

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,)
)
 v.)
)
CHARLES P. WILSON, JR.,)
(ID. No. 0207008541))
)
 Defendant.)

Submitted: February 26, 2003
Decided: May 30, 2003

Joseph Giordano, Esq., Department of Justice, Dover, Delaware. Attorney for State.

Paul S. Swierzbinski, Esq., Public Defender's Office, Dover, Delaware. Attorney for Defendant.

Upon Consideration of Defendant's Appeal
From Decision of Court of Common Pleas
AFFIRMED

VAUGHN, Resident Judge

ORDER

State v. Charles P. Wilson, Jr.

ID. No. 0207008541

May 30, 2003

Upon consideration of the parties briefs and the record of the case, it appears that:

1. The appellant, Charles P. Wilson Jr., was convicted in the Court of Common Pleas of theft and criminal mischief. He appeals his conviction, contending that the evidence was insufficient to sustain a finding of guilt. Specifically, he contends that the evidence identifying him as the person who committed the offenses was legally insufficient.

2. When addressing appeals from the Court of Common Pleas, this Court sits as an intermediate appellate court.¹ As such, its function is the same as that of the Supreme Court.² Therefore, the court's role is to "correct errors of law and to review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process."³ If substantial evidence exists for a finding of fact, this Court must accept that ruling, as it must not make its own factual conclusions, weigh evidence, or make credibility determinations.⁴ Errors of law are reviewed *de novo*.⁵ Findings of

¹ *State v. Richards*, 1998 Del. Super. LEXIS 454 (Del. Super. 1998).

² *Baker v. Connell*, 488 A.2d 1303 (Del. 1985).

³ *State v. Huss*, 1993 Del. Super. LEXIS 481, at *2 (Del. Super. 1993) (*citing Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972)).

⁴ *Johnson v. Chrysler*, 213 A.2d 64 (Del. 1965).

⁵ *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

State v. Charles P. Wilson, Jr.

ID. No. 0207008541

May 30, 2003

fact are reviewed only to verify that they are supported by substantial evidence.⁶ The standard of review when considering the sufficiency of evidence on an appeal is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.⁷

3. On June 30, 2002, Raymond Olsen, a cashier at Lowe's Department Store in Dover, saw someone forcing a box and chainsaw through a hole in a chain linked fence that surrounded the lawn and garden section of the store. When Olsen approached, the person ran from the fenced area with the stolen items and got into a blue truck. The truck then drove off. Earlier in the day an assistant store manager, Marvin Lands, saw the same blue truck parked outside the fenced area in a loading zone. He noticed it because it was parked in a loading zone but was not loading. He got a view of the person sitting in the driver's seat. Incidents of theft would ordinarily be reported to the store's loss prevention officer, Paula Donovan. However, on the day in question she was off from work due to a family emergency. After returning to work and being informed of the incident, Donovan obtained a photograph from a loss prevention officer at a Lowe's store in Christiana, Delaware of a person suspected of committing a similar theft at that store. She showed the photograph to Olsen who identified the person in the picture as the same person that escaped in the blue truck. Lands was separately shown the photo and identified the

⁶ *Shahan v. Landing*, 643 A.2d 1357 (Del. 1994).

⁷ *Dixon v. State*, 567 A.2d 854, 857 (Del. 1989); *Davis v. State*, 453 A.2d 802, 803 (Del. 1982); see *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

State v. Charles P. Wilson, Jr.

ID. No. 0207008541

May 30, 2003

person in the picture as the same person he observed sitting in the driver's seat of the blue pickup in the loading zone. The person in the photograph was the defendant, Charles P. Wilson, Jr. On July 13, Donovan contacted police who then arrested the defendant. At trial, both Olsen and Lands identified the defendant. Wilson denied being in Dover that day, denied that he had ever been to the Lowe's store in Dover, and stated that he did not own and had never used a blue pickup truck.

4. The appellant contends that there is insufficient evidence in the record to support his convictions for theft and criminal mischief because the process by which he was identified by the Lowe's employees was suggestive and unreliable. He argues the photo identification was unduly suggestive because only a single photograph was shown to the store employees, and it was shown two weeks after the incident. In support of his contention, he also emphasizes he was not apprehended at the scene and that there was no evidence he owns or uses a blue pickup truck like the one witnessed at the scene.

5. The trial court concluded that credible evidence existed sufficient to find the defendant guilty beyond a reasonable doubt of theft and criminal mischief. The court believed the testimony of the two Lowe's employees, Lands and Olsen, that Wilson was the person sitting in the blue pickup truck later observed fleeing from the scene after being seen by Olsen in the act of forcing a chain saw through a hole in the home and garden department's fence area.⁸

⁸ The trial court did grant the defendant's motion for judgment of acquittal as to a conspiracy count.

State v. Charles P. Wilson, Jr.

ID. No. 0207008541

May 30, 2003

6. Viewed in the light most favorable to the prosecution, there is sufficient evidence to support the defendant's conviction. The record supports a conclusion that both Olsen and Wilson had an adequate opportunity to observe the defendant on the day of the offense, including his face. Their separate eyewitness accounts and positive, independent identifications of the defendant in the photograph and in court corroborate each other. The trial court, which had the opportunity to observe the demeanor of the witnesses as they made their in-court identifications and explained their photo identifications, found their testimony to be credible. The court rejected the testimony of the defendant, noting that his testimony was impeached by prior convictions of crimes involving dishonesty.

7. The decision of the Court of Common Pleas is ***affirmed.***

IT IS SO ORDERED.

Resident Judge

oc: Prothonotary
cc: Order Distribution
File