

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27567-1-III

Respondent,

)

)

) **Division Three**

v.

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)

LEROY CHARLES,

) **UNPUBLISHED OPINION**

)

Appellant.

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Kulik, A.C. J.—William Simons was watching television when a man entered his home, tied him up, and took his money and his car. The Washington State Patrol Crime Lab matched DNA¹ samples taken from Mr. Simons’s house and car to Leroy Charles. At trial, no witness made an in-court identification of Mr. Charles. A jury convicted Mr. Charles of first degree burglary and first degree robbery. Mr. Charles appeals, asserting there was insufficient evidence to support his convictions because there was no in-court identification. We affirm Mr. Charles’s convictions.

¹ Deoxyribonucleic acid.

FACTS

On May 21, 2005, around 12:30 a.m., a man entered William Simons's home uninvited. The man drank Mr. Simons's beer and smoked Mr. Simons's pipe. The man tied Mr. Simons up and took Mr. Simons's money and car. Mr. Simons described the man as a white or possibly Hispanic male, in his early to mid 20s, five feet eight inches to five feet ten inches, with a stocky build, dark black hair, a flat face, thick eyebrows, and a thick mustache.

The police did not find any sign of forced entry into Mr. Simons's house, or any latent identifiable fingerprints in either Mr. Simons's house or Mr. Simons's recovered car. However, using a DNA data bank, the Washington State Patrol Crime Lab matched DNA samples from a cigarette found in Mr. Simons's abandoned car and from a beer can found in Mr. Simons's house to Leroy Charles. Mr. Charles gave a DNA sample to the crime lab that matched the DNA on the cigarette and the beer can.

At trial, no witness testified that the Mr. Charles in the courtroom was the same Mr. Charles whose DNA matched the samples on the cigarette and the beer can. Mr. Charles is 20 to 25 years older, and three to five inches shorter, than Mr. Simons's

description of the man who broke into his home.

A jury convicted Mr. Charles of first degree burglary and first degree robbery. Mr. Charles appeals, asserting there is insufficient evidence to support his convictions because no one identified him as the perpetrator of the charged crimes.

ANALYSIS

The test for sufficiency of the evidence is whether, when all reasonable inferences are drawn in favor of the State, any rational trier of fact could find guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When an appellant asserts insufficient evidence, he or she admits the truth of the State's evidence, as well as all reasonable inferences that can be drawn from that evidence. *Id.*

Mr. Charles asserts that his convictions are not supported by sufficient evidence because no witness made an in-court identification of him as the perpetrator. The State admits that Mr. Charles was not identified in court by any witness, but asserts that he was identified by the DNA found in Mr. Simons's home and stolen car.

Using a DNA data bank, the crime lab matched DNA obtained from a beer can found in Mr. Simons's home, and a cigarette found in Mr. Simons's stolen car, to Leroy Charles. The crime lab obtained a DNA sample from Mr. Charles, the defendant here,

that also matched the samples from the beer can and the cigarette. The State's DNA scientist testified that the probability of the samples matching another individual picked at random from the United States, was 1 in 6.6 quadrillion. Furthermore, Detective Theresa Ferguson replied affirmatively when asked if she obtained a DNA sample from "the defendant, Mr. Charles." Report of Proceedings at 243. Lastly, Mr. Simons testified that he had never seen Mr. Charles before, so there is no explanation for why Mr. Charles's DNA would be in Mr. Simons's home and car.

Based on the State's evidence, a rational juror could find that Mr. Charles is the same Leroy Charles in the DNA data bank, and the same Leroy Charles whose DNA was found in Mr. Simons's home and car.

We affirm Mr. Charles's convictions for first degree burglary and first degree robbery.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, A.C.J.

WE CONCUR:

No. 27567-1-III
State v. Charles

Sweeney, J.

Brown, J.