delaware State Police processed the crime scene, including taking pictures and collecting evidence. Detective Harach found duct tape pieces on Williams' legs and wrist, in the office, and in Williams' upstairs bedroom. The detective also found several pizza slices on the hall floor along with a torn pizza box. Police located a roll of duct tape and two firearm magazines in the office and a bullet in the entryway floor near the front door. In the laundry room, police also found a cell phone belonging to Jeremy

¹⁸ *Id.* at 187-89.

¹⁹ *Id.* at 88-106.

²⁰ Trial Tr. (Nov. 20, 2018) at 73-78.

Clark.²¹ Detective Harach processed the duct tape roll and the pizza box for fingerprints and found possible useable prints on both items. The detective then sent those items to the State Bureau of Identification for further processing and investigation.²²

9. Anthony DiNardo, a fingerprint examiner, testified that he matched Clark's fingerprint to the fingerprint recovered from a piece of duct tape and matched Allen's fingerprint to the fingerprint on the pizza box.²³ DiNardo testified he was 100 percent certain about both matches.²⁴

10. The jury also heard evidence regarding cell tower records for Allen's phone and a forensic examination of the cellphone found at the scene. The cell tower records showed that Allen's phone hit off a tower in Philadelphia in the morning of July 15, 2015, and between 10:46 a.m. and 2:49 p.m. Allen's phone repeatedly hit off a cell tower near Williams' residence. At 2:57 p.m., the phone hit off a tower north of the tower near Williams' residence, indicating the phone was moving in a northerly direction.²⁵ At 3:33 p.m. and 3:58 p.m., Allen's phone hit off cell towers in the Philadelphia area.²⁶

²¹ Trial Tr. (Nov. 16, 2018) at 7-18.

²² *Id.* at 47-50.

²³ *Id.* at 141-48.

²⁴ *Id.* at 152. A forensic DNA analyst also testified about DNA swabs taken from various items of evidence. The results of the DNA testing were mixed and had no real evidentiary value.

²⁵ Trial Tr. (Nov. 19, 2018) at 96-104.

²⁶ *Id.* at 105-06.

11. Police also analyzed the phone left in Williams' home and discovered it belonged to Clark. After forensically examining the phone, investigators found text messages and phone calls between Clark and Allen, along with communications between Clark and two other individuals, "Sadiqq" and "Gees 2."²⁷ There were numerous communications between Clark and those three individuals on the day of incident, including a message Clark sent to Gees 2 that stated "Tape and rope."²⁸

12. At the close of the State's evidence, Allen made an oral motion for judgment of acquittal, arguing the State failed to present a prima facie case that Allen committed any of the charged crimes as opposed to merely being present at the scene. The Court denied that motion, finding the State presented sufficient evidence for a rational jury to conclude beyond a reasonable doubt that Allen committed the charged crimes either as a principal or as an accomplice.²⁹

13. The defense's theory of the case, offered largely through Jeremy Clark's testimony, was that the July 15, 2015 incident at Williams' home was a drug deal gone awry. Clark testified that Williams was Clark's cocaine supplier and that on July 15, 2015, Clark purchased a large quantity of cocaine from Williams for approximately \$10,000. Clark explained that he brought Allen along

²⁷ Trial Tr. (Nov. 16, 2018) at 185-86.

²⁸ *Id.* at 190-95.

²⁹ Trial Tr. (Nov. 19, 2018) at 165-71.

with him for the purchase in order to introduce Allen to Williams.³⁰ Clark testified that he and Allen went to Williams' home that morning, purchased the cocaine, waited for Williams to count the money, and then Clark and Allen drove back to Pennsylvania to give the cocaine to Clark's uncle, Sadiqq, who "cooked" the cocaine to make crack cocaine for street sales.³¹

14. Clark further testified that while he was at Sadiqq's house, Williams called Clark and demanded he return to Williams' home immediately because there was a "discrepancy." Clark stated he returned to Delaware with Allen and a second friend nicknamed "Gees."³² While Gees and Allen waited in the car, Clark entered Williams' home, where Williams accused Clark of using counterfeit money to purchase the cocaine that morning. Williams demanded that Clark pay \$5,000 cash immediately.³³ Clark testified Williams became enraged and threatened Clark with a gun, at which point Clark called his uncle and allowed Williams to speak with him. Williams purportedly did not return Clark's phone and instead began restraining Clark with duct tape.³⁴ The two men struggled during this encounter, and Clark testified he struck Williams' head with the scale that Williams previously used to weigh the cocaine.³⁵ Clark ultimately freed

³⁰ *Id.* at 182-89.

³¹ *Id.* at 192-200.

³² *Id.* at 200-02.

³³ *Id.* at 203-06.

³⁴ *Id.* at 207-12.

³⁵ *Id.* at 212.

himself from the duct tape and ran out of Williams' residence as Williams was firing a gun at him.

15. Clark was shot one time in his shoulder but fled to the car where Allen and Gees were waiting.³⁶ Allen and Gees drove Clark to Temple University Hospital in Philadelphia, where he was treated and released. While at the hospital, Clark was questioned by Philadelphia police regarding the origins of the gunshot wound. Clark lied and said he was shot by an unknown assailant while walking through Philadelphia.³⁷

16. To explain the State's fingerprint evidence, Clark testified there was a pizza box on Williams' desk that Allen picked up and moved to give Williams room to count the money during the initial drug purchase.³⁸ As to the "tape and rope" text message Clark sent on the morning of July 15, 2015, Clark explained that Williams called Clark that morning and asked him to bring duct tape and rope with him to the house. Clark said he tried to make a shopping list on his phone, but accidentally created a text message to Gees instead.³⁹

17. The State cross-examined Clark about his past felony convictions.⁴⁰ Clark also admitted on cross-examination that after the July 15, 2015 incident, he sent his then-girlfriend to pay Williams money. Clark denied he was trying to

³⁶ *Id.* at 213-15.

³⁷ *Id.* at 215-17.

³⁸ *Id.* at 197-98.

³⁹ *Id.* at 184-87.

⁴⁰ *Id.* at 253-54.

bribe Williams and testified he simply was trying to repay Williams the money that Williams believed he was owed. Clark also acknowledged that he saw all the police reports and evidence in the case before testifying.⁴¹

18. In its rebuttal case, the State offered a videotaped statement that Allen gave the State police on July 25, 2017.⁴² Through that statement, the State pointed out several inconsistencies between Clark's and Allen's versions of the events of July 15, 2015. The inconsistencies included that: (1) Allen stated he met Clark through an individual named Mike, while Clark denied knowing anyone named Mike; (2) Allen told police he and Clark stopped for pizza and cheesesteaks before going to Williams' house on the morning of July 15, 2015, but Clark denied ever doing so; (3) Allen denied ever entering Williams' home, but Clark insisted Allen was in the home that morning and picked up a pizza box from the desk; (4) Allen said only he and Clark drove to Williams' home, but Clark testified Gees was with them; (5) Allen said he and Clark only went to Williams' home once, but Clark said they visited on two separate occasions that day; (6) Allen denied knowing Clark was involved with any drugs other than marijuana, but Clark testified Allen was present when Clark purchased cocaine from Williams and when Clark later gave the cocaine to Sadiqq to "cook."⁴³

⁴¹ *Id.* at 261-69.

⁴² Trial Tr. (Nov. 20, 2018) at 19-21.

⁴³ *Id.* at 40-43.

19. Allen contends the State's evidence was not sufficient to support his convictions "given the alternative theory of the case advanced by the defense at trial[.]"⁴⁴ According to Allen, the State's theory of the case "ignores critical evidence regarding Williams that came to light at trial," and when all the evidence is considered, the defense's theory of a "drug deal that turned sour" is a much more likely scenario than the State's theory of the case.⁴⁵ Allen argues the inconsistencies in the evidence and Williams' "intentional omissions and fabrications" call into question Williams' credibility, and Williams' version of events was not believable in light of the defense's evidence and theory of the case.⁴⁶ The State, on the other hand, contends that questions of credibility exclusively are the jury's province, and the Court may not substitute its own credibility determinations for that of the jury. The State argues the jury was free to accept or reject some or all of the witnesses' testimony, and the fact that the parties presented conflicting testimony is not a basis to grant a motion for judgment of acquittal.⁴⁷

⁴⁴ Allen's Opening Mem. in Supp. of Mot. for J. of Acquittal (hereinafter "Mot.") 13.

⁴⁵ *Id.* at 14.

⁴⁶ *Id.* at 16.

⁴⁷ State's Resp. to Def.'s Mot. for Post-Verdict J. of Acquittal 12-13.

ANALYSIS

20. Under Rule 29, a defendant may move for judgment of acquittal to set aside a guilty verdict.⁴⁸ In considering such a motion, all evidence and the legitimate inferences therefrom must be viewed in the light most favorable to the State.⁴⁹ If any rational trier of fact “could conclude from the evidence that the defendant is guilty beyond a reasonable doubt, a motion for acquittal” must be denied.⁵⁰

21. Allen concedes that the State’s evidence, if “considered in a vacuum,” was sufficient to support the jury’s guilty verdict.⁵¹ Allen argues, however, that the defense’s case casts such doubt on Williams’ credibility that no rational trier of fact could accept the State’s theory of the case.⁵² Allen points to the following evidence that he contends rendered Williams’ testimony entirely unreliable: (1) Williams previously was convicted of drug dealing and was unemployed at the time of these events, but enjoyed financial stability and owned substantial assets that the defense theorized indicated Williams likely dealt drugs; (2) Williams did not immediately call 911 after the assailants fled the home, giving him time to fabricate evidence or hide drugs; and (3) Williams initially lied to police about

⁴⁸ Super. Ct. Crim. R. 29.

⁴⁹ *State v. Biter*, 119 A.2d 894, 898 (Del. Super. Ct. 1955).

⁵⁰ *Jervey v. State*, 637 A.2d 827, 827 (Del. 1994).

⁵¹ Mot. at 16.

⁵² *Id.*

possessing and discharging a firearm during the incident.⁵³ Allen contends that, at best, the State's theory and Allen's theory equally were plausible, and the jury therefore could not rationally find Allen guilty beyond a reasonable doubt.⁵⁴

22. Allen's argument requires this Court to override the jury's judgment regarding the witnesses' credibility, and that result is antithetical to established Delaware precedent. As the trier of fact, it is the jury's sole province to determine witness credibility and resolve conflicts in testimony.⁵⁵ In the face of conflicting or inconsistent evidence, the fact finder's role is to decide which evidence to accept and which to reject, and this Court may not substitute its judgment for the jury's judgment.⁵⁶

23. Allen acknowledges this general principle, but argues that "where an irreconcilable conflict exists regarding the guilt of an accused individual that precludes a conviction beyond a reasonable doubt, the trial court is required to take the case from the consideration of the jury and grant a defendant's motion for judgment of acquittal."⁵⁷ In support of this proposition, Allen cites the Delaware Supreme Court's decision in *Washington v. State*.⁵⁸ *Washington*, however, does

⁵³ *Id.* at 14-16.

⁵⁴ *Id.* at 16-17.

⁵⁵ *McCoy v. State*, 112 A.3d 239, 267 (Del. 2015) (quoting *Poon v. State*, 880 A.2d 236, 238 (Del. 2005)).

⁵⁶ *Poon*, 880 A.2d at 238.

⁵⁷ Reply Br. at 2.

⁵⁸ *Washington v. State*, 4 A.3d 375 (Del. 2010).

not stand for the sweeping principle Allen advances.⁵⁹ Rather, *Washington* involved a narrow exception to the rule exclusively charging the jury with resolving witness credibility.⁶⁰

24. In *Washington*, the Delaware Supreme Court held that when an accomplice's testimony inculcating a defendant is uncorroborated, and the victim denies the defendant was present when the crime was committed, a motion for judgment of acquittal should be granted.⁶¹ The *Washington* Court explained, however, that this exception's requirements only will be met in rare cases.⁶² Those requirements are (1) there is an irreconcilable conflict in the State's evidence, (2) the only evidence of the defendant's guilt was the uncorroborated testimony of one or more accomplices, and (3) the inconsistencies in the evidence are material to a finding of guilt.⁶³ Neither of the first two requirements applies in this case. Indeed, to fall within the exception recognized in *Washington*, the conflicting evidence must be in the State's case; the defense's evidence is "irrelevant" to the

⁵⁹ The language from the *Washington* case that Allen cites actually is a discussion of the decision in *Bland v. State*, 263 A.2d 286 (Del. 1970), which first resolved whether Delaware requires that an independent source corroborate an accomplice witness's testimony. See *Washington*, 4 A.3d at 378-79. In *Bland*, the Court held corroboration was not "an absolute necessity," but it may be the Court's duty to grant a judgment of acquittal when an accomplice's testimony is uncorroborated and there is an "irreconcilable conflict in the State's case concerning a defendant's guilt." *Bland*, 263 A.2d at 288 (emphasis added). As explained above, Allen cannot shoehorn his case into the narrow exception addressed in *Bland* and *Washington*.

⁶⁰ *Washington*, 4 A.3d at 378.

⁶¹ *Id.* at 376.

⁶² *Id.* at 379.

⁶³ *Id.*

analysis.⁶⁴ Moreover, the evidence of Allen's guilt did not come from an accomplice, but rather from the victim and the physical evidence. Allen's alleged accomplice, Jeremy Clark, actually exculpated Allen. Thus, *Washington* is inapposite both factually and legally.

25. In sum, Allen cannot avoid the rule that a motion for judgment of acquittal is not an appropriate vehicle to disturb either a jury's determination of witness credibility or a jury's reconciliation of conflicting evidence. The Court is hard-pressed to envision a case in which the evidence is not conflicting in some way or another, and it would upend our system of justice to grant acquittal after a jury verdict simply because the defendant disagrees with the jury's weighing of the evidence. For all the foregoing reasons, Andrew Allen's Motion for Judgment of Acquittal is **DENIED. IT IS SO ORDERED.**


Abigail M. LeGrow, Judge

Original to Prothonotary

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⁶⁴ *Id.*