

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JACKIE E. JACKSON,	§	
	§	No. 101, 2002
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Sussex County
	§	Cr. ID No. 0107021899
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 15, 2002  
Decided: January 21, 2003

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

ORDER

This 21<sup>st</sup> day of January, 2003, upon consideration of the briefs of the parties, it appears to the Court that:

1) Jackie E. Jackson appeals from his multiple convictions, following a jury trial, of burglary second degree, conspiracy second degree, theft, receiving stolen property, unlawful use of a credit card, and criminal impersonation. Jackson argues that the trial court erred in : i) denying his motion for judgment of acquittal as to one of the burglary and related conspiracy charges; ii) admitting testimony under 11 *Del. C.* §3507 without a proper foundation; and iii) admitting certain hearsay as an excited utterance. We find these arguments to be without merit and affirm.

2) John Edgell and his family were guests at the Atlantic Budget Inn in Rehoboth Beach, Delaware, on June 30, 2001. Edgell was returning to his room that night at about 11 p.m. when he saw two African American men on the hotel balcony who appeared to be coming from his room. Edgell hurried to his room and found the door was not secured shut. He noticed that his wallet had been moved and, on inspection, found that his Visa card was missing. Edgell tried to chase after the two men, but could not find them. He then reported to the hotel office that he had been robbed.

3) Ten minutes later, two African American men used Edgell's credit card to purchase more than \$600 worth of liquor at a liquor store that is five minutes, by car, from the hotel. The liquor store clerk noticed that the men arrived in a light colored car similar to a Nissan Maxima.

4) On July 23, 2001, valuables were stolen from another family vacationing at the Delaware shore. John Homann and his family were staying at the Dewey Beach Suites Hotel. When Homann returned to his room to get his video camera, he discovered that the video camera, two other cameras, some cash, and an overnight bag containing an electric razor were missing. Homann's son found that his watch, some cash, and his girlfriend's ATM card were missing from his room.

5) Bert Jackson stayed at a third beach hotel, the Henlopen Hotel, from July 24, 2001 until July 28, 2001. When he arrived, he had \$1128 in cash, which he left in a mesh bag in his hotel room, along with five American Express traveler's checks. Bert did not need the money or checks during his stay, but when he returned home, he discovered that both the cash and checks were missing.

6) Later on July 24, 2001, a guest at the Dewey Beach Suites Hotel called Nick Tekman, the hotel operator, and reported that someone was trying to get into his room. Tekman ran upstairs and saw an African American man going down another staircase about 30 feet away. When the man saw Tekman, he ran to his car. Tekman saw another African American man in the car, which was a white Nissan Maxima with a Pennsylvania license plate. Tekman got a partial license number before the car sped off, northbound on Route 1. Tekman called 911 to report the incident.

7) At 6:15 P.M., on the same day, Delaware State Police Captain Pete Schwartzkopf saw a white Nissan Maxima traveling northbound on the shoulder of Route 1 about three miles north of Dewey Beach. Schwartzkopf confirmed that the Nissan was the same vehicle sought in connection with the earlier incident at the Dewey Beach Suites Hotel, and then instructed Corporal Anthony Mendez, who was driving in a marked police car, to stop the Nissan. When Mendez activated his lights

and gave chase, the Nissan sped off at speeds in excess of 100 miles per hour. The chase ended when the Nissan's engine failed.

8) Jackson and Mark Guess, the two occupants of the Nissan, were arrested. In the car, the police found three traveler's checks signed by Bert, Homann's black bag with an electric razor in it, and several hotel "Do Not Disturb" doorknob signs, including some that were the kind used at the Atlantic Budget Inn. After the arrest, the liquor store clerk identified Jackson and Guess from a photo lineup as the two men who used Edgell's credit card in late June.

9) Jackson first argues that the State presented insufficient evidence to sustain the burglary and conspiracy charges relating to the Henlopen Hotel burglary. He says that the only evidence to support those charges was the traveler's checks found in the Nissan after Jackson was arrested. Jackson contends that the State failed to prove that a burglary actually occurred and, therefore, the State could not rely on the statutory presumption that "a person found in possession of goods acquired as a result of a recent crime is presumed to have committed the crime."<sup>1</sup>

10) This argument fails because the State did present evidence that a burglary had been committed. Bert testified that he left cash and traveler's checks in his room on July 24, 2001; that he did not remove the bag containing those items from his room

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<sup>1</sup>11 *Del. C.* §306(c)(2).

during his entire stay; that he did not give the traveler's checks to anyone; and that they were gone when he examined the contents of his bag after returning home. A reasonable juror could conclude from this evidence that someone had entered Bert's hotel room unlawfully with the intent to commit the crime of theft.<sup>2</sup>

Moreover, the fact that Bert checked into his room on the same day that Jackson and Guess were arrested with Bert's traveler's checks in their possession, after being spotted trying to break into another nearby hotel room, provides a sufficient nexus for the jury to have found that Jackson committed the Henlopen Hotel burglary.<sup>3</sup>

11) Jackson next argues that the State failed to establish a proper foundation, under 11 *Del. C.* §3507, before Officer Parsons testified that the liquor store clerk identified Jackson from a photo lineup. Because Jackson did not raise this argument before the trial court, we review for plain error, which is error that is "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."<sup>4</sup>

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<sup>2</sup>11 *Del. C.* §825.

<sup>3</sup> See: *Barnett v. State*, 691 A.2d 614 (Del. 1997)(Jury verdict will be upheld against insufficiency of evidence claim where, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt.).

<sup>4</sup>*Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

12) Jackson complains that the State failed to establish that the liquor store clerk's photo identification was truthful and voluntary. He does not suggest, however, any reason to suspect that it was not truthful or voluntary. In addition, the trial court specifically found that the identification process was not impermissibly suggestive. Accordingly, even if there was error in admitting the evidence without a proper foundation, we conclude that it was not plain error.

13) Finally, Jackson argues that the trial court erred in admitting Tekman's hearsay testimony about the call he received from a hotel guest stating that someone was trying to get into his room. The trial court ultimately vacated the convictions for attempted burglary and conspiracy that were based on this incident, but Jackson suggests that this issue is not moot because the phone call evidence prejudiced him in connection with his other charges. Again, Jackson offers no explanation for his claim of prejudice, and we find none from our review of the record. As a result, we conclude that this issue is moot and we, therefore, decline to address the admission of Tekman's hearsay testimony.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice