IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JULY SESSION, 1996

STATE OF TENNESSEE,	)	**C.C.A. NO. 02C01-9510-CR-00322**
	)	
Appellee,	)	
	)	
	)	**SHELBY COUNTY**
VS.	)	
	)	**HON. L.T. LAFFERTY**
KENNETH WILSON,	)	**JUDGE**
	)	
Appellant.	)	(Theft Over $60,000)

ON APPEAL FROM THE JUDGMENT OF THE CRIMINAL COURT OF SHELBY COUNTY

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. The Defendant was convicted on a jury verdict of theft of property with a value over $60,000. He appeals his conviction presenting four issues for review: (1) That the trial court erred when it instructed criminal responsibility and by not instructing ignorance or mistake of fact; (2) that the law enforcement officials exhibited "outrageous conduct" constituting entrapment, and that the trial court erred in not instructing as to entrapment; (3) that the evidence presented at trial was insufficient to support the verdict of guilt; and (4) that the proof of the value of the shirts was insufficient to sustain a conviction for theft over $60,000. We conclude there is no merit to these issues, and therefore, we affirm the judgment of the trial court.

We begin with a brief summary of the facts. On February 4, 1995, the Defendant was arrested while loading shirts into a truck. These shirts were identified as stolen and intended for sale to Randy Sparks. On May 10, 1995, the Defendant was convicted by a jury of theft of property with a value over $60,000.

Prior to the arrest and conviction, FBI Special Agent Ellis Young had received information from a confidential source that the Defendant was planning to sell stolen shirts. The Defendant stated following his arrest that he had purchased the shirts from Thomas Pickney, stored them in plastic bags at a friend's residence, and then took the shirts to Nashville where he sold some of

them to Randy Sparks for $13,000. The Defendant also sold $1000 in shirts to Stephen Terral, who operated stalls in the Nashville flea market.

Following the Nashville sales, the Defendant arranged a $60,000 sale to Mr. Sparks. The Defendant obtained access to a mini-storage unit and took Mr. Sparks and an undercover agent to the unit to load the shirts. The Defendant was arrested in the process of this exchange.

We first note the State's argument that the issues relating to the jury charge have been waived. We chose to address these issues on the merits.

I.

On appeal, the Defendant first argues that to charge the jury with criminal responsibility for the conduct of another was error. There was evidence at trial that there may have been other parties involved in the offense. This evidence warranted the instruction on criminal responsibility. The charge, however, did not unfairly affect the proceedings because the Defendant was convicted for the offense for which he was indicted based on evidence of his own actions, not the actions of other parties.

The Defendant also assigns as error the trial court's failure to include an instruction regarding ignorance or mistake of fact pursuant to Tennessee Code Annotated section 39-11-502. The Defendant did not present sufficient evidence at trial to warrant such an instruction. In State v. McPherson, 882 S.W.2d 365 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1994), this court noted

that, “before an accused is entitled to an instruction on a theory of defense, the defense must be ‘fairly raised’ by the evidence adduced at trial.” Id. at 374. The Defendant’s lawyer did not ask any questions at trial that would establish evidence regarding the Defendant’s state of mind. The Defendant did not testify as to his own state of mind. As such, there was not enough evidence to render the failure to instruct on ignorance or mistake reversible error.

II.

The trial court did not err by failing to charge entrapment. The Defendant did not provide notice of an entrapment defense as is required under Tennessee Code Annotated section 39-11-505. The defense was not argued at trial, and this issue was not raised in the motion for new trial. Under such circumstances, a charge of entrapment was not required and failure to include the charge is not reversible error.

III.

The Defendant also argues that the evidence is insufficient to support the verdict. When an accused challenges the sufficiency of the convicting evidence, the standard is whether, after reviewing 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, 319 (1979). Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact, not this court. State v. Pappas, 754

S.W.2d 620, 623 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1987). Nor may this court reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

A jury verdict approved by the trial judge accredits the State's witnesses and resolves all conflicts in favor of the State. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). On appeal, the State is entitled to the strongest legitimate view of the evidence and all inferences therefrom. Cabbage, 571 S.W.2d at 835. Because a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused has the burden in this court of illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982); Grace, 493 S.W.2d at 476.

In this case, there was sufficient evidence presented at trial for the jury to find the Defendant guilty of theft over $60,000. At trial, Special Agent Ellis Young testified that the Defendant told him that "when he got the shirts from Mr. Pickney, Pickney told him to be cool with the shirts when he's trying to sell them." There was also testimony that during the exchange of the shirts, the Defendant asked the buyers to "stay here, these people, you know, the people are nervous, they don't want to see you, they don't want you coming to their house." These statements indicate that the Defendant knew that the shirts were stolen. There was also testimony that the Defendant told a buyer that the shirts were "hot". The Defendant did sell some of the shirts and was found in possession of a large quantity of the shirts at the time of the arrest. The Defendant did not produce evidence at trial to refute any of the statements indicating his knowledge of the

nature of the shirts and the jury was well within its discretion to find that the Defendant did intend to sell stolen property.

Contrary to the Defendant's arguments, the jury was properly instructed concerning circumstantial evidence. Even if the court had not instructed at all regarding circumstantial evidence, when there is both direct and circumstantial evidence to support a verdict, a failure to specially instruct on circumstantial evidence is not reversible error. State v. Caldwell, 671 S.W.2d 459, 465-66 (Tenn.), cert. denied, 469 U.S. 873 (1984). Even without the circumstantial evidence, there was enough direct evidence presented at trial to justify the jury's finding. The Defendant also argues that the court failed to instruct regarding the term "recently stolen". The court's instructions in this regard were adequate, and therefore, the claim is without merit.

IV.

There was also sufficient proof to establish that the shirts were of a value greater that $60,000. At trial, Homer Ferrell, the warehouse manager for Van Heusen, the maker of the shirts, testified that the shirts were worth $90,720. There was testimony from Agent Young that a buyer was willing to pay around $60,000 for a portion of the shirts. Thus, the jury could have reasonably concluded that the value exceeded $60,000.

Because the Defendant has failed to raise any issues which constitute reversible error, the judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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CORNELIA A. CLARK, SPECIAL JUDGE