

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JUNE 1997 SESSION

FILED
September 2, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee

V.

MELVIN E. WISDOM

Appellant

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NO. 01C01-9608-CC-00339

MONTGOMERY COUNTY

HON. ROBERT W. WEDEMEYER,
JUDGE

(Theft and Burglary)

FOR THE APPELLANT

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OPINION FILED: _____

AFFIRMED

Opinion

The appellant, Melvin E. Wisdom, appeals as of right his conviction of automobile burglary and theft of property valued at less than five hundred dollars. He argues on appeal that the evidence presented at trial was insufficient to sustain his conviction. We have reviewed the record on appeal and find that the evidence was more than sufficient to convict the appellant. Accordingly, we affirm the trial court's judgment.

On May 31, 1995, at approximately 11:45 p.m., Randy Young and John Powers parked their car near J.P.'s Lounge in Clarksville. Young noticed a man leaning into a van belonging to Robert Lewis, an acquaintance of Young. While Young continued to observe the man leaning into the van, Powers went to call the police. Shortly thereafter, the man emerged from the van carrying a small case. He began to walk down the street from where Young was watching him. In an attempt to prevent the man from getting away, Young got out of his car and approached the man. When Young saw his face, the man quickly turned around and walked back toward the van and disappeared around behind J.P.'s Lounge. Shortly thereafter, the police arrived at the scene.

Randy Young testified that he described the person he had seen leaning into the van to Officer Clinnard and told him that he recognized the man as Melvin Wisdom, a popular athlete from his high school. Officer Peterson testified that he had seen the appellant in the area surrounding J.P.'s Lounge earlier that evening and that he had told Officer Clinnard that he had seen the appellant there. Officer Clinnard testified that upon hearing Randy Young's description of the suspected burglar, but before Young stated the appellant's name, he immediately suspected that it was the appellant.

Robert Lewis, the van's owner, testified that he had not consented to the appellant entering his van and removing property. He also testified that a Mikata drill

worth approximately one hundred fifty dollars (\$150.00) was missing and that without his knowledge or permission, his electric tacker sat on the hood of the vehicle parked next to his van.

The appellant testified that he had been in the area surrounding J.P.'s Lounge around 8:30 or 8:45 that evening, but that he had hailed a taxi and gone home. The appellant denied any involvement in the van burglary.

The appellant argues that the evidence was insufficient to sustain convictions of automobile burglary and theft. The appellant's argument is without merit.

When an accused challenges the sufficiency of the convicting evidence, we must review the evidence in the light most favorable to the prosecution in determining whether “any rational trier of fact would have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979). We do not reweigh or reevaluate the evidence and are required to afford the State the strongest legitimate view of the proof contained in the record, as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). A guilty verdict rendered by the jury and approved by the trial judge accredits the testimony of the witnesses for the State, and a presumption of guilt replaces the presumption of innocence. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973).

A defendant challenging the sufficiency of the proof has the burden of illustrating to this Court why the evidence is insufficient to support the verdict returned by the trier of fact in his or her case. This Court will not disturb a verdict of guilt for lack of sufficient evidence unless the facts contained in the record and any inferences which may be drawn from the facts are insufficient, as a matter of law, for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

In order to convict the appellant of theft of property, the State had to prove that the appellant acted with an “intent to deprive the owner of property [and] knowingly

obtain[ed] or exercise[d] control over the property without the owner's effective consent." Tenn. Code Ann. §39-14-103 (1991). In order to convict the appellant of burglary, the State had to prove that the appellant, without the owner's consent, entered the van with the intent to commit a felony of theft. See Tenn. Code Ann. §39-14-402(a) (1991).

We find that the evidence introduced at the trial was more than sufficient to sustain the convictions of theft of property and automobile burglary. At the trial, Randy Young testified that he witnessed the crime and he also positively identified the appellant as the burglar. He stated that when he identified the appellant, he was only ten to fifteen feet from him and in a well-lit area and that he recognized the appellant from their high school days. Officer Peterson testified that he had seen the appellant that same evening in the area where the van was burglarized. Officer Clinnard testified that upon hearing Young's description of the burglar, he immediately suspected that it was the appellant. The appellant has failed to overcome the presumption of guilt resulting from his convictions. Accordingly, the trial court's judgment is affirmed.

WILLIAM M. BARKER, JUDGE

CONCUR:

JOE B. JONES, PRESIDING JUDGE

THOMAS T. WOODALL, JUDGE