IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER SESSION, l994

FILED

November 15, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE	)	
	)	
APPELLEE	)	NO. 0lC0l-9404-CC-00l53
	)	
	)	MARSHALL COUNTY
V.	)	
	)	HON. CHARLES LEE, JUDGE
	)	
DONALD RAY VEASLEY	)	(Theft)
A/K/A	)	
DONALD RAY VEAZEY	)	
APPELLANT	)	

FOR THE APPELLANT:

Robert L. Marlow
Assistant Public Defender
P.O. Box lll9
Fayetteville, TN 37334

FOR THE APPELLEE:

Charles W. Burson
Attorney General

Kimbra R. Spann
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

W. Michael McCown
District Attorney General

Weakley E. Barnard
Asst. Dist. Attorney General
Marshall County Courthouse
Lewisburg, TN 3709l

AFFIRMED

OPINION FILED:_____

JERRY SCOTT, PRESIDING JUDGE

O P I N I O N

The appellant, Donald Ray Veasley, appeals as a matter of right from a judgment entered in the Marshall County Circuit Court. The jury returned a verdict of guilty against the appellant for the Class D felony of theft in an amount of more than one thousand dollars but less than ten thousand dollars. Tenn. Code Ann. §§ 39-l4-l03,l05(3). The appellant was sentenced as a Range II, multiple offender to a term of eight years in the Tennessee Department of Correction.

On appeal, the appellant presents two issues for review by this Court: (1) whether it was plain error for the trial court to fail to fully instruct the jury concerning the proper standards for utilizing circumstantial evidence; and (2) whether the evidence adduced at trial was sufficient to permit a rational jury to find the appellant guilty of theft beyond a reasonable doubt. We affirm as to both issues.

FACTS

On the afternoon of June 3, 1993, Belinda L. Wade, a teacher at J. E. Moss Elementary School in Davidson County, discovered that her automobile, a 1989 Chevrolet Corsica valued at approximately eight thousand dollars, had been stolen from the school parking lot. Some items which were in her purse at the time her keys were taken were later discovered in the same school parking lot inside another stolen vehicle. Ms. Wade testified that she knew from personal experience that whenever her car ran out of gas it had to be towed and its fuel pump had to be replaced.

At approximately 4:00 a.m. on June 15, 1993, in a rural area of Marshall County, Denise Baxter was awakened when the appellant rang her doorbell. The appellant told Ms. Baxter that his car had run out of gas and that he needed

help. Ms. Baxter stated that she would call someone to come and aid the appellant. When she attempted to use her telephone, however, it would not operate. She returned to the door and told the appellant to return to his car and that someone would be right there. After the appellant left, Ms. Baxter successfully placed a call to her husband, a dispatcher for the Lewisburg Police Department.

Captain Phil Blackwell of the Marshall County Sheriff's Department responded to the call. Captain Blackwell arrived at the scene at approximately 4:35 a.m. and discovered an unoccupied vehicle about a quarter of a mile from the Baxter residence. When he called in the license plate number to determine if the vehicle was stolen, he was advised that the vehicle was indeed stolen from Ms. Wade. Not observing anyone in the immediate surrounding area, Captain Blackwell proceeded to the Baxter residence. After conducting a search around the Baxter residence, Captain Blackwell radioed for backup and returned to the stolen vehicle. He found the vehicle unmoved and in the same condition. He then returned to the Baxter residence and searched the area with the aid of another officer. Failing to find anyone around the residence, both officers returned to the site where the stolen vehicle had been parked. It was no longer there. Captain Blackwell drove around in search of the vehicle, overtaking it a short time thereafter. He did not believe that the vehicle was speeding. When Captain Blackwell activated his emergency lights, the vehicle pulled over to the side of the road. The appellant was the driver.

When told by Captain Blackwell that the vehicle was stolen, the appellant stated "that it was not, that it was his girlfriend's car." After Captain Blackwell told the appellant that the vehicle belonged to Ms. Wade, the appellant "changed his story" and stated that a female friend of his girlfriend was the one who loaned him the car. However, he did not know her name. Captain Blackwell then conducted a search of the vehicle and found a gold purse in the trunk that was

identified as belonging to Priscilla Caldwell. The appellant offered the officer no explanation for why the car had been left unattended on the side of the road.

In his defense, the appellant presented testimony by his girlfriend, Karen Deloris Wilson, to the effect that a friend of hers named Priscilla, whom she had known for approximately three weeks, had been driving Ms. Wade's stolen car.[1] She said that Priscilla gave the keys to the stolen vehicle to the appellant on June 14, 1993. She had never seen the appellant drive the car before that evening. She also recognized the purse found in the trunk of the vehicle as belonging to Priscilla. Ms. Wilson testified that she did not know that the car was stolen. On cross-examination, she admitted that she had a prior felony conviction for petit larceny.

Seline Venet King, a friend of the appellant's girlfriend, testified that she was present when Priscilla gave the keys to the stolen vehicle to the appellant.[2] She stated that she had observed Priscilla driving the stolen car for about a week prior to June 14, 1993. She thought that the vehicle belonged to Priscilla's boyfriend, and had no knowledge that it was stolen.

The appellant testified that he originally borrowed the car from Ms. Caldwell so that he could go to buy beer. However, he called another girlfriend who lived in Spring Hill, and decided to go to see her. The appellant missed the Saturn Parkway exit from the interstate, got lost and wound up on U.S. Highway 431 in Marshall County, where he eventually ran out of gas. He walked to the Baxter residence and requested assistance. When he was told that help was coming, he left the residence. A man came along in another vehicle and took him to a gas station. Later, they returned to the car with a can of gas, which the man purchased for the appellant, the man gave the appellant directions to the

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[1]She never testified as to Priscilla's last name.

[2]She testified that she did not know Priscilla's last name.

interstate and the appellant drove off. Shortly thereafter, Captain Blackwell pulled the appellant over and arrested him.

Lastly, to refute the owner's testimony, an employee of a Chevrolet dealership testified that a 1989 Corsica that ran out of gas would operate after gas was placed in the tank.

DISCUSSION

The first issue presented by the appellant is whether the trial court erred by omitting a requisite portion of the jury charge concerning circumstantial evidence. Specifically, he contends the trial court failed to instruct the jury "that the State had the burden to disprove all reasonable theories except that of guilt."

The state's responsive position is that the appellant has waived this issue by his failure to object to the omission of the desired jury instruction. Clearly, this is a proper ground for considering this issue waived. See State v. Haynes, 720 S.W.2d 76, 85 (Tenn. Crim. App. 1986) (one cannot complain about a meager jury charge without a contemporaneous objection or submission of a special request); see also Rule 36(a), Tenn. R. App. P.; State v. Thomas, 818 S.W.2d 350, 364 (Tenn. Crim. App. 1991); State v. Killebrew, 760 S.W.2d 228, 235 (Tenn. Crim. App. 1988). Moreover, our rules of appellate procedure dictate that the issue has been waived because it was not presented in the appellant's motion for a new trial. Rule 3(b), Tenn. R. App. P., State v. Gauldin, 737 S.W.2d 795, 798 (Tenn. Crim. App. 1987); see State v. Clinton, 754 S.W.2d 100, 103 (Tenn. Crim. App. 1988).

The appellant endeavors to circumvent these waiver doctrines by claiming that the trial court's alleged omission was plain error. Rule 52(b), Tenn. R. Crim. P. In support of this argument, the appellant relies upon State v. Thompson, 5l9 S.W.2d 789, 992 (Tenn. l978), in which our Supreme Court stated: "This Court has consistently held that when *all* the incriminating evidence against the accused in a criminal trial is circumstantial, the failure of the judge to instruct the jury [as to] the law of circumstantial evidence, whether or not the [appellant] requests such instructions, is fundamental reversible error." (emphasis in original)(citing numerous cases).

A copy of form jury instructions is included in the technical record. However, since the instructions are not authenticated in any way by the trial judge, we cannot know whether these were the exact instructions that were read to the jury. However, assuming that these instructions were read verbatim to the jury, the appellant cannot prevail. The written jury instructions filed in the record contain the statement: "When the evidence is entirely circumstantial then before you would be justified in finding the defendant guilty, you must find that all of the essential facts are consistent with the theory of guilt, *and the facts must exclude every other reasonable theory except that of guilt.*" (emphasis added). Although the quoted excerpt may not be the most artful or detailed description of the state's burden of proof concerning circumstantial evidence, it is a sufficient rendition of the applicable law in the absence of a special request for additional instructions. This issue is without merit.

In his second issue the appellant contends that the evidence adduced at trial was insufficient, as a matter of law, to permit a rational jury to find him guilty of theft beyond a reasonable doubt. We disagree.

The principles which govern this court's review of a conviction by a jury are settled. This court must review the record to determine if the evidence adduced at trial was sufficient "to support the finding of the trier of fact of guilt beyond a reasonable doubt." Rule l3(e), Tenn. R. App. P. This rule is applicable to determinations of guilt predicated upon direct evidence, circumstantial evidence, or a combination thereof. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

When examining the sufficiency of the evidence, this court does not reevaluate the weight or credibility of the witnesses' testimony as these are matters entrusted exclusively to the jury as the triers of fact. State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Wright, 836 S.W.2d 130, 134 (Tenn. Crim. App. 1992). Nor may this court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956).

A jury verdict of guilty, approved by the trial judge, accredits the testimony of the state's witnesses and resolves all conflicts in favor of the theory of the state. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983); State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978). On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Moreover, a guilty verdict against the appellant removes the presumption of innocence and raises a presumption of guilt on appeal, State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973), which the appellant has the burden of overcoming. State v. Brown, 551 S.W.2d 329, 330 (Tenn. 1977).

The relevant question on appeal is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have determined that the essential elements of the crime were established beyond a

reasonable doubt. Rule l3(e), Tenn. R. App. P.; Jackson v. Virginia, 443 U.S. 307, 314-324, 99 S.Ct. 2781, 2786-2792, 61 L.Ed.2d 560 (1979). In addition, a conviction may be based entirely on circumstantial evidence where the facts are "so clearly interwoven and connected that the finger of guilt is pointed unerringly at the defendant and the defendant alone." State v. Crawford, 225 Tenn. 478, 484, 470 S.W.2d 610, 612 (1971).

The most crucial evidence introduced at trial, all of which was circumstantial, can be reiterated quite briefly. On June 3, 1993, Ms. Wade's automobile, valued at approximately eight thousand dollars, was stolen. Twelve days later, the appellant was found in possession of the stolen vehicle. The appellant, through his own testimony and that of other witnesses, related an exculpatory explanation concerning his possession of the vehicle.

The jury obviously did not believe the appellant's version of what transpired.[3] This is significant because the law is settled that the "unexplained possession of recently stolen property permits . . . the jury to draw inferences both that the defendant knew the property was stolen . . . and that the defendant received the property from a third person, if he himself is not the thief . . . ." State v. Tharpe, 726 S.W.2d 896, 900 (Tenn. 1987)(citations omitted); accord State v. Anderson, 738 S.W.2d 200, 202 (Tenn. Crim. App. 1987).[4] As noted earlier, this Court is not entitled to displace, substitute, or nullify any such inferences the jury may have drawn. See Liakas, 199 Tenn. at 305, 286 S.W.2d at 859.

Thus the only remaining question is whether the property could have

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[3]"The reasonableness of an explanation offered by one found in possession of recently stolen property is primarily a question for the jury to determine from all the evidence . . . ." Cameron v. State, 546 S.W.2d 261, 263 (Tenn. Crim. App. 1976).

[4]Both Tharpe and Anderson were decided prior to the 1989 consolidation of embezzlement, false pretense, fraudulent conversion, larceny, receiving/concealing stolen property, and other similar offenses into the single offense of "theft." See Tenn. Code Ann. § 39-14-101 et seq. Nevertheless, their principles pertaining to the issues before this Court remain valid. See e.g., State v. Tate, No. 03C01-9204-CR-127, 1993 WL 55631, at *2 (Tenn. Crim. App. Mar. 4, 1993); State v. Blair, No. 63, 1991 WL 61291, at *3 (Tenn. Crim. App. Apr. 24, 1991).

been considered "recently stolen" at the time the appellant was arrested. This Court and our Supreme Court have held that "recently" is a relative term that does not connote a specific time lapse, but instead "depends upon the nature of the property and all of the facts and circumstances shown by the evidence in the case." Anderson, 738 S.W.2d at 202; see Bush v. State, 541 S.W.2d 391, 397 n.5 (Tenn. 1976). In Anderson, this Court cited a litany of cases from other jurisdictions where property was held to have been recently stolen, many of which involving time frames far in excess of the twelve day period in this case. 738 S.W.2d at 202-04; see also Annotation, What Constitutes "Recently" Stolen Property Within Rule Inferring Guilt from Unexplained Possession of Such Property, 89 A.L.R.3d 1202 (1979). Moreover, our Supreme Court has previously held that an automobile first discovered in the possession of the defendant seven days after the theft constituted recently stolen property. Peek v. State, 213 Tenn. 323, 326-28, 375 S.W.2d 863, 864-65 (1964). Based upon the foregoing authorities and the facts of this case, the automobile the appellant was driving when he was arrested was "recently stolen" property.

Given the limited nature of this Court's review concerning sufficiency of the evidence questions, as well as the jury's wide province in determining facts and drawing inferences, we must conclude that the evidence adduced at trial, though by no means overwhelming, was sufficient for a rational jury to find the appellant guilty beyond a reasonable doubt. This issue is without merit.

Accordingly, the judgment of the trial court is affirmed.

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JERRY SCOTT, PRESIDING JUDGE

CONCUR:

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JOE B. JONES, JUDGE

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JOE D. DUNCAN, SPECIAL JUDGE