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Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 25, 2026

STATE OF TENNESSEE v. DEVON D. HOLLOWAY

Appeal from the Criminal Court for Knox County

No. 127239 Hector I. Sanchez, Judge

No. E2025-01043-CCA-R3-CD

A Knox County jury convicted the Defendant, Devon D. Holloway, of theft of property, and the trial court sentenced him to a term of twelve years' incarceration. On appeal, the Defendant raises two issues: (1) whether the evidence was legally sufficient to sustain his conviction for theft; and (2) whether the trial court erred by instructing the jury on flight. Upon our review, we respectfully affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Criminal Court Affirmed**

TOM GREENHOLTZ, J., delivered the opinion of the court, in which TIMOTHY L. EASTER and J. ROSS DYER, JJ., joined.

Holly K. Nehls, Knoxville, Tennessee, for the appellant, Devon D. Holloway.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General, and Michael J. Hurst;¹ Charme P. Allen, District Attorney General; and TaKisha M. Fitzgerald and William Bright, Assistant District Attorneys General, for the appellee, State of Tennessee.

¹ Mr. Hurst participated in this case as a qualified law student pursuant to authority granted by Tennessee Supreme Court Rule 7, section 10.03.

OPINION

FACTUAL BACKGROUND

On the morning of August 31, 2023, the victim, who worked as a server and host, arrived for work at an IHOP restaurant in South Knoxville. The Defendant also worked at the restaurant as a cook and was assigned to the kitchen. He had been employed there for less than a week.

Upon her arrival, the victim placed her purse in the restaurant office before her shift began. The victim had saved \$6,200 in cash over several months from her tip income and kept the money in the inner zipper pocket of her purse. The victim had spoken openly with a coworker the day before about her plan to bring her money into work and shop for a vehicle after her shift.

At the end of her shift, the victim returned to the office to add her tips to the money in her purse. When she opened the zipper pocket, the money was gone. She called for her manager, who came to her and called 911. At the time of the call, the manager had learned from another cook that the Defendant had left the restaurant early. During the 911 call, the manager reported that one of his cooks had taken approximately \$6,000 from a server's purse and had left for the day. The manager also reported that he had decided to terminate the Defendant after the Defendant drove off, but before anyone had discovered the missing money.

When officers arrived, the manager provided security footage from the office camera. The security footage, which was admitted as Exhibit 3, showed the Defendant entering the office, searching the victim's purse, removing the cash, and leaving. The footage also showed the Defendant outside the back door, placing what appeared to be the cash into his pocket. He then briefly returned to the office, searched the purse again, and left in a vehicle that had just arrived.

After reviewing the footage, the victim identified her purse and the Defendant. She testified that what appeared in the video “looks like money,” that she had \$6,200 in her purse before her shift, and that none of the money remained when she checked it. She also testified that she did not give the Defendant permission to take the money and that she never recovered it.

About ten days after the theft, Officer Andrell Cummings with the Knoxville Police Department arrested the Defendant in East Knoxville, a different part of the city from the IHOP. At the time of his arrest, the Defendant provided his name and date of birth.

On March 27, 2024, a Knox County grand jury charged the Defendant with theft of property valued at least \$2,500 but less than \$10,000. The case proceeded to trial approximately six months later. At trial, the State presented testimony from the victim, her manager, and Officer Cummings regarding the events described above. The jury found the Defendant guilty of theft of property as charged, a Class D felony. After a separate hearing, the trial court sentenced the Defendant to twelve years in the Tennessee Department of Correction as a career offender and ordered him to pay \$6,200 in restitution.

The trial court entered a written order on July 10, 2025, denying the Defendant’s motion for a new trial. The Defendant filed a timely notice of appeal five days later. *See* Tenn. R. App. P. 4(a).

ANALYSIS

In this appeal, the Defendant raises two issues. First, he challenges the legal sufficiency of the evidence supporting his conviction for theft of property. He argues that the State failed to prove that he acted knowingly and that the proof was insufficient to establish that the value of the stolen property exceeded \$2,500. Second, the Defendant argues that the trial court erred by instructing the jury on flight. He asserts that the evidence did not support a finding that he fled the scene or concealed himself in the community following the theft.

We address each of these issues in turn.

A. LEGAL SUFFICIENCY OF THE EVIDENCE

The Defendant argues that the evidence was legally insufficient to sustain his conviction for theft of property. Specifically, he contends that the State failed to prove that he acted knowingly and that the State failed to establish that the value of the stolen property exceeded \$2,500. The State responds that the video evidence, the victim’s testimony, and the surrounding circumstances were more than sufficient to establish both elements beyond a reasonable doubt. We agree with the State.

1. Standard of Appellate Review

“The standard for appellate review of a claim challenging the sufficiency of the State’s evidence 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.’” *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard of review is “highly deferential” in favor of the jury’s verdict. *See State v. Lyons*, 669 S.W.3d 775, 791 (Tenn. 2023). Indeed, when making that determination, the State “is entitled to the strongest legitimate view of the evidence and any reasonable inferences that may be drawn from it.” *State v. Rimmel*, 710 S.W.3d 640, 645 (Tenn. 2025) (citation and internal quotation marks omitted).

To that end, “[w]e do not reweigh the evidence, because questions regarding witness credibility, the weight to be given the evidence, and factual issues raised by the evidence are resolved by the jury as the trier of fact.” *State v. Curry*, 705 S.W.3d 176, 183 (Tenn. 2025) (citations omitted). “The standard of review is the same whether the conviction is based upon direct or circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (citation and internal quotation marks omitted).

2. The Theft Statute

The first step in evaluating the sufficiency of the evidence is to identify the elements of the offense. *See Rimmel*, 710 S.W.3d at 646. As relevant here, a person commits theft of property “if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner’s effective consent.” Tenn. Code Ann. § 39-14-103(a) (2025). As such, “three elements must be proven to establish theft

under our statute: ‘(1) the defendant knowingly obtained or exercised control over property; (2) the defendant did not have the owner’s effective consent; and (3) the defendant intended to deprive the owner of the property.’” *State v. Gentry*, 538 S.W.3d 413, 422 (Tenn. 2017) (quoting *State v. Amanns*, 2 S.W.3d 241, 244-45 (Tenn. Crim. App. 1999)). The offense is a Class D felony when the value of the property obtained is at least \$2,500 but less than \$10,000. *Id.* § 39-14-105(a)(3) (2025).

a. “Knowingly” Mens Rea

The Defendant first challenges the sufficiency of the proof as to the first element, arguing the State failed to establish that he acted “knowingly” when he took the money. A person acts “knowingly” with respect to conduct when he is aware of the nature of his conduct or that the circumstances surrounding the conduct exist. *See* Tenn. Code Ann. § 39-11-302(b) (2025). In the context of a theft offense, this mental state requires proof that the defendant was aware he was obtaining or exercising control over property belonging to another. *See State v. Summers*, 159 S.W.3d 586, 599 (Tenn. Crim. App. 2004) (explaining that theft requires awareness that one is obtaining control over property and that one is not the owner of the property). This requirement is distinct from, and in addition to, the separate element that the defendant acted with the intent to deprive the owner of the property. *See Gentry*, 538 S.W.3d at 423.

Applying these principles and viewing the evidence in the light most favorable to the State, we observe that the victim openly discussed the money at work the day before the theft. The next morning, the Defendant entered the office, searched the victim’s purse, removed a visible sum of cash, and concealed it on his person before leaving the premises. He then briefly returned and searched the purse a second time. The victim testified that she did not give the Defendant permission to search her purse or take her money. From these circumstances, a rational juror could reasonably infer that the Defendant was aware he was obtaining or exercising control over property belonging to another.

The Defendant argues, however, that the State failed to prove that he acted knowingly because no witness testified to any statement showing that he knew the money belonged to the victim or that he lacked permission to take it. He further argues that the surveillance video contained no audio establishing his knowledge. In essence, the Defendant contends that the absence of direct proof of his subjective awareness precludes a finding that he acted knowingly.

This argument misapprehends both the nature of the proof required and the role of the jury. A defendant's mental state may be established by circumstantial evidence and the reasonable inferences drawn from that evidence, including whether the defendant acted knowingly. *See Gentry*, 538 S.W.3d at 421. Direct evidence of a defendant's internal thought process is rarely available, and the jury may infer knowledge from the defendant's conduct and the surrounding circumstances. *State v. Brown*, 311 S.W.3d 422, 432 (Tenn. 2010). The absence of testimony regarding an explicit statement does not negate this inference. Nor does the lack of audio on the surveillance recording undermine the jury's ability to assess the Defendant's conduct and draw reasonable conclusions about his mental state. We conclude that a rational trier of fact could find beyond a reasonable doubt that the Defendant acted knowingly when he obtained or exercised control over the victim's property.

b. Value of the Stolen Property

The Defendant next argues that the State failed to prove that the value of the stolen property exceeded \$2,500. He contends that the victim's testimony was uncorroborated and inconsistent with the amount reported in the 911 call. The State responds that the victim's testimony alone is sufficient to establish value and that the surrounding evidence corroborated her account. We agree with the State.

Although the value of stolen property is not an essential element of the offense of theft, it determines the classification of, and the punishment for, the offense. *See State v. Menke*, 590 S.W.3d 455, 468 (Tenn. 2019); *State v. Jones*, 589 S.W.3d 747, 756 (Tenn. 2019). As such, the State was required to prove the value of the stolen property beyond a reasonable doubt. *See* Tenn. Code Ann. § 39-11-115. Here, the Defendant was charged with theft of property having a value of at least \$2,500 but less than \$10,000. *See* Tenn. Code Ann. § 39-14-105(a)(3) (2025).

Our criminal code defines "value" as the fair market value of the stolen property at the time and place of the offense or, if that value cannot be ascertained, the cost of replacing the property within a reasonable time after the offense. Tenn. Code Ann. § 39-11-106(a)(36)(A) (2025). A witness may testify to the value of his or her own property, and an owner's credited testimony alone may be sufficient to establish its value. *See* Tenn. R. Evid. 701(b); *State v. Felts*, No. M2013-01404-CCA-R3-CD, 2014 WL 2902261, at *9-10 (Tenn. Crim. App. Jun. 25, 2014), *no perm. app. filed*. The value of stolen property is a question of fact for the jury. *See Menke*, 590 S.W.3d at 468.

Applying these principles and viewing the evidence in the light most favorable to the State, we observe that the victim testified she had saved \$6,200 over several months from her work at IHOP and kept this money in her purse. She had been setting the money aside to help her parents purchase or repair a vehicle. On the morning of the theft, she brought the cash to work and planned to meet her mother at a car dealership immediately after her shift. The day before the theft, the victim had discussed the money and her plans openly with a coworker at the restaurant. When she returned to her purse at the end of her shift, all of the money was gone. That testimony, which reflected the victim's deliberate accumulation of the funds toward a defined goal and her certain knowledge of the amount she had saved, was legally sufficient to establish the value of the stolen property.

Moreover, although the victim's testimony requires no corroboration to be accepted by the jury, the record does not support the Defendant's claim that her testimony was uncorroborated. The video shows the Defendant removing a substantial sum of cash from the victim's purse. In the 911 call, which was made within minutes of the discovery of the theft, the manager reported that the Defendant had taken approximately \$6,000, which was a figure consistent in magnitude with the victim's testimony, even if it was not identical.

The minor discrepancy between the figure the manager reported in the 911 call and the amount the victim reported at trial was a factual issue for the jury to resolve, not a basis for this court to disturb the verdict on appeal. *See Curry*, 705 S.W.3d at 183 (“[Q]uestions regarding witness credibility, the weight to be given the evidence, and factual issues raised by the evidence are resolved by the jury as the trier of fact.”). We conclude a rational trier of fact could find beyond a reasonable doubt that the value of the stolen property was at least \$2,500 but less than \$10,000.

Having reviewed the evidence in the light most favorable to the State, we conclude that it is legally sufficient to sustain the Defendant's conviction for theft of property. The Defendant is not entitled to relief on this ground.

B. FLIGHT INSTRUCTION

The Defendant also argues that the trial court erred by including a flight instruction in the jury charge. He contends that the evidence was insufficient to support the instruction because he had a legitimate reason not to return to the restaurant after the manager terminated him and because no evidence showed that he attempted to conceal his identity or hide out in the community.

The State responds that the video and Officer Cummings' testimony established that the Defendant hastily departed the scene of the theft and evaded discovery until he was located and arrested in a different part of Knox County several days later. The State argues that these facts support an inference that the Defendant sought to avoid detection after committing the theft. We agree with the State.

1. Standard of Appellate Review

Challenges to jury instructions present mixed questions of law and fact. *State v. Smith*, 492 S.W.3d 224, 245 (Tenn. 2016). Accordingly, we review challenged instructions de novo without a presumption of correctness. *Id.* A jury instruction is prejudicially erroneous only if, when read as a whole, it fails to fairly submit the legal issues or misleads the jury as to the applicable law. *State v. Vann*, 976 S.W.2d 93, 101 (Tenn. 1998).

2. The Flight Instruction

Flight or attempted flight may bear on a defendant's intent, purpose, or consciousness of guilt and may connect the accused with the commission of the offense. *State v. Collins*, No. W2020-01566-CCA-R3-CD, 2022 WL 1183803, at *9 (Tenn. Crim. App. Apr. 21, 2022), *no perm. app. filed*. A trial court may instruct the jury on possible inferences to be drawn from a defendant's flight only when there is sufficient evidence to support the instruction. *See State v. Berry*, 141 S.W.3d 549, 588 (Tenn. 2004) (appendix). When properly given, the instruction permits, but does not require, the jury to infer consciousness of guilt from evidence of flight. *See State v. Kendricks*, 947 S.W.2d 875, 886 (Tenn. Crim. App. 1996).

To warrant the instruction, the proof must raise an inference establishing two elements: (1) the defendant's leaving of the scene of the difficulty; and (2) his or her subsequent hiding out, evasion, or concealment in the community, or a leaving of the community for parts unknown. *State v. Burns*, 979 S.W.2d 276, 289-90 (Tenn. 1998); *see also Berry*, 141 S.W.3d at 588. The law makes no precise distinction as to the manner or method of flight; it may be open or hurried, or it may involve concealment within the jurisdiction. *Rogers v. State*, 455 S.W.2d 182, 187 (Tenn. Crim. App. 1970). Even a brief evasion of authorities can support the giving of a flight instruction, and no particular distance for the flight must be shown. *State v. Martin*, No. W2017-01610-CCA-R3-CD, 2018 WL 4677575, at *19 (Tenn. Crim. App. Sept. 28, 2018), *no perm. app. filed*.

Importantly, a defendant's flight and concealment may be explained by reasons other than a guilty conscience. However, the existence of alternative explanations does not preclude the giving of a flight instruction. When the evidence supports competing inferences, the question of the defendant's motive for leaving the scene is one for the jury to resolve. *See Hall v. State*, 584 S.W.2d 819, 821 (Tenn. Crim. App. 1979). Any contradictory evidence that serves to rebut the State's proof of flight merely raises a question for the jury. *State v. Brazelton*, No. E2019-00992-CCA-R3-CD, 2021 WL 5878997, at *11 (Tenn. Crim. App. Dec. 13, 2021), *perm. app. denied* (Tenn. Apr. 13, 2022).

3. Application

Applying these principles, we consider whether the evidence was sufficient to support each element required to give a flight instruction.

As to the first element—leaving the scene of the difficulty—the security footage showed the Defendant removing cash from the victim's purse, stepping outside the back door of the restaurant, placing the cash in his pocket, and then departing in a vehicle that had just arrived. He never returned to the restaurant. The Defendant argues that he had no reason to return because the manager had terminated him before anyone discovered the theft. The record does not support this premise. The 911 call established that the manager terminated the Defendant after he drove off with the victim's money, not before.

As to the second element—hiding out, evasion, or concealment in the community—the evidence presents a closer question. On the one hand, the record contains no testimony that the Defendant took any affirmative step to avoid detection. He did not leave Knoxville, did not use a false identity, and was located at a public business rather than a concealed location. When Officer Cummings arrested him ten days after the theft, the Defendant provided his name and date of birth without resistance. On the other hand, the Defendant departed the crime scene in a vehicle immediately after the theft, never returned to the restaurant, and was not apprehended until law enforcement sought him out ten days later at an establishment in East Knoxville, a different part of the city from the South Knoxville restaurant where the theft occurred.

Although this question is close, we conclude that, on balance, there was sufficient evidence to fairly raise a flight issue for the jury's determination. A jury could reasonably infer from the combination of the hasty departure, the ten-day interval, and the Defendant's

failure to come forward that he was concealing himself in the community within the meaning of the instruction. *See State v. Payton*, 782 S.W.2d 490, 498 (Tenn. Crim. App. 1989) (recognizing that even a brief evasion of authorities can support a flight instruction). The Defendant's candor upon arrest does not compel a different result, because evidence tending to rebut an inference of flight raises a question for the jury, not a basis for withholding the instruction. "The conclusion to be drawn from such evidence is for the jury upon proper instructions from the trial court." *Hall*, 584 S.W.2d at 821.

In any event, any error in giving the instruction was harmless beyond a reasonable doubt. Erroneous jury instructions are non-structural constitutional errors subject to harmless error analysis. *State v. Rodriguez*, 254 S.W.3d 361, 371 (Tenn. 2008). The test is whether the error appears beyond a reasonable doubt not to have contributed to the verdict obtained. *Id.*

With respect to flight instructions specifically, our supreme court has held that even an improperly given instruction is not reversible where the trial court told the jury that whether the defendant fled was a question solely for their determination, that the jury need not infer flight, and that flight alone was insufficient to establish guilt. *State v. Smith*, 893 S.W.2d 908, 918 (Tenn. 1994). We have applied the same principle where the evidence of evasion was "tenuous." *State v. Hall*, No. W2008-01875-CCA-R3-CD, 2010 WL 571790, at *9 (Tenn. Crim. App. Feb. 18, 2010), *perm. app. denied* (Tenn. Sept. 7, 2010).

Here, the trial court gave precisely the instruction approved in *Smith*: it told the jury that whether the Defendant fled was a question for its determination, that the jury need not infer flight, and that flight alone was insufficient to support a guilty verdict. The instruction also emphasized that an innocent person may take flight and left to the jury the determination of whether flight occurred, the reasons for it, and the weight to be given to it. *Cf. State v. Richardson*, 995 S.W.2d 119, 129 (Tenn. Crim. App. 1998). Moreover, the security footage captured the Defendant removing the victim's cash from her purse and placing it in his pocket. In light of that overwhelming and direct proof of guilt, any error in giving the flight instruction did not contribute to the verdict beyond a reasonable doubt and does not warrant reversal. *Smith*, 893 S.W.2d at 918; *Hall*, 2010 WL 571790, at *9; *Rodriguez*, 254 S.W.3d at 371.

CONCLUSION

In summary, we hold that the evidence is legally sufficient to sustain the Defendant's conviction for theft of property. We also hold that the evidence supports the trial court's decision to provide a jury instruction on flight. Accordingly, we respectfully affirm the judgment of the trial court.

s/ Tom Greenholtz

TOM GREENHOLTZ, JUDGE