

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
v.)	ID No. 2212003817
)	
ERIC FRY,)	
Defendant.)	

ORDER

*On Defendant’s Motion for Judgment of Acquittal – **DENIED.***

This 30th day of August, 2024, upon consideration of Defendant Eric Fry’s Motion to for Judgment of Acquittal,¹ the State’s Response in Opposition² and the record in this matter, it appears to the Court that:

1. On April 17, 2024, following a 3-day jury trial, Defendant was convicted of one (1) count of Theft of a Motor Vehicle, one (1) count of Theft Under \$1,500, a misdemeanor, one (1) count of Burglary Third Degree, one (1) count of Attempted Theft Under \$1,500, a misdemeanor, and one (1) count of Criminal Mischief under \$1000, a misdemeanor.³ Prior to trial, Defendant requested and, following a colloquy, was permitted to represent himself in this case.⁴ During trial, standby counsel available at all times if he so chose to take advantage; he did not.

¹ *State v. Eric Fry*, Crim. Act. No. 2212003817, D.I 30.

² D.I. 33.

³ D.I. 28, 45.

⁴ D.I. 26.

2. Post-trial, but prior to sentencing, on April 25, 2024, Defendant filed the instant, timely motion pursuant to Superior Court Criminal Rule 29.⁵ On May 23, 2024, the State responded in opposition.⁶

3. In his Motion, Defendant raises a sufficiency of the evidence claim. Specifically, he argues there was “insufficient evidence to support [his] conviction...” because the “... State had no fingerprints. No D.N.A. Further more [sic] it had no video evidence to support there [sic] claim....”⁷ In opposition, the State asserts that the circumstantial evidence surrounding each crime, the surveillance video capturing Defendant at two scenes, Defendant’s admission to taking the cellular phone and the evidence seized in the case, sufficient evidence exists to support the jury’s finding of guilt on all charges, albeit, “without DNA and fingerprints.”⁸

4. Under Superior Court Criminal Rule 29 (c), “[i]f the jury returns a verdict of guilty . . . a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period.” In considering a motion for judgment of acquittal, the Court must determine “whether any rational trier of fact, viewing the evidence in the

⁵ D.I. 30.

⁶ D.I. 33.

⁷ D.I. 30.

⁸ D.I. 33.

light most favorable to the State, could find a defendant guilty beyond a reasonable doubt.”⁹ “Evidence of a defendant's guilt may be proven exclusively through circumstantial evidence since this Court does not distinguish between direct and circumstantial evidence in a conviction context.”¹⁰

5. The convictions in this case stem from a two-day crime spree on December 2 2022, and December 3, 2022, in which Defendant stole a vehicle from AutoZone, stole a cell phone from a woman in Walmart that was accidentally left on a self-checkout counter, burglarized a laundromat in an attempt to steal an ATM machine from inside and in doing so, caused damage to the laundromat’s front door.¹¹

6. At trial, the State called seven live witnesses: the three victims and the four investigating police officers.¹² The State produced circumstantial evidence, including direct testimony of the victims and officers, surveillance video connecting Defendant to both the theft of the phone at Walmart, to which he confessed, and the burglary of the laundromat where the ATM theft was attempted. Defendant is

⁹ *Davis v. State*, 706 A.2d 523 (Del. 1998).

¹⁰ *Id.*

¹¹ D.I. 33, *see generally* D.I. 25-28.

¹² D.I. 29.

correct that no forensic evidence such as DNA or fingerprint evidence was presented.¹³

COUNT I: THEFT OF A MOTOR VEHICLE

7. Under 11 *Del. C.* §841A(a), “[a] person is guilty of theft when the person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it.” On December 2, 2022, a white 2019 Nissan Frontier (the “pickup truck”) was stolen from AutoZone. Stephen Taing, AutoZone’s general manager, reported the truck stolen.

8. Among other evidence, the State presented testimony from Taing, who testified to the circumstances surrounding the theft. The State additionally presented the testimony of the Delaware State Police Trooper who located the stolen vehicle, and testimony regarding the close proximity between where the truck was located and the hotel where Defendant was staying. The evidence presented could allow a rational trier of fact, viewing the evidence in the light most favorable to the State and in conjunction with the evidence of the other crimes presented, to find Defendant guilty beyond a reasonable doubt of Theft of a Motor Vehicle.

¹³ The facts of this case as noted in this Order are derived from the trial testimony. *See generally* D.I. 25-28.

COUNT II: THEFT

9. Under 11 *Del. C.* §841(a), “[a] person is guilty of theft when the person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it.” Defendant was charged with theft for taking the cellular phone of Neha Misra, a customer who accidentally left her phone on the checkout counter at Walmart. In support of this charge, the State played they jury a clip of Defendant’s interview with Detective Rash, in which Defendant admits that he saw the phone left on the checkout counter and took it. Detective Rash also testified that following a search of Defendant’s motel room, Delaware State Police found Misra’s cell phone.

10. The State also presented video surveillance from the Walmart which shows Defendant in the Walmart at the time of the theft wearing a distinctive yellow and black plaid shirt. In his closing argument to the jury, Defendant admitted his guilt to taking Misra’s cell phone. The evidence presented could allow a rational trier of fact, viewing the evidence in the light most favorable to the State, to find Defendant guilty beyond a reasonable doubt of Theft under \$1500.

COUNTS III-V: BURGLARY IN THE THIRD DEGREE, ATTEMPTED THEFT, CRIMINAL MISCHIEF

11. Defendant was charged with Burglary Third Degree, Attempted Theft Under \$1500 and Criminal Mischief Under \$1500 all stemming from the break in at the Sparklean Laundromat.

12. The State must prove the following the following elements beyond a reasonable doubt to support a guilty verdict for Burglary Third Degree: (1) the defendant knowingly entered or remained in a building; (2) the defendant intended to commit a crime in the building; and (3) the defendant acted unlawfully.¹⁴

13. To find the defendant guilty of an attempt to commit the crime of theft, the State must prove beyond a reasonable doubt that the defendant did anything which under the circumstances as he believed them to be, was a substantial step in a course of conduct planned to culminate in his commission of theft.¹⁵

14. To support a guilty verdict for Criminal Mischief the State must prove, beyond a reasonable doubt, that the defendant damaged tangible property of another person; and the defendant acted either intentionally or recklessly.¹⁶

15. At trial, the State presented the jury with video surveillance of the burglary at the laundromat. The surveillance shows a truck, fitting the description of the stolen Autozone truck, back up to the front of the laundromat and park. The operator of the truck exits, and is seen wearing a yellow and black plaid shirt and a grey knit cap. The operator then tied something akin to a rope to the doors and the truck, got back into the truck and drove it a few feet, breaking the door and allowing

¹⁴ 11 *Del. C.* §824.

¹⁵ 11 *Del. C.* §531.

¹⁶ 11 *Del. C.* §811.

entry. The surveillance then shows the same person attempt to remove the ATM from the laundromat with a hand cart.

16. As testified to by Karen Yang, the owner of Sparklean, the ATM was unable to be removed as it was bolted to the ground. The surveillance of the burglary concludes as the truck operator flees the scene without the ATM. The damage to the doors of the laundromat is visible from the surveillance video shown.

17. In addition to finding the stolen cellular phone in Defendant's motel room, Delaware State Police also located a yellow and black plaid shirt and a grey knit cap in his room. This was all introduced as evidence at trial and before the jury.

18. Collectively, the evidence presented could allow a rational trier of fact, viewing the evidence in the light most favorable to the State, to find Defendant guilty beyond a reasonable doubt of Burglary Third Degree, Attempted Theft under \$1500 and Criminal Mischief for the damage to the laundromat doors.

19. Contrary to Defendant's assertion, forensic evidence, such as fingerprints and DNA are not a required for a conviction.¹⁷

20. In looking at the totality of the evidence presented, more than sufficient evidence was presented to allow a rational trier of fact, viewing all of the evidence in the light most favorable to the non-moving party, the State, to convict Defendant of all charges, as the jury did here. Therefore, the Defendant's motion is **DENIED**.

¹⁷ See *Mitchell v. State*, 2014 WL 1202953, at *7 (Del. 2014).

21. Upon the resolution of Defendant's other pending charges, and upon completion of the Ordered Pre-Sentence Investigation, this matter is to immediately be scheduled for sentencing.

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read 'DJB', is written above a horizontal line.

Danielle J. Brennan, Judge

cc: Original to File
James Betts, Esquire
Eric Fry, *pro se*, SBI 251345
Jay Edinger, Esquire, standby counsel