

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
APRIL SESSION, 1995

FILED

November 20, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee)

vs.)

EDWARD FORRESTER,)

Appellant)

No. 03C01-9501-00007

MONROE COUNTY

Hon. **MAYO L. MASHBURN**, Judge

(Theft of Property over \$500 and
less than \$1000)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Edward Forrester, appeals from his conviction for theft of property valued at more than \$500 but less than \$1,000, a class E felony. The trial court sentenced the appellant to three years confinement in the Department of Correction as a Range II multiple offender. The sole issue presented for review is whether the evidence introduced at trial is sufficient to support the appellant's conviction for theft.

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

Facts

The proof at trial revealed that on the morning of February 23, 1994, the mobile home and utility building owned by Mike Saunders were burglarized. Saunders testified that he left his residence for work that morning and was notified of the burglary around 11:00 a.m. Items taken from both the residence and utility building included numerous tools, hunting equipment, a portable CB radio, and a class ring. The victim testified that the value of the tools alone exceeded \$1,000.

The State's principal witness, Everett Sutton, testified that he lived approximately 200 - 300 yards from Saunders' residence. Sutton stated that at approximately 10:30 a.m. on February 23, 1994, he observed a silver and black Toyota automobile pull into his driveway and then back out. The vehicle, which contained three occupants, then proceeded toward Saunders' residence. Mr. Sutton testified that, because he heard Saunders' dogs barking, he walked down the road to Saunders' driveway where he observed the Toyota automobile backed into the driveway and parked near some trees. Although, according to

Sutton, no one was in the parked vehicle at this time, he observed one of the men that he had seen in the Toyota "come out from behind the trailer " in the area where the utility building was located. At this point, Sutton left the scene and immediately called the victim's sister, who then called the sheriff's department.

At trial, Sutton identified the appellant as the driver of the Toyota which he had observed on the victim's property on February 23rd. Additionally, Sutton identified from a photograph the silver and black Toyota, established by the proof as being owned by the appellant.

Another witness and neighbor of the victim, Daniel Bookout, testified that he knew the appellant and had sold the silver and black Toyota to him. Bookout observed the appellant driving the Toyota automobile in the direction of the victim's house on February 23rd. Bookout testified that the car returned, traveling in the opposite direction, about 15 or 20 minutes later.

The appellant did not testify, and he offered no proof in his defense. The appellant had been indicted on one count of aggravated burglary, one count of burglary, and one count of theft. At the conclusion of the proof, the jury acquitted the appellant of aggravated burglary and burglary, but returned a verdict of guilty for theft of property valued between \$500 and \$1000.

Sufficiency of the Evidence

The appellant challenges the sufficiency of the evidence to sustain a conviction for the offense of theft. Specifically, the appellant contends that no evidence demonstrated that the appellant obtained or exercised control of the

victim's property. In support of this contention, the appellant argues that no stolen property was ever found in his possession.

A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). In determining the sufficiency of the evidence, this court does not reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). A jury verdict, supported by the trial court, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the State's theory. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). It is the appellate court's duty to affirm the conviction if the evidence, viewed under these standards, was sufficient for any rational trier of fact to have found the essential elements of the offenses beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 317, 99 S.Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); Tenn. R. App. P. 13(e).

In the case before us, evidence that the appellant obtained or exercised control over property owned by the victim is entirely circumstantial. However, a conviction may be based entirely upon circumstantial evidence. Duhac v. State, 505 S.W.2d 237, 241 (Tenn. 1974), cert denied, 419 U.S. 877, 95 S.Ct. 141 (1974); State v. Buttrey, 756 S.W.2d 718, 721 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1988). In circumstantial evidence cases, single facts of themselves may count for little weight, but when all the facts and circumstances are put together they may unerringly point the finger of guilt to the defendant to the exclusion of all others beyond a reasonable doubt. State v. Lawson, 794

S.W.2d 363, 370 (Tenn. Crim. App.), perm to appeal denied, (Tenn. 1990). The evidence must be inconsistent with the defendant's innocence and exclude every reasonable hypothesis or theory other than the defendant's guilt. State v. Gregory, 862 S.W.2d 574, 577 (Tenn. Crim. App. 1993). If circumstantial evidence sufficiently shows all elements of the crime and the defendant's connection to the crime, then circumstantial evidence is enough to support a conviction. T.R.A.P. Rule 13(e). See also State v. Peck, 719 S.W.2d 533, 555 (Tenn. Crim. App. 1986). In applying the above principles of law, it is incumbent upon this court to recognize that the weight to be given circumstantial evidence and "[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence are questions primarily for the jury." Marable v. State, 313 S.W.2d 451, 457 (Tenn. 1958).

A review of the record establishes that a rational trier of fact had ample evidence to find that the appellant obtained or exercised control over the property owned by the victim. The evidence clearly placed the appellant at the scene of the theft, within the time frame in which the theft occurred. Moreover, the appellant's entry onto the victim's property was unauthorized. The appellant's vehicle was backed onto the property. All the occupants exited the vehicle. One of the occupants was observed coming from behind the victim's trailer, in close proximity to the burglarized utility building. Finally, immediately after the appellant's departure from the victim's property, the theft was discovered.

Accordingly, the appellant's challenge to the sufficiency of the evidence is without merit. The judgment of the trial court is affirmed.

David G. Hayes, Judge

CONCUR:

David H. Welles, Judge

John A. Turnbull, Special Judge