IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

SEPTEMBER SESSION, 1999

STATE OF TENNESSEE,	)	**C.C.A. NO. W1999-01681-CCA-R3-CD**
	)	
Appellee,	)	
	)	**DYER COUNTY**
V.	)	
	)	
	)	**HON. LEE MOORE, JUDGE**
LEON GOINS,	)	
	)	
Appellant.	)	**(BURGLARY AND THEFT)**

FOR THE APPELLANT:

C. MICHAEL ROBBINS
46 North Third Street, Suite 719
Memphis, TN 38103
(On Appeal)

JIM W. HORNER
District Public Defender

H. TOD TAYLOR
Assistant Public Defender
P.O. Box 742
Dyersburg, TN 38025-0742

FOR THE APPELLEE:

PAUL G. SUMMERS
Attorney General & Reporter

J. ROSS DYER
Assistant Attorney General
2nd Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37243

C. PHILLIP BIVENS
District Attorney General

GREG ALFORD
Assistant District Attorney General
115 East Market Street
P.O. Drawer E
Dyersburg, TN 38025

OPINION FILED _____

AFFIRMED
THOMAS T. WOODALL, JUDGE

OPINION

On April 13, 1998, the Dyer County Grand Jury indicted Defendant Leon Goins for burglary and theft of property worth between $1,000.00 and $10,000.00. Following a jury trial on September 23, 1998, Defendant was convicted of burglary and theft of property worth between $500.00 and $1,000.00. Following a sentencing hearing on October 30, 1998, the trial court sentenced Defendant as a Range II multiple offender to concurrent terms of seven years for burglary and three years for theft. Defendant challenges his convictions, raising the following issues:

1) whether the trial court erred when it allowed the State to introduce evidence of Defendant's oral statement to police when the State had failed to disclose the substance of the statement during discovery; and

2) whether the evidence was sufficient to support Defendant's convictions.

After a review of the record, we affirm the judgment of the trial court.

I. FACTS

Bennie Patterson testified that he is the owner of the City Pawn Shop. On February 11, 1998, Carlotta Dunn entered the pawn shop and sold Patterson a garbage bag full of model airplanes and cars. Later that day, Dunn and Defendant entered the pawn shop together and sold Patterson some more models. On February 12, 1998, Defendant entered the pawn shop alone and sold some more models to Patterson.

Patterson testified that he paid Dunn and Defendant a total of $245.00 for the models. Patterson also testified that the $245.00 was a wholesale price that was only a fraction of the actual value of the models.

Joe Willie Gauldin testified that he was the owner of the models that were sold to the City Pawn Shop. Gauldin had been storing the models in a shed on some

property that was jointly owned by Gauldin and his siblings. Gauldin first realized that the models he stored in the shed were missing when he went to the property and saw that the boxes the models had been in were torn open and strewn about the property. When he discovered that the models were missing, Gauldin called the police. Gauldin testified that the models that were stolen had a value of "close to a hundred or something—close to a thousand, something like that."

Officer Deborah Swasey testified that she interviewed Defendant as part of her investigation of this case. During the interview, Defendant stated that he and Dunn had gone into a shed and removed some models that they subsequently sold at a pawn shop. Swasey testified that she had attempted to record this interview, but the tape that was used did not record.

Carlotta Dunn testified that after she learned about the models that were being stored in the shed, she and Defendant decided to take the models and sell them at the pawn shop. Dunn and Defendant subsequently took the models and sold them for money to buy drugs.

Dunn testified that she had initially lied to police officers when she told them that Defendant had nothing to do with the theft and sale of the models. Dunn also testified that she had pled guilty to burglary and theft of property worth $1,000.00 or more and she committed perjury during the plea hearing when she stated that Defendant had not participated in the commission of the offenses. Dunn stated that she had a reason to protect Defendant when she gave her statement to police and testified at the hearing because "[Defendant] was [her] man" at the time.

II. DEFENDANT'S ORAL STATEMENT

Defendant contends that the trial court erred when it permitted Swasey to testify about Defendant's oral statement when the State had failed to disclose the substance of the statement during discovery.

The record indicates that immediately before trial began, defense counsel asked the trial court to prevent Swasey from testifying because the defense had not been provided with the substance of the oral statement as required by Rule 16(a)(1)(A) of the Tennessee Rules of Criminal Procedure. Defense counsel stated that he had talked to Swasey and she had stated that Defendant admitted to her that he helped Dunn perpetrate the crimes, but Swasey had not been specific about the exact words that Defendant had used. The trial court subsequently ruled that Swasey could testify about Defendant's oral statement. Although it is not entirely clear, the trial court apparently based its ruling on the fact that defense counsel was aware of the oral statement, yet failed to ask Swasey about the specifics of it.

Rule 16(a)(1)(A) provides in pertinent part:

> Upon request of a defendant the State shall permit the defendant to inspect . . . the substance of any oral statement which the State intends to offer in evidence at the trial made by the defendant .. . .

To enforce the rule, Rule 16(d)(2), provides that if there has been noncompliance, the trial court may order the offending party to permit the discovery or inspection, grant a continuance, prohibit the introduction of the evidence not disclosed or enter such other order as the court deems just under the circumstances. "Thus, it is clear that the court has wide discretion to fashion a remedy that is appropriate for the circumstances of each case and the sanction must fit the circumstances of that case." State v. Dennie Ray Loden, No. 03C01-9311-CR-00380, 1995 WL 23351, at *2 (Tenn. Crim. App., Knoxville, Jan. 19, 1995), perm. to appeal denied, (Tenn. 1995) (citing State v. James, 688 S.W.2d 463, 466 (Tenn. Crim. App.1984)). However, evidence should not be excluded except when it is shown that a party is actually prejudiced by the failure to comply with the discovery rules and the prejudice cannot be otherwise eradicated. Loden, 1995 WL 23351, at *2 (citing State v.

Garland, 617 S.W.2d 176, 185 (Tenn. Crim. App.1981)). "The exclusionary rule should not be invoked merely to punish the state or the defendant for deliberate conduct in failing to comply with [Rule 16(a)(1)(A)]." Loden, 1995 WL 23351, at *2.

We agree with Defendant that because he made a pretrial request for discovery of any oral statements, the State should have disclosed the substance of the oral statement that Defendant gave to Swasey. Indeed, there is no excuse for the State's failure to do so. However, we agree with the State that the trial court was not required to exclude this evidence.

Defendant has failed to indicate how he was prejudiced by the State's failure to comply with Rule 16(a)(1)(A). Indeed, Defendant has failed to identify anything that he could or would have done differently if the State had complied with the rule. In essence, it appears that Defendant is really concerned with the content of Swasey's testimony rather than the fact that the precise details of the oral statement were not disclosed to him before trial. In fact, Defendant sought only exclusion of the statement and did not request any other remedy such as a continuance.

Further, this was not a situation where Defendant was caught completely off guard by Swasey's testimony about his oral statement. Defense counsel specifically admitted that he suspected that Swasey was going to be called to testify about the oral statement and that he had even talked to Swasey about the content of the oral statement. Although Defendant complains that Swasey did not go into great detail about the substance of the oral statement, Swasey did tell defense counsel that Defendant had admitted to helping Dunn perpetrate the offenses in this case. In addition, Swasey's testimony about the oral statement did not contain a great deal of detail itself.

In State v. Underwood, 669 S.W.2d 700 (Tenn. Crim. App. 1984), this Court held that a trial court properly admitted evidence of the defendant's oral statements

even though the State had not complied with Rule 16(a)(1)(A). This Court held that admission was proper because the defendant was already aware of the statements and introduction of the statements placed no undue burden on the defendant. Id. at 704. Similarly, Defendant was already aware of the statement and introduction of the statement placed no undue burden on the defense. Defendant is not entitled to relief on this issue.

III. SUFFICIENCY OF THE EVIDENCE

Defendant contends that the evidence was insufficient to support his convictions for burglary and theft.

When an appellant challenges the sufficiency of the evidence, this Court is obliged to review that challenge according to certain well-settled principles. A verdict of guilty by the jury, approved by the trial judge, accredits the testimony of the State's witnesses and resolves all conflicts in the testimony in favor of the State. State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994). Although an accused is originally cloaked with a presumption of innocence, a jury verdict removes this presumption and replaces it with one of guilt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with Appellant to demonstrate the insufficiency of the convicting evidence. Id. On appeal, "the [S]tate is entitled to the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom." Id. Where the sufficiency of the evidence is contested on appeal, the relevant question for the reviewing court is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). In conducting our evaluation

of the convicting evidence, this Court is precluded from reweighing or reconsidering the evidence. State v. Morgan, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996). Moreover, this Court may not substitute its own inferences "for those drawn by the trier of fact from circumstantial evidence." State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Finally, Rule 13(e) of the Tennessee Rules of Appellate Procedure provides, "findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact beyond a reasonable doubt."

Under Tennessee law, "[a] person commits burglary who, without the effective consent of the property owner: [e]nters a building other than a habitation (or any portion thereof) not open to the public, with intent to commit a felony, theft or assault." Tenn. Code Ann. § 39-14-402(a)(1) (1997). In addition, "'enter' means: [i]ntrusion of any part of the body." Tenn. Code Ann. § 39-14-402(b)(1) (1997). Further, a person commits Class E felony theft "if, with intent to deprive the owner of property, the person knowingly obtains and exercises control over the property without the owner's effective consent" and the property has a value of more that $500.00 and less than $1,000.00. Tenn. Code Ann. §§ 39-14-103, -105(2) (1997).

Defendant contends that the evidence was insufficient to support his conviction for burglary and theft because the proof only established that he was present when Dunn committed these offenses and there was no proof that he actively participated in committing the offenses.

We conclude that when the evidence is viewed in the light most favorable to the State, as it must be, the evidence was clearly sufficient for a rational jury to conclude beyond a reasonable doubt that Defendant committed the offenses of burglary and theft. Dunn testified that when she and Defendant learned of the models' existence, they reached a "mutual decision" to take the models and sell them at the pawn shop. Dunn also testified that Defendant assisted her in removing

the models from the shed and she and Defendant then used the money they received from the City Pawn Shop to purchase drugs. Gauldin testified that someone had entered the shed without his permission and removed his models. Gauldin also testified that he subsequently identified the models recovered from the pawn shop as the models that were taken from the shed. Patterson testified that Defendant brought the models to the City Pawn Shop on two separate occasions. Finally, Defendant admitted in his oral statement that he went with Dunn to get the models, "he opened the shed door, . . . he pulled 'em out and then bagged 'em up" and then helped take the models to the City Pawn Shop. This evidence was clearly sufficient to support Defendant's convictions for burglary and theft.

Defendant also contends that even if the evidence was sufficient to support his conviction for theft, the evidence was only sufficient to support a conviction for Class A misdemeanor theft and was not sufficient to support a conviction for Class E felony theft because the proof did not establish that the models had a value of more than $500.00.

We conclude that when the evidence is viewed in the light most favorable to the State, the evidence was sufficient for a rational jury to conclude that the value of the models was more than $500.00. Tennessee Code Annotated section 39-11-106 defines value as the "fair market value of the property." Tenn. Code Ann. § 39-11-106(a)(36)(A)(i) (1997). The determination of fair market value of stolen property is a question for the jury which is based on all the evidence presented at trial. State v. Hamm, 611 S.W.2d 826, 828–29 (Tenn. 1981). Gauldin's testimony was admittedly far from clear in that he was only able to testify that the models had a value of "close to a hundred or something—close to a thousand, something like that." However, Patterson testified that the $245.00 that he paid for the models was the wholesale price that was only a fraction of its actual value. Patterson explained that when he purchased items at the wholesale price, he generally purchased the items at ten to fifteen cents on the dollar. Patterson also testified that "the difference

of wholesale and retail can sometimes mean twenty times." Under these circumstances, we conclude that the evidence was sufficient for a rational jury to find beyond a reasonable doubt that the models had a fair market value of more than $500.00. Defendant is not entitled to relief on this issue.

Accordingly, the judgment of the trial court is AFFIRMED.

_____
THOMAS T. WOODALL, Judge

CONCUR:

_____
DAVID G. HAYES, Judge

_____
JOE G. RILEY, JR., Judge