

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,)	
)	CRIMINAL NO. ST-09-CR-439
Plaintiff,)	
)	
vs.)	
)	
STEVEN R. JACKSON,)	
(D.O.B.: 11/25/85))	
Defendant.)	
)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Steven R. Jackson's Motion for New Trial. The People of the Virgin Islands have filed an opposition. The Defendant is represented by Terry Halpern, Esq. The People are represented by Assistant Attorney General Courtney Reese. The Court will deny the Defendant's Motion.

Defendant Steven R. Jackson ("Jackson") was charged in an Amended Information filed with the Court on February 9, 2010 with the crimes of robbery third degree under Count I and grand larceny under Count II. At trial, witnesses testified that on August 28, 2009, Jackson stole a laptop computer from the victim, Allan Francis ("Francis"), in the area of Garden Street, St. Thomas, Virgin Islands. Francis testified that Jackson came up from behind him while he was walking on Garden Street, and took the laptop computer from him. Francis stated that he had never seen Jackson before the date of the incident. Francis testified that the laptop was worth about Eight Hundred Dollars (\$800.00).

Other witnesses saw Francis with the laptop computer, and moments later, saw Jackson running with the laptop computer. When one of the witnesses yelled, "Stop, thief!," at Jackson, he continued to run with the laptop computer. Jackson was apprehended by the police a brief

time after this encounter with the laptop in his possession. When he was encountered by the police, Jackson spontaneously stated that someone had tried to steal his laptop.

Jackson testified regarding his version of events. According to Jackson, he knew Francis, because he had discussed selling him some CDs a few weeks before the date of the incident. On the date of the incident, Jackson stated that he saw Francis leaving a coffee shop, wearing headphones connected to a laptop. Jackson approached Francis, and renewed the discussion about the purchase of the CDs. According to Jackson, Francis stated that he was interested, and the two men walked towards the area of Garden Street. When they reached an area on Garden Street beyond All Saints School, Jackson offered to download music onto Francis's laptop computer. At that point, while Jackson had Francis's laptop in his hands, he heard voices threatening to rob them. In a panicked state, Jackson started to run with the laptop in his hands, and he told Francis to run. He did not stop running until he was apprehended by the police at the top of Bunker Hill.

After the evidence had been presented, the Court found the Defendant guilty of the lesser-included offense of grand larceny under V.I. Code Ann. tit. 14, § 1083(2) (1996)¹ under Count I and guilty of grand larceny under V.I. Code Ann. tit. 14, § 1083(1) (1996)² under Count II.

¹ 14 V.I.C. § 1083 provides as follows:

Whoever takes property---

(1) which is \$100 or more in value; or

(2) from the person of another –

commits grand larceny and shall be imprisoned for not more than 10 years.

14 V.I.C. § 1081(a) defines larceny as the “unlawful taking, stealing, carrying, leading or driving away [of] the personal property of another.

² *Id.*

Jackson asks that the Court's verdict be set aside on the ground that the evidence presented against him was insufficient under Fed. R. Civ. P. 29. The Federal Rules of Criminal Procedure allows the Defendant to "move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later." Fed. R. Crim. P. 29(c)(1).³ The Court may set aside a guilty verdict and enter an acquittal. Fed. R. Crim. P. 29(c)(2). The standard used by the Court under this rule is whether, viewing the evidence adduced at trial in the light most favorable to the government, there was substantial evidence upon which a reasonable finder of fact could have based the guilty verdict. *United States v. Salmon*, 944 F.2d 1106, 1113 (3d Cir. 1991). The verdict of the jury will be sustained "if any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence." *Maynard v. Gov't of the Virgin Islands*, D.C. Crim. App. No. 2005-33, 2008 WL 552457, at *1 (D.V.I. App Div. Feb. 22, 2008) (quoting *United States v. Wolfe*, 245 F.3d 257, 261 (3d Cir. 2001)). A finding of insufficiency should "be confined to cases where the prosecution's failure is clear." *United States v. Smith*, 294 F.3d 473, 477 (3d Cir. 2002). Stated differently, the Court must determine whether a reasonable finder of fact, on the evidence presented, could find beyond a reasonable doubt that the government had proved all the elements of the offenses. *Salmon*, 944 F.2d at 1113; *see also United States v. Fredericks*, 38 F. Supp. 2d 396, 398 (D.V.I. 1999).

³ The practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and to the extent not inconsistent therewith, by the Rules of the District Court, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

Jackson argues that the evidence to convict him of the lesser-included offense under Count I, grand larceny, under 1083(2) is insufficient, because there was insufficient evidence to convict him of robbery third degree, and grand larceny, the charge which Jackson was convicted of, is not a lesser-included offense of robbery third degree.

The Court agrees with Jackson that there was not sufficient evidence to find him guilty beyond a reasonable doubt of robbery third degree. Robbery third degree is the unlawful taking of personal property in the possession of another, from his person or immediate presence and against his will, by means of force or fear. V.I. Code Ann. tit. 14, § 1861, 1864 (1996). Because the Court found that there was insufficient evidence of force and fear presented by the People during the trial, Jackson was found not guilty of robbery third degree.

Having found Jackson not guilty of robbery, however, because the element of taking by means of force or fear was absent, the Court then considered the lesser included offense of grand larceny under 1083(2). A lesser-included offense is one that contains some, but not all of the elements of the greater offense. *Government of the Virgin Islands v. Bedford*, 671 F.2d 758, 765 (3d Cir. 1982). To prove the elements of a lesser-included offense does not require proof of any element beyond what is required in proving the greater offense. *Id.* Grand larceny under 1083(2) is a lesser-included offense of robbery third degree, since it contains all of the elements of robbery third degree, except that the element of force and fear is not present. *Government of the Virgin Islands v. Kenneth Brown*, 685 F.2d 834, 838 (3d Cir. 1982); *Government of the Virgin Islands v. Kitson Jarvis*, 653 F.2 762, 765 (3d Cir. 1981). Furthermore, grand larceny under 1083(2), does not require proof of any element beyond what is required in proving robbery third degree.

Jackson argues, however, that he could not have been found guilty of grand larceny as a lesser-included offense under Count I, since grand larceny requires the additional element that the value of the property be in excess of one hundred dollars which is not one of the elements of robbery third degree. However, under Count I, the Court found Jackson guilty under 1083(2), and not 1083(1). Under 1083(2), the fact finder must find as an element of the crime that the property be taken from the person of another. The crime of robbery third degree, the greater offense, also includes as an element that the property be taken from the victim's "person or immediate presence." Thus, under 1083(2), the additional element concerning the value of the property being in excess of one hundred dollars is not present, and the finding of guilt under the first count of the lesser-included offense of grand larceny pursuant to 1083(2) was supported by the evidence.

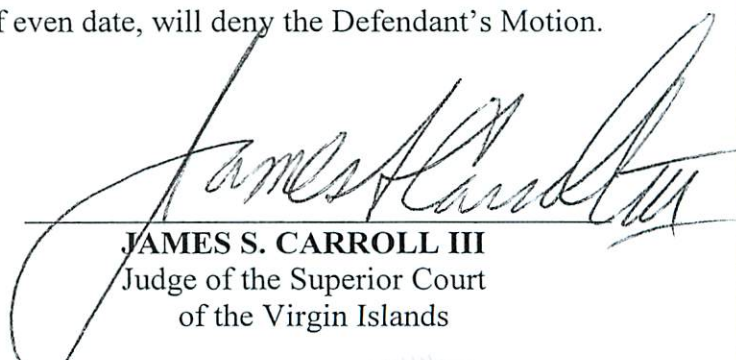
Jackson also argues that the Court could not have found him guilty under the second count of the Information charging grand larceny under 1083(1). This argument is based upon Jackson's proffer of his testimony as being the only plausible view of the events that occurred on the date of the incident. Clearly it was not. The People's witnesses established that Jackson took the laptop computer from Francis, and that he did so with the intent to permanently deprive Francis of the computer. Although the victim, and at least one of the two witnesses, chased Jackson, and the other yelled "Stop, thief!", Jackson continued to run. This was sufficient evidence to show that Jackson's intent was not to protect the theft of the computer from unidentified assailants, but to deprive Francis of his computer. Francis's testimony that the computer was valued in excess of One Hundred Dollars was credited by the Court as believable, and, thus, there was sufficient evidence to establish value. Finally, Jackson was found in immediate possession of the computer, and gave a false statement about the computer when he

was stopped by the police. Although the Court could have chosen to believe Jackson's version of the events, his testimony did not have the ring of truth and was rejected by the Court. Resting its decision about whether or not the People had proven guilt beyond a reasonable doubt based upon the testimony of the Government's witnesses, the Court found that they had given sufficient credible evidence for the Court to find the Defendant guilty beyond a reasonable doubt as to Count II.

CONCLUSION


Having considered the arguments of counsel on the Motion for Judgment of Acquittal, the Court finds that there was sufficient credible evidence to find the Defendant guilty beyond a reasonable doubt, and, by separate Order of even date, will deny the Defendant's Motion.

DATED: June 4, 2010



JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQUIRE
Clerk of the Court

BY: 
ROSALIE J. GRIFFITH
Court Clerk Supervisor 6/7/10

CERTIFIED A TRUE COPY
Date: 6-21-10
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk