

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY LOCKE,	§	
	§	No. 167, 2006
Defendant Below-	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID # 0504014006
	§	ID # 0505001729
Plaintiff-Below,	§	ID # 0505001354
Appellee	§	

Submitted: October 18, 2006

Decided: October 31, 2006

Before **STEELE**, Chief Justice, **BERGER**, and **RIDGELY**, Justices.

ORDER

(1) This is an appeal from the Family Court's adjudication of delinquency of Gregory Locke¹ for Second Degree Burglary, Second Degree Conspiracy, Theft Over \$1,000 and Criminal Mischief Under \$1,000. Locke argues that there was insufficient evidence presented at trial to support an adjudication of delinquency. We find no merit to his argument and affirm.

(2) On April 17, 2005, Locke and three others, Stan Jankowski, Jack Samuels and Tony Deets, went to the home of Stephen Grinnage at 436 Bethune

¹ Pursuant to Supr. Ct. R. 7(d), the names of the party and others involved have been replaced with a pseudonym.

Drive in Wilmington. When they arrived, Locke opened the exterior screen door of the back entrance of the home while either Jankowski or Samuels kicked open the locked back door. According to Officer Treadwell, the investigating officer, Locke briefly entered the home and then left and walked to the front of the residence. Locke, however, denied ever entering the home at trial. The testimony of Jackson and Samuels supported Locke's story. Jackson and Samuels admitted entering the home. While inside, they stole cell phones, jewelry, video games and other property.

(3) The Family Court adjudicated Locke delinquent on four charges: (i) second degree burglary; (2) Theft \$1,000 or greater; (3) Second Degree Conspiracy; and (4) Criminal Mischief Under \$1,000.

(4) An insufficiency of evidence claim on appeal must be properly preserved in the Family Court.² If not, this Court will only review such a claim for plain error. "In reviewing a claim for insufficiency of the evidence, the relevant inquiry is whether, viewing the evidence in light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."³ Moreover, this Court will not substitute its own opinion for that of the trial court "when the determination turns on a question of credibility and

² Fam. Ct. Crim. R. 29; *Richards v. State*, 865 A.2d 1274, 1280 (Del. 2004).

³ *Nelson v. State*, 900 A.2d 101 (Del. 2006) (TABLE) (citations omitted); *Richards*, 865 A.2d at 1280.

the acceptance or rejection of the testimony or witnesses appearing before him.”⁴ Because Locke did not properly preserve the issue for appeal, this Court reviews his insufficiency of evidence claim for plain error.

(5) Locke first argues that there was insufficient evidence to support the charge of Second Degree Burglary. Second Degree Burglary requires that a person knowingly enter or remain unlawfully in a dwelling with the intent to commit a crime therein.⁵

(6) There was sufficient evidence from which the judge could conclude that Locke entered the residence unlawfully. At trial, Officer Treadwell testified that Locke admitted that he “stepped inside momentarily then came back out and went across the street and waited for the others to come out.” In contrast, Locke testified at trial that he never went inside the residence. In addition, both Samuels and Jankowski testified that Locke never entered the residence. While the testimony is certainly contradicting, the Family Court apparently found the Officer’s testimony more credible than that of Locke, Jankowski and Samuels. This Court will not substitute its own credibility determinations for those of the Family Court. Further, Locke admitted to opening the screen door while either Jankowski or Samuels kicked open the locked back door. This method of entry

⁴ *Richards*, 865 A.2d at 1280.

⁵ 11 *Del. C.* § 825.

suggests that the group entered the home unlawfully. Locke's argument that because Jackson lived at the home, he had permission to enter is unavailing. Locke points to no evidence in the record to support such a contention.

(7) There was also sufficient evidence from which the judge could conclude that Locke intended to commit a crime while in the residence. Samuels testified at trial that Locke knew what the group was planning on doing once they arrived at the home. Moreover, this was not the first time Locke and Samuels, acting together, burglarized a home.⁶ In addition, Locke admitted to having property from the burglarized home in his possession. Taken together, and viewing this evidence in light most favorable to the State, a trier of fact could reasonably find that Locke intended to commit a crime at the home.

(8) Locke next contends that there was insufficient evidence to support the charge of Second Degree Conspiracy because there was no evidence demonstrating that there was a necessary plan or agreement.⁷ This assertion is

⁶ Locke admitted at trial that he and Samuels participated in three other burglaries in the past.

⁷ 11 *Del. C.* § 512 provides:

A person is guilty of conspiracy in the second degree when, intending to promote or facilitate the commission of a felony, the person: (1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony; or (2) Agrees to aid another person or persons in the planning or commission of the felony or an attempt or solicitation to commit the felony; and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

contradicted by the record. While Locke testified that he believed the group was going to the residence to obtain Samuels' cell phone, Samuels testified that everyone in the group knew why they were going to the home: to vandalize and steal from it. Thus, there was sufficient evidence to support the conspiracy charge.

(9) Locke also argues that there was insufficient evidence to support the charge of Theft Over \$1,000.⁸ Although Locke argues that there was no evidence produced demonstrating that Locke himself removed any items from the house, such evidence is not necessary because there was sufficient evidence to conclude that Locke was an accomplice. Under an accomplice liability theory, Locke can be found guilty of the crime so long as he intended to promote or facilitate the theft.⁹ Locke admitted to holding the screen door open so that someone else could kick open the locked back door.¹⁰ The evidence at trial was sufficient to support a finding that Locke was guilty of the theft as an accomplice.

(10) Locke finally argues that there was insufficient evidence to support an adjudication of delinquency with respect to the charge of Criminal Mischief Under \$1,000.¹¹ The same reasons that support Locke's Theft Over \$1,000 charge

⁸ 11 *Del. C.* § 841(a).

⁹ 11 *Del. C.* § 271.

¹⁰ "Stephen say [sic] he couldn't open the screen door so I helped open the screen door and that's when Stephen started kicking the back door in."

¹¹ 11 *Del. C.* § 811(a)(1). The State did not discuss whether there was sufficient evidence to support the criminal mischief charge in their answering brief. In the Summary of the Argument

support the criminal mischief charge. By holding the screen door open so that someone else could kick open the locked back door, it is reasonable to conclude that Locke intended to promote or facilitate the mischief that occurred once inside the home. Thus, there was sufficient evidence to adjudicate Locke delinquent on the charge of Criminal Mischief Under \$1,000.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice

section, however, the State denied Locke's claims and stated that "[s]ufficient evidence was adduced at trial to support the adjudication of delinquency by Family Court on *all* counts." Answering Br., at 2 (emphasis added). Thus, the State did not concede the argument by not specifically addressing it in detail later in its brief.