

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES F. BLIZZARD,	§
	§ No. 626, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 83007303DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 25, 2009
Decided: October 27, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 27th day of October 2009, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Charles F. Blizzard, filed an appeal from the Superior Court’s December 10, 2008 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that Blizzard and his co-defendant, Ronnie Cordell, were indicted in 1983 on charges of Murder in the First Degree (felony murder), Robbery in the First Degree, and Conspiracy in the Second Degree. In March 1984, both defendants were convicted of all three

charges. Blizzard received a sentence of life without probation or parole on the murder conviction and an additional 5 years at Level V on the remaining convictions. Blizzard's convictions were affirmed by this Court on direct appeal.¹

(3) In 2008, Blizzard moved for postconviction relief in the Superior Court. He claimed that his conviction for felony murder under Del. Code Ann. tit. 11, §636(a)(2) should be vacated under Rule 61(i)(5) on the ground that there was insufficient evidence presented to the jury that the victim was murdered "in furtherance of" the robbery.

(4) In this appeal from the Superior Court's denial of his motion for postconviction relief, Blizzard claims that the Superior Court incorrectly determined that his claim was without merit.

(5) Before considering the merits of a motion under Rule 61, the Superior Court must first determine whether to apply any of the procedural bars set forth in the rule.² Blizzard's motion, which was filed in 2008, plainly was time-barred under Rule 61(i)(1). Moreover, the motion was procedurally defaulted under Rule 61(i)(3) because Blizzard did not raise his claim in the proceedings leading to the judgment of conviction. Blizzard seeks to overcome the procedural bars by arguing that, because there was

¹ *Blizzard v. State*, Del. Supr., No. 269, 1984, Christie, C.J. (July 28, 1986).

² *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

insufficient evidence presented at trial that the murder of the victim was “in furtherance of” the robbery, his rights have been violated and his conviction resulted in a miscarriage of justice under Rule 61(i)(5).

(6) The evidence at trial established that, after midnight on June 4, 1982, Blizzard and Cordell were sitting under the I-95 overpass on Liberty Street in Wilmington, Delaware, when Howard Marshall walked by. Blizzard and Cordell grabbed Marshall and punched and kicked him in the head and chest. As Marshall lay on the ground unconscious, Blizzard told Cordell to check to see if Marshall had any money. After taking \$10.00 from his pocket, they dragged Marshall to an adjacent lot and kicked him some more. They then covered the victim with a blanket and left him between two trash containers. The victim’s dead body was found sometime thereafter. An autopsy revealed that the victim had died of asphyxia, which resulted from fractures of the thyroid cartilage.

(7) The standard of review in assessing a claim of insufficiency of the evidence is “whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt.”³ The record reflects that the evidence adduced at trial fully supports a finding that Blizzard committed the murder “in furtherance

³ *Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991).

of” the robbery. Specifically, there was evidence that the victim was rendered unconscious before his money was taken and also evidence that, after his money was taken, the victim continued to be kicked until he was dragged to an adjacent lot and covered with a blanket. Finally, there was evidence that the victim died as a result of the beating. As such, there is no indication either that Blizzard’s rights were violated or that there was a miscarriage of justice. We, therefore, conclude that the Superior Court’s judgment must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice