

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER SESSION, 1995

FILED
February 26, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee,)

VS.)

VICTOR D. MCMILLER,)

Appellant.)

C.C.A. NO. 03C01-9504-CR-00126

SULLIVAN COUNTY

HON. FRANK L. SLAUGHTER
JUDGE

(Direct Appeal - Sufficiency of Evidence)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED _____

AFFIRMED

JERRY L. SMITH, JUDGE

OPINION

Appellant was convicted of aggravated burglary under Tenn. Code Ann. § 39-14-403 (1991) and theft of property under Tenn. Code Ann. § 39-14-103 (1991). He was sentenced to ten (10) years in the Department of Corrections and fined five thousand dollars (\$5,000.00). In this appeal, Appellant argues that the evidence at trial was insufficient as a matter of law to sustain the convictions. Specifically, Appellant asserts that the testimony at trial was so contradictory that a rational trier of fact could not have believed the State's theory of the case. After viewing the evidence under the applicable standard of review, we find that a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. The convictions are affirmed.

When an appeal challenges the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 318 (1979); State v. Johnson, 910 S.W.2d 897, 899 (Tenn. Crim. App. 1995); Tenn. R. App. P. 13(e). The weight and the credibility of the testimony of witnesses are matters entrusted exclusively to the jury as trier of fact. State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984). A verdict against a defendant removes the presumption of innocence and, on appeal, raises a presumption of guilt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant then bears the burden of overcoming this presumption of guilt. State v. Black, 815 S.W.2d 166, 175 (Tenn. 1991). Furthermore, a jury verdict, approved by the trial judge, accredits the testimony of the prosecution's witnesses and resolves all conflicts in favor of the State. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). As a result, the appellate court affords the State the strongest legitimate view of the evidence and all reasonable evidentiary inferences. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). An appellate court

may not reweigh the evidence, re-evaluate the evidence, or substitute evidentiary inferences for those drawn by the trier of fact. State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992).

At trial, Officer Ralph Cline of the Kingsport Police Department testified that he investigated the report of a burglary at 220 Dunbar Street in Kingsport, Tennessee, the home of Mr. James Peters. In the course of his investigation, Officer Cline learned that the following items of personal property were missing: two televisions, a video cassette recorder, a stereo amplifier, two stereo speakers, and a digital cable radio. Mr. Peters testified that, on the morning of November 26, 1993, he returned home to find that his kitchen door was broken open and that some of his possessions were missing. Mr. Peters further testified that, on the day before the burglary, Appellant made a visit to his home in order to sell him a small color television.

Mr. Freddie Skaggs, an across-the-street neighbor of Mr. Peters, testified that, on the morning of the burglary, he observed Appellant and a white male, identified only as John, walk around the corner of Mr. Peters' house. Soon thereafter, Mr. Skaggs observed Appellant and the white male exit the house carrying stereo equipment. According to Mr. Skaggs, Appellant and the white male loaded the equipment into their truck and drove away. The record reflects various inconsistencies in the testimony of Mr. Skaggs, such as which of the two burglars was driving the truck, what items Appellant carried from the house, and whether Skaggs phoned the police immediately; however, he consistently testified that he observed Appellant leave the house carrying equipment. Mr. Skaggs testified that Mr. Peters offered him money to testify but that he was never paid. Mr. Skaggs later testified that Mr. Peters offered him fifty dollars (\$50.00) to tell the truth and that Mr. Peters never asked him to lie about the circumstances surrounding the burglary.

Mrs. Marion Harold, a visitor in the home of Mr. Skaggs on the morning of the burglary, testified that she observed him carry a television from the home of Mr. Peters. However, Mrs.

Harold signed a statement saying that Mr. Peters paid her and her husband, Mr. Charles Harold, to tell the police that Appellant had committed the burglary. The statement also said that Mrs. Howard intended to let it be known that Appellant was not guilty. The statement concluded by saying that Mrs. Harold had neither been threatened nor rewarded for the statement and that the statement was true and accurate. Mrs. Harold later testified that Appellant had asked her to sign the pre-prepared statement and that she had not read the statement before signing. She disavowed the truthfulness of the statement and testified that Appellant had indeed burglarized the home of Mr. Peters.

Mr. Harold testified that, during his visit to the home of Mr. Skaggs on the morning of the burglary, he never saw Appellant. Mr. Harold stated that Mr. Peters offered him twenty-five dollars (\$25.00) to testify and that Appellant asked him to sign a statement to that effect. During the police investigation of the burglary, Mr. Harold signed a statement saying that he had seen Appellant carry stereo equipment from Mr. Peters' home. However, Mr. Harold testified that, at the time he gave the statement to the police, he was not in his right mind due to drug use. He later testified that he had seen Appellant walking around on the morning of the burglary but that Appellant was not carrying anything. Mr. Harold admitted that, at the time of trial, he was in custody for violation of parole from a burglary conviction.

It is clear that the testimony of Mr. Peters and Officer Cline allowed the jury to conclude that an aggravated burglary and a theft of property had occurred. The testimony of Mr. Skaggs and Mrs. Harold and the signed statement of Mr. Harold identified Appellant as the perpetrator of these crimes. Although conflicting and inconsistent testimony came out at trial, the task of resolving the conflicts and inconsistencies remained exclusively within the province of the jury. In doing so, the jury obviously reconciled these inconsistencies in favor of the State's theory of the case. This Court is not free, under such circumstances, to substitute its judgment for that of the jury.

Accordingly, the judgment of the trial court is affirmed

JERRY L. SMITH, JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

WILLIAM M. BARKER, JUDGE