

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CATHERINE W. CULP, )  
 ) No. 401, 2001  
 Defendant Below, )  
 Appellant, ) Court Below: Superior Court  
 v. ) of the State of Delaware in  
 ) and for Kent County  
 )  
 STATE OF DELAWARE, ) Cr. IK Nos. IK98-08-0027 and 0028  
 )  
 Plaintiff Below, )  
 Appellee. )

Submitted: October 15, 2002  
Decided: January 27, 2003

Before **VEASEY**, Chief Justice, **WALSH, HOLLAND, BERGER** and **STEELE**,  
Justices.

***ORDER***

This 27<sup>th</sup> day of January 2003, upon consideration of the briefs and oral  
argument of the parties, it appears to the Court as follows:

(1) In December 1999, a Superior Court jury convicted the appellant,  
Catherine W. Culp, of Murder in the First degree, 11 *Del. C.* 636(a)(1) and  
Possession of a Firearm during the Commission of a Felony, 11 *Del. C.* § 1447A.  
Before the December 1999 trial, the Superior Court denied Culp's Motion *in*  
*Limine* in which she sought to introduce certain statements she had made that were  
recorded on a 911 tape. In January 2000, Culp appealed her conviction to this  
Court. We reversed the conviction and held that the proffered testimony of the 911

tape satisfied the excited utterance exception to the hearsay rule under Delaware Rule of Evidence of 803(2).<sup>1</sup> In July 2001, a Superior Court jury acquitted Culp following a retrial on the charge of Murder in the First Degree, but found her guilty of the lesser included offense of Murder in the Second Degree, 11 *Del. C.* § 635(1), and Possession of a Firearm During the Commission of a Felony. In this appeal, Culp claims the trial judge committed reversible error when he denied Culp's Motion for Judgment of Acquittal based on Insufficiency of the Evidence. We conclude that the trial judge did not err when he denied her motion and that the conviction should be affirmed.

(2) On July 28, 1999, the victim, Lee B. Hicks, attended a family barbeque with his girlfriend, Catherine Culp, the appellant/defendant-below. Hick's daughter held the barbeque at her home. During the party, Hicks continuously dropped his wallet. At the suggestion of Hicks' daughter and his niece, Culp took possession of the wallet. Thereafter, Hicks and Culp began to argue because Culp allegedly indicated she wanted to have sex with Hicks' grandson. This comment angered Hicks and he told Culp that he was going to take her back to Florida and "did not want anything else to do with her." It appears that Hicks and Culp kept their distance from each other following this incident. As the party concluded during the evening hours, Hicks suggested everyone return to his

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<sup>1</sup> *Culp v. State*, 766 A.2d 486 (Del. 2001).

home in Felton, Delaware. Thereafter, many of those who attended the barbeque returned to Hicks' residence. Upon returning to his residence, Hicks realized he did not have his wallet. He was told that Culp had the wallet. Hicks asked Culp to return the wallet, but she refused. An argument ensued, and after repeated requests, Culp returned the wallet. No other incidents between Culp and Hicks took place. All the guests in attendance departed shortly after midnight. Culp and Hicks remained at his residence.

(3) At approximately 1:00 a.m., Culp frantically banged on the door of Kimberly and Corinthian Cuffee, who lived a few doors away from the Hicks residence. When Mr. Cuffee opened the door Culp stated, "I need help ... he is hurt, I need somebody to come call 911."<sup>2</sup> Culp entered the Cuffee residence and Mr. Cuffee dialed 911. The 911 dispatcher requested that Mr. Cuffee give the telephone to Culp. When the dispatcher asked what happened, Culp replied, "He told me to give him his gun, and I gave it to him. And the gun went off and it shot him in the back." The dispatcher responded, "You shot him in the back?" Culp replied, "He's bleeding. Oh, God, Please."

(4) Trooper Robert Daddio arrived at the Cuffee residence at 1:36 a.m. As Trooper Daddio entered the Cuffee's driveway, Culp ran toward him frantically pointing toward the Hicks residence and yelling "over there, over there."

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<sup>2</sup> Culp went to the Cuffee residence seeking assistance because Hicks' home did not have a telephone.

According to Trooper Daddio, Culp appeared hysterical and also stated, “He is in there, he is dead.” Inside the residence, Trooper Daddio found Hicks lying dead in his bed. It was later determined that Hicks died as a result of a single, close range, gunshot wound.

(5) Culp returned to the Cuffee residence and remained there while the officers conducted their investigation. During this time, Mrs. Cuffee indicated that Culp said: “It was an accident, it was an accident. I grabbed a towel and I tried to stop the bleeding, but it wouldn’t stop, you know, he wouldn’t stop bleeding.” Mrs. Cuffee reported that Culp gave conflicting accounts about the cause of the shooting. According to Mrs. Cuffee, Culp first stated “He asked me for the gun, I handed him the gun, he laid it on the bed or something, I turned the light out and he rolled over and it went off.” Mrs. Cuffee testified that Culp later told her that she “handed him the gun, he put it on the dresser, and then I left the room.”

(6) Lieutenant Joseph Huttie arrived at the Cuffee residence at approximately 1:44 a.m. After Mrs. Cuffee woke Culp, Lt. Huttie asked Culp what happened. Culp responded that “Mr. Hicks had asked me to retrieve a handgun from on top of the bureau ...,” she gave the weapon to Hicks, “turned off the light, closed the door, and the gun accidentally went off.” Culp told Lt. Huttie she was asked to retrieve the gun “for the purpose of protecting the children from it, because the kids earlier in the day had been playing with that handgun.” Huttie

stated that Culp said “after the shooting, she went back in the room, saw that he was bleeding ... took the gun off the bed, put it on the floor, and then tended to his injury.” At approximately 2:20 a.m., Trooper Blades spoke with Culp at the Cuffee residence and Culp stated that “it was an accident. I shot him, but it was an accident.” Culp was then taken to Delaware State Police Troop 3, where tests were conducted. At this point, she was considered a suspect.

(7) The Assistant State Medical Examiner performed an autopsy on the victim and determined that cause of death was a massive hemorrhage due to a gunshot wound that hit Hicks’ aorta, the body’s largest artery, as well as his heart. The Police used a gunshot residue kit to check for gunpowder on the defendant’s hands, as well as the victim’s. Both tests were negative.

(8) In order to prove that Culp committed Murder in the Second Degree as defined in 11 *Del. C.* § 635(1), the State was required to prove that Culp recklessly caused the death of Hicks. On appeal, Culp separately analyzes the physical evidence, expert ballistics evidence, her own incriminatory admissions, and certain trial testimony and then argues that a rational trier of fact could not have found that Culp committed a reckless homicide. When a defendant challenges the sufficiency of the evidence to sustain her conviction of a crime, the relevant inquiry 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.”<sup>3</sup> Direct evidence is not necessary to establish guilt; circumstantial evidence is sufficient.<sup>4</sup>

(9) Given the totality of the State’s evidence presented during its case-in-chief, the trial judge properly determined that the State had presented a *prima facie* case of at least second degree reckless murder. The homicide occurred after Hicks’ family left his home around midnight of July 28. At that point, Hicks and Culp were the only individuals in the house when Hicks suffered the fatal shot in the back. Not only was there a potential motive for Culp’s alleged homicidal conduct, but Culp had the opportunity to perpetrate the offense. In addition, on the first day of trial testimony, Trooper Blades testified that shortly after he encountered Culp at the Cuffee residence near the homicide scene, Culp stated, “I shot him, it was an accident.” Similarly, Mrs. Cuffee testified that Culp first stated that she handed the gun to Hicks when he asked for the weapon and only after she closed the bedroom door did she hear the gun go off. Later, Culp told Mrs. Cuffee that she actually saw the gun go off. None of her various explanations provided a reasonable explanation of how Hicks suffered a fatal wound to his back while reclining in his bed. Whether or not a jury would ultimately accept Culp’s excuse of an accidental shooting was an open question to be resolved at the conclusion of all the evidence. For purposes of deciding the Motion for Judgment of Acquittal, it

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<sup>3</sup> *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997).

<sup>4</sup> *Seward v. State*, 723 A.2d 365, 369 (Del. 1999).

was only necessary for the trial judge to find that a *prima facia case* of either an intentional or reckless homicide had been presented. We conclude that with evidence of motive, opportunity and inconsistent admissions relevant to how the fatal shot may have been fired that the State presented sufficient evidence of reckless conduct by circumstantial evidence to support the trial judge's denial of the Motion for Judgment of Acquittal Based on Insufficiency of the Evidence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Justice