

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Hillard M. Winn
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1181 Paddock Road
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**Re: State of Delaware v. Hillard M. Winn
I.D. No. 06030020909**

Submitted: November 21, 2006
Decided: December 13, 2006

On Defendant's "Motion for Acquittal/Mistrial"
DENIED.

Dear Ms. White and Mr. Winn:

Before the Court is Defendant's *pro se* motion for acquittal or for a mistrial.¹

¹ Defendant also filed a related motion for transcripts of his trial and a motion to proceed in forma pauperis in connection therewith. His sentencing is scheduled for December 15, 2006. The Court finds these motions to be premature. Any later need by Defendant for transcripts can be addressed at that time. The motion for transcripts and the motion to proceed in forma pauperis are denied without prejudice.

Because the Court finds that the State presented sufficient evidence at trial to sustain a guilty verdict and that Defendant has not presented any grounds entitling him to a new trial, the motion is **DENIED**.²

On September 11, 2006, after a jury trial, Defendant was found guilty of Burglary First Degree, Assault Third Degree, Possession of a Deadly Weapon During the Commission of a Felony, and Terroristic Threatening. Defendant subsequently filed this motion *pro se* on September 20, 2006.

The State's theory at trial was that the Defendant came to the victim's apartment on the night of March 5, 2006 to retrieve some belongings that he had left there several weeks before. Defendant was let in the apartment by a man named "Smoke," and then proceeded to enter the victim's bedroom where he woke her and allegedly assaulted her and yelled at her while trying to determine where his belongings were. Defendant briefly left the apartment to look for his things in another woman's apartment while he had a man named "Pooh" remain with the victim to watch her. Defendant returned to the apartment and this time "Pooh" opened the door for Defendant. By this time, the victim had escaped out of the back bedroom window.

In his motion, Defendant contends that the State "deprived the defendant of a fair trial" by making an inappropriate statement about the burglary charge during closing statements. Specifically, he asserts that the State improperly suggested to the jury that if they found Defendant had committed an assault when he first entered the premises, then it was "totally impossible" that they could find that the Defendant was lawfully on the property when he reentered the premises.

One of the elements that the State must prove in order to convict someone of First Degree Burglary is that the defendant "knowingly enter[ed] or remain[ed] unlawfully in a dwelling."³ Moreover, "[a] person who enters when he is not licensed or privileged to do so enters unlawfully."⁴ There was more than sufficient evidence presented at trial for the jury to find that Defendant was on the property unlawfully. Additionally, the Court notes that Defendant made no objection to the State's statement at the time of trial

² See *Vouras v. State*, 452 A.2d 1165, 1169 (Del. 1982) (stating that a motion for acquittal is to be granted only when the State has presented insufficient evidence to sustain a verdict of guilt). See also *McCloskey v. State*, 457 A.2d 332, 337 (Del. 1983) (noting that a motion for a mistrial based on impropriety occurring at trial is left to the sound discretion of the trial court).

³ 11 Del. C. § 826(a).

⁴ *Pauls v. State*, 476 A.2d 157 (Del. 1984).

and the Court properly instructed the jury on the elements of burglary.⁵ Therefore, the Court does not find that the alleged improper statement deprived the Defendant of a fair trial.⁶

Next, Defendant claims that the Court erred by allowing the charge of Assault Second Degree to go to the jury. He contends that a taped statement where the victim stated that Defendant did not hit her with a crowbar “clearly exonerated” him from that charge.

When a defendant challenges the sufficiency of the evidence to convict him, the Court must inquire “whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”⁷ While there may have been inconsistencies in the victim’s testimony, there was sufficient evidence presented at trial for the jury to have found Defendant guilty of Assault Second Degree. Specifically, the victim testified that she was hit in the shoulder area with the crowbar. In addition, the State introduced photographs of the victim’s shoulder, which demonstrated a “pattern injury” according to the testimony of the State’s witness, a forensic nurse evaluator. Any inconsistencies in the testimony were properly left to the jury, the “sole judge of the credibility of the witnesses,” to resolve.⁸ Furthermore, the Court notes that the jury did not find Defendant guilty of Assault Second Degree.

Additionally, Defendant contends that the Court should not have instructed the jury at the request of the State on Assault Third Degree, as a lesser-included offense of Assault Second Degree. An offense is lesser-included when “[i]t is established by the proof of the same or less than all the facts required to establish the commission of the offense charged.”⁹ Moreover, a Court may charge the jury on a lesser included offense if “there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting the defendant of the included offense.”¹⁰ After the evidence was presented at trial, the Court determined that there

⁵ The jury instructions stated that a “person ‘enters or remains unlawfully’ in a place when the person has no license or privilege to be there; that is, the person does not have the permission or consent of the owner of the place to be there.”

⁶ *Wilson v. State*, 1985 WL 188316 (Del. Supr.) (“Since defendant neither objected to the statements when made nor requested of the Court a cautionary instruction to the jury, the prosecutor's improper statements would not constitute reversible error unless they were so prejudicial as to affect defendant's substantial right to a fair trial.”).

⁷ *Williams v. State*, 539 A.2d 164, 168 (Del. 1988).

⁸ *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

⁹ 11 *Del. C.* § 206(b)(1).

¹⁰ *Id.* at § 206(c).

was a rational basis in the evidence to conclude that the Defendant did not injure the victim with a crowbar, but that he caused her injuries without the use of a weapon. Therefore, the Court properly instructed the jury on the lesser-included charge of Assault Third Degree.¹¹

For the above reasons, Defendant's motion for acquittal or a mistrial is **DENIED**.

IT IS SO ORDERED.

cc: Prothonotary

¹¹ See *Moore v. State*, 2003 WL 1987899 (Del. Supr.) (holding that “the trial judge correctly instructed the jury on the lesser-included offense of third degree assault, since there was a rational basis in the evidence for a finding by the jury that [the defendant] recklessly caused [the victim’s] physical injury”).