IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES L. JOHNSON,	§	
	§	No. 582, 1999
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Sussex County
	§	Cr.A. Nos. 99-06-0618
Plaintiff Below,	§	through 0620
Appellee.	§	

Submitted: August 15, 2000
Decided: October 19, 2000

Before **WALSH**, **BERGER** and **STEELE**, Justices.

O R D E R

This 19th day of October, 2000, upon consideration of the briefs of the parties, it appears to the Court that:

1) James L. Johnson, Jr. appeals from his convictions, following a jury trial, of second degree burglary and offensive touching[1]. He argues that there was insufficient evidence to support the guilty verdicts, but we conclude that a rational jury could have found all of the elements of the two crimes beyond a reasonable doubt. Accordingly, we affirm.

2) At the time of the incident in question, Johnson and Keli Nichols had

[1]Johnson also was convicted of terroristic threatening, but he does not appeal that conviction.

two children and had been together, in a somewhat rocky relationship, for about ten years. On Sunday, June 13, 1999, the two were "fussing," and Nichols decided that Johnson should leave. Johnson refused, and Nichols went to work. When Johnson called Nichols at work, she again told him to leave.

3) On the way home from work, Nichols went to Seaford Police Officer Bowen to ask his help in getting Johnson out of the apartment. Bowen accompanied Nichols to her apartment and found Johnson standing outside. The officer told Johnson to wait there while Nichols packed his belongings. After the bags were brought outside, Bowen told Johnson not to come back.

4) Nichols spent the next two nights at her mother's home because she suspected that Johnson would return. On Tuesday, June 15th, Johnson found Nichols at work, as she was heading back from her lunch break. Johnson wanted to talk but Nichols did not, so Johnson jumped out of his car and said, "You don't want to talk with me, that's all right. I'll get you." During that encounter Johnson also said, "Bitch, I'm going to kill you…. I'm going to get you today…."

5) Johnson was hiding in Nichols' apartment when she got home from work that day. As Nichols walked down the hall to her bedroom, Johnson jumped out of a closet and said, "I got you now." Nichols was shocked and ran out the front door. Johnson ran after her, grabbed her around the waist and tried to bring her back into the apartment. Johnson said he just wanted to talk, but Nichols held onto the staircase

railing and told Johnson to let her go. When a neighbor opened the door and saw what was happening, Johnson released Nichols.

6) Seaford Police Officers Thornton and Lecates responded to Nichols' apartment and took Johnson into custody. Thornton testified that Nichols looked scared and upset. Nichols' friend, who was present throughout the incident, said Nichols was panicky. Nichols was a reluctant witness and testified, under subpoena, that the incident was blown out of proportion.

7) To be convicted of burglary second degree, the State must prove that Johnson knowingly entered or remained unlawfully in Nichols' apartment with the intent to commit a crime. Offensive touching requires proof that Johnson touched Nichols knowing that he was likely to cause offense or alarm. Johnson argues that there was no evidence that he entered Nichols' apartment with the intent to commit the crime of offensive touching. He says he just wanted to talk to Nichols and, although he did grab her around the waist, he did that outside her apartment. As to the offensive touching charge, Johnson says there is no evidence that he caused offense or alarm.

8) The jury's verdict will be upheld against a claim of insufficient evidence if, viewing the evidence in the light most favorable to the State, a rational juror could have found all essential elements of the crimes beyond a reasonable doubt.[2] The only

[2] *Barnett v. State*, Del. Supr., 691 A.2d 614, 618 (1997).

element of the crime of burglary that Johnson questions is his intent to commit a crime. There was evidence that: (i) Johnson threatened Nichols earlier in the day; (ii) he was hiding in a closet when Nichols got home from work; (iii) he jumped out and said "I got you now;" and (iv) he chased her and grabbed her as soon as he caught up to her. These facts, if accepted by the jury, were sufficient to establish that Johnson was in Nichols' apartment with the intent to commit the crime of offensive touching. It does not matter that Johnson did not grab Nichols until after she ran out the door of the apartment. The jury could infer from the evidence that Johnson intended to restrain Nichols inside the apartment and accomplished his goal belatedly because Nichols was fast enough to get through the front door before he caught up with her.

9) With respect to the offensive touching charge, Johnson says there was no evidence that his conduct caused offense or alarm. He focuses on the fact that Nichols testified that she was angry, not afraid. That was not the only evidence of Nichols' state of mind, however. Other witnesses said she was panicked, scared and upset. Given the fact that Nichols was a reluctant witness, a rational juror could have rejected Nichols' testimony on this point and accepted the observations of detached observers. Thus, we conclude that there was sufficient evidence to support a guilty verdict on this charge, as well.

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

For the Court:

/s/ Carolyn Berger
Justice