

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

AUGUST, 1997 SESSION

FILED

October 30, 1997

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,

APPELLEE,

VS.

DONALD H. STANTON,

APPELLANT.

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C.C.A. NO. 01

MONTGOMERY COUNTY

Hon. Robert W. Wedemeyer,
Judge

(Theft)

CO1-9607-CC-00296

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

APPEAL DISMISSED
REMANDED

JOE H. WALKER, III
Sp. JUDGE

OPINION

The defendant, Donald H. Stanton, was convicted by a jury of theft. He was placed on post-trial diversion.

He presents for our review whether the trial court erred by denying the defendant's post-trial motion for judgment of acquittal or motion for a new trial, alleging that the evidence was insufficient to sustain a conviction. He also asserts the trial court committed error in ruling on an objection concerning cross-examination of a witness, and further alleges the jury was improperly influenced.

For the reasons stated herein, the appeal is dismissed.

Procedural History

_____The jury returned a verdict on August 22, 1995, finding the defendant guilty of theft in an amount greater than \$1,000.00. The defendant filed a timely motion for a new trial and for judgment of acquittal.

The motions were argued on November 17, 1995, and were overruled by order entered on January 26, 1996.

The defendant was placed on probation, pursuant to T.C.A. 40-35-313, by order of January 26, 1996, which was filed February 2, 1996. The order deferred further proceedings and placed the defendant on supervised probation with the defendant being required to perform 200 hours of public service work, pay a fine of \$1,000.00, pay restitution of \$8,000.00, and pay costs within one year.

On February 29, 1996, the trial court entered a stay of execution in this matter.

On March 19, 1996, the court entered another order of post-trial diversion pursuant to T.C.A. 40-35-313 reciting the same basic conditions set forth in the January 26th order.

On March 21, 1996, the defendant was discharged from active supervision, with the balance of the period of probation to remain in effect.

On April 12, 1996, the defendant filed notice of appeal.

This court finds that the notice of appeal was not timely filed. Notice of appeal must be filed with and received by the clerk of the trial court within thirty days after the date of entry of the judgment appealed from. T.R.Crim.P.37(d); T.R.App.P.4(a).

The order overruling the motion for new trial was entered January 26, 1996, at the same time that the order placing the defendant on post-trial diversion was entered. Notice of appeal was not filed until April 12, 1996. This court has thoroughly reviewed the record and finds no reason in the interest of justice to waive the timely filing requirement of the notice of appeal required by Rule 4 of the Rules of Appellate Procedure.

In reviewing the record this Court further finds that no error occurred such as to require reversal under Rule of Criminal Procedure 52(b) or Rule of Appellate Procedure 36(a).

This Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the defendant demonstrates that the facts contained in the record and the inferences which may be drawn therefrom are insufficient, as a matter of law, for a rational trier of fact to find the accused guilty beyond a reasonable doubt. State v. Brewer, 932 S.W.2d 1, 19 (Tenn.Crim.App. 1996). Accordingly, 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 offense beyond a reasonable doubt. Tenn. R. App. P. 13(e); Jackson v. Virginia, 443 U.S. 307, 317, 99 S. Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994). The court determines the evidence was sufficient for a rational trier of fact to have found the essential elements of the offense beyond a reasonable doubt.

This Court has further reviewed the ruling of the trial judge on objections at trial and finds no error requiring reversal.

The appellant alleges the jury was improperly influenced by extraneous, prejudicial information, alleging that one juror may have been able to hear a discussion about the appellant some time before trial. No affidavit or testimony from the juror was presented in the record. The transcript of evidence did not include the voir dire or motion for new trial. We are unable to determine whether that juror or any juror was questioned concerning any possible extraneous prejudicial information. We find the appellant has not carried his burden to show that the juror was in some way biased, prejudiced, or influenced by extraneous, prejudicial information. Bowan v. State, 598 S.W.2d 809, 812 (Tenn.Crim.App.1980).

We, therefore, dismiss the appeal and remand to the trial court for enforcement of the order of diversion.

Sp. JUDGE JOE H. WALKER, III

CONCUR:

JOE G. RILEY, JUDGE

CURWOOD WITT, JUDGE