

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-491

MARCH TERM, 2004

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| | } APPEALED FROM: |
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| State of Vermont | } District Court of Vermont Unit No. 1, Windham Circuit |
| | } |
| v. | } |
| | } DOCKET NO. 1475-8-99 Wmcr |
| Daniel A. Riggs | } Trial Judge: David T. Suntag |
| | } |
| | } |

In the above-entitled cause, the Clerk will enter:

Defendant appeals his conviction for burglary of an occupied dwelling, claiming the court should have granted his motion for judgment of acquittal. Defendant also challenges the court's decision to allow jurors to pose questions to witnesses through the judge. We affirm.

Taking the evidence in the light most favorable to the verdict, the record reveals that at approximately 4:30 a.m. on August 29, 1999, the manager of the Molly Stark Motel in Brattleboro, David Lonergan, awoke to find intruders in the apartment he shared with his fiancé, Cindy Loverro. After Lonergan woke up, he and the intruders, who wore masks, struggled, and Lonergan received a severe stab wound in the abdomen as a result. Loverro, who the intruders also woke up, tried to assist Lonergan during the struggle by hitting one of the intruders in the face with a porcelain paperweight. Loverro testified that when she did so, the intruder's mask came off and she recognized the person as defendant.

Loverro knew defendant because he was a friend of Loverro's daughter, Rebecca. Rebecca and her sister also lived at the apartment at the Molly Stark Motel with Lonergan and Loverro, although the couple kicked Rebecca out of the house briefly for stealing money from them. On the night of the burglary, Rebecca was spending time with defendant and others at another Brattleboro motel. Eventually, defendant was arrested and tried for aggravated assault and burglary. The jury acquitted defendant of the aggravated assault charge, but convicted him of burglary. Following his sentence of one to twenty-five years to serve, he filed the present appeal.

Defendant first argues that the court erred by denying his V.R.Cr.P. 29 motion for judgment of acquittal because the evidence was insufficient to convince a jury beyond a reasonable doubt that he entered the Molly Stark Motel manager's apartment without license or privilege to do so. See 13 V.S.A. § 1201(a) (" A person is guilty of burglary if he enters any building . . . knowing that he is not licensed or privileged to do so . . . "). Defendant grounds his claim on the State's failure to elicit from Rebecca whether she gave defendant permission to enter the apartment. We review the trial court's decision on defendant's V.R.Cr.P. 29 motion in the light most favorable to the verdict. State v. Prior, 174 Vt. 49, 53 (2002). If the evidence reasonably and fairly " > tends to convince a reasonable trier of fact that the defendant is guilty beyond a reasonable doubt," we will affirm. Id. (quoting State v. Couture, 169 Vt. 222, 226 (1999)). The district court

in this case properly denied defendant' s motion because the State carried its burden.

As the trial court noted in its decision on defendant' s motion, the jury could readily conclude that defendant knew he did not have permission to enter the manager' s apartment. The evidence shows that defendant did not reside at the Molly Stark Motel or in the manager' s apartment; neither Lonergan nor Loverro authorized defendant' s entry into their apartment; Lonergan did not know defendant before the burglary; there was no reason for defendant to be present in the apartment at 4:30 a.m.; and, perhaps most importantly, defendant wore a mask that hid his face while he was in the apartment " at least until Loverro struck him with the porcelain paperweight. From these facts a reasonable fact finder could infer that defendant knew he had no permission to be in the apartment in the early morning hours of August 29, 1999. Defendant points to no authority to support his suggestion that the State was required to obtain testimony from Rebecca that she did or did not give defendant permission to enter the premises. We therefore reject defendant' s first claim of error.

The next issue defendant raises is controlled by the Court' s recent decision in State v. Doleszny, 2004 VT 9, 15 Vt. L. Wk. 15. In that case, the Court held that the district court has discretion to allow juror questioning of witnesses at a criminal trial. 2004 VT 9, at & 34. The court must screen the questions before posing them to the jury to ensure that they seek to elicit admissible evidence. Id. The court must disclose the questions, which must become part of the record, and give the parties an opportunity to object. Id. The court must rule on each question and corresponding objection, and it must explain the process to the jury before trial begins. Id.

In the present case, defendant argues that the district court should not have permitted juror questions for many of the reasons the Court rejected in Doleszny. Notably, defendant does not point to any particular question as objectionable; indeed, defense counsel did not object to a single question the court posed to the witnesses at the jury' s request. For the reasons the Court outlined in Doleszny, we decline to prohibit the practice of juror questioning altogether. Moreover, we find no error in permitting the questions posed in this case because the trial judge " the same judge who presided in Doleszny " employed the procedure the Court approved in Doleszny for presenting juror questions to witnesses. The judge explained the process before opening argument, he screened each question, posed them to the witnesses himself , and gave both sides an opportunity to object to the questions. Accordingly, we find no error warranting reversal or a new trial.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice

