IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 18, 2023

STATE OF TENNESSEE v. JAMES STEPHEN CARDER

Appeal from the Circuit Court for Marshall County
No. 19-CR-176 Forest A. Durard, Jr., Judge

No. M2022-00641-CCA-R3-CD

Defendant, James Stephen Carder, was indicted by the Marshall County Grand Jury for 36 counts of theft of property in amounts ranging from less than $1,000 to $60,000 and two counts of aggregate theft in an amount greater than $60,000 but less than $250,000. Five of the theft counts were dismissed after the close of the State's proof, and a petit jury convicted Defendant of 24 theft counts and both aggregate theft counts. The trial court merged those individual theft convictions involving the same victim and also merged the two counts of aggregate theft, and the court sentenced Defendant as a Range II offender to an effective 20 years' incarceration and ordered him to pay $134,990 in restitution. In this appeal, Defendant argues that the evidence was insufficient to support his convictions, that the trial court lacked subject matter jurisdiction, and that law enforcement improperly investigated the case and interfered with his contracts. Having reviewed the entire record and the briefs of the parties, we affirm the judgments of the trial court. However, we remand this case to the trial court for entry of amended judgment forms to reflect the merger of the 24 individual theft convictions into count 37, the one aggregate theft conviction.

Tenn. R. App. P. 3, Appeal as of Right; Judgments of the Circuit Court Affirmed and Case Remanded

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

James Stephen Carder, Whiteville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Brooke A. Huppenthal, Assistant Attorney General; Robert J. Carter, District Attorney General; and William Bottoms and Lee Brooks, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Evidence at Trial

Defendant was the owner of Sleeping Beauty Customs, LLC, an antique and hot rod car restoration business. Defendant operated the business in Mount Pleasant and later moved his shop to Lewisburg. Defendant advertised on Craigslist and Facebook and attracted customers from Tennessee and surrounding states. Generally, customers provided or purchased the parts required for the restoration and repair, and Defendant charged for his labor.

Victims testified generally that Defendant was difficult to contact; that he failed to complete the work in the agreed upon timeframe; and that he left their disassembled vehicles exposed to the elements, causing damage. Defendant's customer contract contained a clause stating that Defendant was not required to meet the agreed-upon deadline and that if customers attempted to retrieve their vehicles, they would forfeit all money paid and parts provided.

Defendant rented his shop in Lewisburg from Mike Wilson. A mechanic shop was located adjacent to Defendant's shop in the same building. In November 2018, Lewisburg Police Department Detective Santiago McClain began investigating reports of theft by Sleeping Beauty Customs. When he arrived at Defendant's shop, Detective McClain spoke to Mr. Wilson, now deceased, and several victims who were outside looking for their vehicles. Defendant was not present, and his shop was closed. Detective McClain told the victims to go to the police station, where he took a report from each of them. As the investigation continued, more victims came forward.

Detective McClain executed a search warrant for Defendant's shop. He recovered several vehicles identified by the victims' titles and VINs, including a Dodge Ram 2500, a 1970 Chevy Nova, a 1968 Ford Mustang, a 1973 Ford Mustang, a 1969 Lincoln, a 1958 Chevy Corvette, a one-ton Chevy truck, a 1974 Firebird, a 1960 Ford truck, and various vehicle parts. Detective McClain explained that police did not seize any engines due to the difficulty of moving them. One of the victims worked with Mr. Wilson to remove an engine for his Firebird from Defendant's shop. Officers moved the items recovered to an impound lot for the victims to retrieve. All of the vehicles were "completely disassembled," and victims had to use trailers to transport them.

Detective McClain made several attempts to contact Defendant, including going to Defendant's other shop in Nashville, but was unsuccessful. Eventually, Defendant called the police department and spoke to a supervisor. Defendant was arrested in October 2019.

Randy Lewis (Count 1) took his 1968 El Camino to Defendant in March 2018 to be painted. Mr. Lewis agreed to pay $5,000, and Defendant agreed to finish the project in 90 days. Mr. Lewis testified the car was in "good shape" when he left it with Defendant. In August 2018, Mr. Lewis paid an additional $1,230 after Defendant told him the frame was bent. Mr. Lewis recovered the car in October 2018. Defendant had removed the engine, and a mechanic in the adjacent shop had installed a wiring harness. The car had not been sanded or primed, despite Defendant's having told Mr. Lewis on September 24 that one of his employees "had worked all weekend to get the car ready to be primed." Mr. Lewis testified that Defendant "was almost impossible to get in touch with." Mr. Lewis did not recover several parts, including the battery, chrome trim, taillight assembly, and door handles.

Brandon Daniel (Count 2) hired Defendant to restore the interior and repaint his 1979 Cutlass Calais T-top for $5,000. Defendant agreed to complete the work in five months, and Mr. Daniel paid him $3,990. Defendant had Mr. Daniel's car for 11 months and "not one thing was done" to the car, despite Defendant's updates that work was being completed. Defendant gave several excuses for why the work was taking longer than agreed and told Mr. Daniel that he was "going to file bankruptcy because everyone [wa]s trying to get their money and a lot of statements like that."

Eugene Wilburn (Count 3) testified that Defendant agreed to repair two Studebakers and a Nissan Versa. In exchange, Mr. Wilburn traded Defendant a 1962 Studebaker and paid him $4,000. Defendant estimated the project would take 90 days to complete. When Mr. Wilburn recovered the vehicles, no work had been completed on them.

Gay Crabtree (Counts 5 and 6) testified that Defendant agreed to paint a 1983 Ford F-100. In exchange, Mrs. Crabtree paid Defendant $500, and her husband traded car parts and motors valued at $4,500. Mrs. Crabtree also provided parts for Defendant to install on the Ford F-100. Mrs. Crabtree testified that Defendant never completed any work on the truck and that it "sat in the same place for 8 months." When Mrs. Crabtree took the truck to Defendant's shop, Defendant told her "it had to get in line with everyone else's vehicle." Mrs. Crabtree asked that the truck be kept inside the shop, but Defendant left it outside exposed to the elements. Mrs. Crabtree recovered the truck and some of the parts. The truck was generally in the same condition but had more rust than when she left it with Defendant.

Gregory Gibson (Counts 7 and 8) took his 1968 Ford Mustang Coupe to Defendant to be painted. He paid Defendant $1,500 and traded two other Mustangs to have the work done. Mr. Gibson testified that the car "needed minimal repair work" and "just needed sanding and painted." Defendant told Mr. Gibson that the work would be completed in three months, but the contract stated that it would be complete in six months. Defendant

kept the car for one year before Mr. Gibson retrieved it. Mr. Gibson testified the car was "still sitting in the same spot as when [he] dropped it off" and that it was in "worse condition than when [he] dropped it off due to sitting outside in the elements for a year." Mr. Gibson contacted Defendant several times to inquire about the progress of the work, and Defendant told him if he picked up the car, he would forfeit whatever he had paid and traded for the work according to the contract. Defendant told Mr. Gibson, "'if you want to try to sue me you can, but nobody has ever won because I have everything legally documented at the bottom, here with the clause if it takes me longer, it takes me longer.'" Mr. Gibson did not recover his two other Mustangs because Defendant had already sold them and no longer had the titles to the vehicles. Mr. Gibson testified that he believed Defendant told him he sold one for $1,700 and the other for "around $3,500 and got a couple of other vehicles traded toward it also[.]"

Ibin Moore (Count 10) took the "rear end" from his 1968 Pontiac Firebird to Defendant to repair and repaint in November 2018. Mr. Moore agreed to pay Defendant $4,000, and Defendant agreed to finish the work in three months. Mr. Moore paid $1,000 as a down payment. The contract also stated the parts that Mr. Moore would provide and stated that Defendant would store the car indoors while it was at his shop. On March 12, 2019, Defendant text messaged Mr. Moore telling him that he was out of town but that he would bring the rear end of the vehicle to him when he returned. Mr. Moore never recovered the rear end of his Firebird, which he estimated was worth $3,800.

Harold Childers (Count 12) traded Defendant his 1917 Ford T-Bucket in exchange for restoring Mr. Childers's 1949 Mercury. Defendant agreed to restore the Mercury "from the headlight[s] to the taillights." Defendant agreed to complete the job in six months. When Mr. Childers recovered the car "a little over a year" later, Defendant had removed the motor and transmission but had not completed any other work on the vehicle. Mr. Childers never recovered the motor. He believed that Defendant sold the motor, which he valued at $3,000. Defendant had painted the T-Bucket, which Mr. Childers valued at $13,500, and sold it.

Shamar Jackson (Count 13) took his 1968 Oldsmobile 98 for engine and transmission upgrades and painting. Mr. Jackson paid Defendant $7,150 for the work. Defendant agreed to complete the work by Christmas 2018, but when Mr. Jackson went to pick up the car in April 2019, it was "a shell of itself." Mr. Jackson never recovered the engine or transmission. Mr. Jackson's credit card company refunded him $2,500 after Mr. Jackson disputed the charges because "things were becoming a little sketchy" and Defendant had not returned his calls.

Todd Abraham (Count 14) took a 1913 Model 83 Cross Country Rambler that belonged to Dave Miller to Defendant to be painted and restored. Mr. Abraham signed a

contract and delivered the car to Defendant in March 2017. Mr. Miller sent Defendant a deposit of $3,000 by wire transfer. Defendant agreed to complete the work in six weeks with the balance of $1,500 due upon completion. Mr. Abraham contacted Defendant several times, and Defendant gave a number of reasons for not having started the job. At some point, Defendant changed his phone number, and Mr. Abraham had to track him down through Craigslist. In April 2019, Mr. Abraham picked up the car, and no work had been completed. The wheels were rusted, and the radiator shell was missing.

Andrew Eichorn (Counts 15 and 16) took his C-10 truck to Defendant to be restored in February 2019. Defendant agreed to complete the work in six to eight weeks. Mr. Eichorn paid Defendant $3,800 and traded him a 1987 S-10 worth $2,000 to have the work done. Mr. Eichorn recovered his truck in May 2019, and it was in "worse shape" than when he left it with Defendant. He testified Defendant left the truck outside and it had a "broken rod in the motor and the engine was no good." Mr. Eichorn was deployed to Poland during the time that Defendant had the truck. When Mr. Eichorn contacted Defendant to ask for updates on the progress of the truck, Defendant "would just make excuses and say that he was almost done with this and almost done with that and that he was making progress; but nothing was ever actually done." Mr. Eichorn never recovered the S-10 he traded Defendant.

James Pruitt (Count 18) took his 1974 Dodge Charger to Defendant's shop to have an engine, transmission, and suspension installed. Mr. Pruitt paid Defendant $8,300 for labor and parts. Mr. Pruitt later learned of Defendant's arrest and recovered his car "as he dropped it off, nothing changed." Defendant never installed the parts and never refunded Mr. Pruitt.

Ronald Williams (Count 19) paid Defendant between $7,000 and $8,000 to rebuild two engines and to restore and paint his 1970s Mustang, 1969 Firebird, and 1958 Corvette. Mr. Williams also provided parts for the restorations. At the time of trial, Mr. Williams had not recovered his vehicles. He had recovered about half of the parts. Mr. Williams estimated that Defendant had completed five percent of the work on the Mustang. He testified, "It was almost like I went backwards though. I lost the motor out of it." He estimated that Defendant completed ten percent of the work on the Firebird and that he "did not do anything" to the Corvette.

Kenneth Lober (Count 22) took his 1966 Ford F-100 to Defendant in March 2018. Mr. Lober paid Defendant $17,700 and provided parts for the vehicle, and Defendant agreed to complete the work in December 2018. Mr. Lober testified that Defendant promised he would keep the truck inside his shop building, but when Mr. Lober visited Defendant's shop to check on the progress of the restoration, the truck was outside in the rain. When Mr. Lober retrieved his truck, it was in "a lot worse" condition than when he

took it to Defendant. The frame and bolts were rusted. The motor was covered with plastic that had melted onto the motor. Mr. Lober tried to contact Defendant "well over a hundred times." He testified that "it was very, very difficult" to arrange to meet Defendant at his shop. Mr. Lober testified that he recovered his truck and all but $5,900 in parts he supplied to Defendant.

Donald Flippo (Count 23) agreed to trade his 1978 Firebird, worth approximately $1,500, and his 1953 Hudson Commodore, worth approximately $3,500, in exchange for Defendant's painting his 1976 Chevrolet short bed truck and 1968 Ford short bed truck. Defendant told Mr. Flippo it would take "a couple of weeks" to repaint the Chevrolet truck. Mr. Flippo testified, "it went on like six or eight months and still nothing." Mr. Flippo never took the Ford truck to Defendant because he was waiting for work to be completed on the Chevrolet first. Mr. Flippo recovered the Chevrolet truck in the same condition as he left it at Defendant's shop. He did not recover the Firebird or Hudson because Defendant sold both vehicles. Mr. Flippo also sold Defendant a Corvette frame, which Mr. Flippo recovered, for $500.

Robin Heck (Counts 24 and 25) agreed to pay Defendant $19,200 to purchase a Mustang Coupe that Defendant agreed to convert to a Fastback and restore. Mr. Heck purchased the vehicle in May 2018, and Defendant agreed to complete the restoration by spring of 2019. Mr. Heck paid Defendant $12,500 and never recovered the vehicle.

Johnny Armstrong's (Count 28) son and daughter-in-law took his 1966 Chevelle to Defendant to restore in October 2017. They agreed upon a price of $15,000, and Defendant agreed to complete the job in April or May 2018. The Armstrongs bought $2,000 to $3,000 worth of parts for the restoration, and they paid Defendant $14,700. They retrieved the vehicle in 2019. "Everything was gone" from the interior, and "it was stripped down to nothing." Mr. Armstrong's son provided Defendant a "brand new engine" to put in the car, and it was never recovered.

William "Rod" Hinson (Count 29) paid Defendant $15,700 to restore and paint his 1974 Chevrolet Nova. He took the car to Defendant in May 2018, and Defendant agreed to finish the job in September or October 2018. The car was "fully functional" when Mr. Hinson took it to Defendant. At the time of trial, Mr. Hinson had not recovered his vehicle, which he testified was a "shell." Defendant had disassembled the car and had not replaced the engine, transmission, or interior. Mr. Hinson did not receive any of the parts Defendant had purchased for the restoration.

Alvin Beadle (Count 30) purchased a 1968 Ford Mustang from Defendant for $3,500. Defendant agreed to repair and paint the car in exchange for two Ford Ranger trucks that Mr. Beadle estimated their aggregate value at $2,900. Mr. Beadle took all three

vehicles to Defendant's shop in May 2018. Mr. Beadle testified that, to his knowledge, the car "never moved" from the spot it was taken. He testified, "It ended up sitting there over a year and nothing was done to it." Mr. Beadle recovered the Mustang but not the two Rangers.

Roger Henson (Count 35) testified that Defendant agreed to restore his 1970 Camaro and 1970 Challenger in exchange for two other car bodies and a 1996 Harley-Davidson motorcycle. Defendant took the motorcycle as a down payment. He testified that the car bodies were worth "maybe a thousand a piece." Defendant began work on the Camaro in August 2018 and told Mr. Hinson that it would take three to four months to complete. When Mr. Hinson recovered the car, it was in the same condition as when he left it. Mr. Hinson did not recover the Harley Davidson, which he valued at $5,000, but Defendant never picked up the two car bodies.

Betty Rowland (Count 36) and her husband agreed to give Defendant a 1968 Camaro in exchange for Defendant's taking parts from that Camaro and putting them into another 1968 Camaro. They agreed that Defendant's payment for the work was the body of the Camaro from which he was going to take the parts. The Rowlands provided Defendant with a motor to be installed. Mrs. Rowland estimated the value of the vehicles to be $2,500 each. Defendant did not complete the work, and at the time of trial, Mrs. Rowland had not recovered either vehicle. Mr. Rowland passed away prior to Defendant's trial.

At the conclusion of the State's proof, the trial court dismissed Counts 17, 20, 21, 26, and 27.

Chase Hooten testified for Defendant. Mr. Hooten ran a mechanic shop in the building beside Defendant's body shop and did mechanic work for Defendant on occasion. He testified that Defendant worked "[p]retty much every week" and that he saw Defendant "there anywhere from six in the morning to midnight, or one or two o'clock in the morning, or at least somebody was there working." Defendant also had other employees working in his shop. Mr. Hooten testified there were usually three or four cars at a time being worked on inside Defendant's shop. He said Defendant's paint booth was "severely outdated." Mr. Hooten recalled installing a new wiring harness and fuse box in Randy Lewis's El Camino. He testified it took 30 to 40 hours to complete. He also removed and painted the motor and transmission and upgraded the fuel system. Mr. Hooten was paid for all the work he completed for Defendant. He said Defendant returned his phone calls "for the most part."

Mr. Hooten recalled a period of time in late 2018 and early 2019 when Mike Wilson locked Defendant out of his shop. There were six or seven vehicles, two motorcycles,

vehicle parts, and Defendant's tools inside the shop when Mr. Wilson locked it. Mr. Wilson released most of the vehicles to the owners.

Defendant testified that he had "always loved cars, muscle cars." He opened his restoration shop in Lewisburg in 2017 when he began renting a space from Mr. Wilson. Defendant acknowledged that Randy Lewis paid him $5,000, and he testified that the only work remaining was priming and painting Mr. Lewis's car. Defendant began work on Mr. Lewis's car "about three or four months" after he got it. He discovered it had a damaged frame and took it to another body shop to have it fixed. Mr. Lewis picked up the car after Mr. Hooten finished working on the car but before Defendant was able to paint it. Defendant said he had already purchased the paint and that Mr. Lewis still owed him $1,000.

Defendant testified that Brandon Daniel paid him $3,990 and that Defendant "got all the hail dents out of it which was in excess of over 100" and sprayed the primer. He testified that Mr. Daniel got "antsy toward the end" and took the car before Defendant was able to finish the work. Defendant was in Ohio when police went to his shop and customers retrieved their vehicles.

Defendant testified Eugene Wilbur wanted "a quick paint job" and that he paid Defendant $4,000 and traded a Studebaker to have the work done. Defendant had begun sanding the car when Mr. Wilson locked him out of the shop. Defendant said Mr. Wilson locked him out of his shop because he had heard about Defendant's "trying to get a shop in Nashville."

Defendant testified that he agreed to paint a Ford truck for Mrs. Crabtree and her husband in exchange for $500 and some engines. He testified that one of the engines needed to be rebuilt and that the others were "scrap." Defendant never received the Toyota that was part of the trade. He told Mrs. Crabtree that he was not going to paint the Ford truck until he received the Toyota and title.

Defendant acknowledged that Gregory Gibson paid him $1,500 as agreed. He also received the Mustang and parts and the title for the 1968 Fastback, but he "never ended up getting the rest of the parts to make that '68 Mustang a complete car." Defendant had "done some sanding and some bodywork and some primer work" to Mr. Gibson's car "when Mike [Wilson] locked up the shop on [him]." Defendant offered to finish the work when he opened his new shop in Nashville, but Mr. Gibson refused.

Defendant testified that Ibin Moore paid him $1,000 to repair and paint the rear end of his vehicle and that one of his employees took it to "a store" at an address that Mr. Moore

provided. Defendant estimated that the rear end was worth between $1,200 and $1,500 after it was painted.

Defendant testified that he agreed to paint and restore the interior of Harold Childers's 1949 Mercury in exchange for a Model T and some tools. Defendant "ended up buying and paying in cash" for Mr. Childers's tools because Mr. Childers "c[a]me up to the shop wanting money, need[ing] money." Defendant said he "spent a lot of time trying to find" the parts for the restoration. Defendant testified that he sold the T-Bucket for $2,500 after he put $1,500 worth of parts in it. Defendant said he did "[s]ome work" to Mr. Childers's Mercury, "but not very much."

Defendant testified that he had Shamar Jackson's Oldsmobile towed to his shop, and Mr. Jackson paid him $3,000 of the $5,050 they agreed upon. Defendant discovered a crack in the engine block, and Mr. Jackson paid Defendant $400 for another engine block. Defendant testified Mr. Jackson also paid $2,250 for a transmission. Mr. Jackson later paid Defendant an additional $1,500 to build a fiberglass box in the trunk to contain stereo equipment. After Defendant removed the engine and transmission from Mr. Jackson's car, Mr. Jackson called and told Defendant to stop working on the car. Mr. Jackson picked up his car and told Defendant he wanted "all his money back." Defendant offered to "take off what it costs for the engine rebuild kit because [Defendant] already ordered that[.]" Mr. Jackson got back $2,500 that "was taken out of [Defendant's] account."

Defendant testified that Todd Abraham paid him $3,000 of the $4,500 they agreed upon for Defendant to paint his Oldsmobile. Defendant testified that Mr. Abraham had already sandblasted the car, and he explained, "You don't take a car that's that old with metal that's that fragile and you sandblast it[.]" When Mr. Abraham brought the car to Defendant, it was already disassembled and had "surface rust all over it[.]" Defendant learned that the car belonged to Dave Miller in California and told Mr. Abraham that he could no longer work on it without Mr. Miller's consent. On August 16, 2018, Defendant received a letter from Mr. Miller authorizing the work, but Defendant refused to continue the job until he talked to Mr. Miller. Mr. Abraham then picked up the car from Defendant. Defendant said he and Mr. Abraham "talked a couple of times about giving him some money back." Defendant told Mr. Abraham he wanted to speak with Mr. Miller before he refunded any money. Defendant "was very uncomfortable with the deal."

Defendant testified that he agreed "to do a complete blackout paint job" on Mr. Eichorn's C-10 truck. In exchange, Mr. Eichorn paid him $3,000 and traded him an S-10 truck that Defendant sold for $600. Defendant spent "a good 4 or 5 hours" cleaning "gunk" and "trash" out of Mr. Eichorn's C-10. Defendant bought supplies and paint for Mr. Eichorn's truck but did not finish painting it.

Defendant testified that James Pruitt paid him $3,500 to purchase an engine for his Dodge Charger. Defendant could not recall the total amount Mr. Pruitt paid to have all of the work done, but Defendant had not begun the work when he was arrested.

Defendant testified that he had "multiple deals" with Ronald Williams but that "[t]here was never a project for [Defendant] to finish with him." Defendant said Mr. Williams "paid [him] as [he] went." He testified the only work he had not completed but for which Mr. Williams had paid was replacing the floor pan in a blue Mustang. Defendant "figured [they] were even" because Defendant had done work for Mr. Williams for which Mr. Williams had not paid Defendant.

Defendant testified that Kenneth Lober "brought a huge truckload of parts" to him for his Ford pickup truck. Mr. Lober wanted to build "a show truck." Defendant charged him $65 per hour, and he kept Mr. Lober's truck inside the shop. When Defendant was locked out of his shop, Mr. Lober's truck "was pretty much close to ready to paint." Defendant said Mr. Lober had paid him "most of what [they] agreed on."

Defendant testified he bought a Corvette frame from Donald Flippo for $500. Mr. Flippo traded Defendant a Hudson that "was a complete rust bucket" and a Firebird in exchange for Defendant's painting two trucks for Mr. Flippo. Defendant sold the Firebird for $600 and the Hudson for $800. Defendant said Mr. Flippo "was in no hurry" to have his trucks painted. Defendant testified that Mr. Flippo had agreed to trade him a "really nice" Dodge four-wheel-drive truck, which Defendant said was "the main money" he was getting for painting Mr. Flippo's trucks. Defendant refused to paint the trucks after Mr. Flippo did not give Defendant the Dodge truck. Defendant testified Mr. Flippo "stole" the Corvette frame Defendant had bought from him.

Defendant testified that Robin Heck paid him $12,500 of the $19,200 they agreed upon to paint and convert his Mustang to a Fastback. Defendant told Mr. Heck to "be patient" because it was "a full build." Defendant was arrested before he was able to complete the job, but Defendant offered to continue working on Mr. Heck's car at his shop in Nashville.

Defendant testified that Maurick Armstrong paid him "a little bit over $10,000" to restore his father's Chevelle. Defendant testified he "would have loved to have finished that car." He offered to continue work on the car at his shop in Nashville, but the Armstrongs refused.

Defendant testified that Mr. Hinson paid him $15,000 to restore his Chevy Nova. Defendant "took [his] time" doing the work because Mr. Hinson made several changes to the work order. Defendant "took the car nut and bolt completely apart because of what

[he] was actually doing to it." Defendant testified that the car was almost ready to paint but was never finished because, "Mike Wilson illegally locked me out of my shop and then of course after that they arrested me."

Defendant testified that Alvin Beadle bought one of the Mustangs Defendant got on trade from Mr. Gibson. Mr. Beadle told Defendant he wanted to work at his shop and learn more about restoring cars. Defendant allowed him to use his shop and tools to work on the Mustang. Defendant testified that the 1994 Ford Ranger Mr. Beadle traded him was "in horrible condition," and Defendant sold it for scrap for $130. He sold the other truck Mr. Beadle traded him for $400, which "covered the cost of paint" for the Mustang. Defendant said Mr. Beadle never finished the Mustang because "[h]e would come down to the shop and instead of working on the car he would just hang out and talk."

Defendant testified Roger Henson traded him a Harley Davidson motorcycle, which Defendant sold for $2,500, to paint Mr. Henson's 1970 Camaro. Defendant had removed the engine when Mr. Wilson locked him out of his shop. Defendant said Mr. Henson knew he sold the motorcycle and that "there was no problem with that. . . . [T]here was no talk of a refund of anything like that."

Defendant testified Mrs. Rowland's husband had two cars that he wanted to have combined into one car. Defendant said Mr. Rowland told him, "'if you could just slide the car together to where it is a whole car where I can sell it, and for your time you can have the other shell because that's all it has." Mr. Rowland gave Defendant "the title to the other shell." The Rowlands did not pay Defendant any money. Defendant testified that Mr. Rowland agreed to give him a disassembled but "complete '68 Camaro, that included the seats, all of the components, all of the pieces, engine, everything, complete car. . . ." When Defendant went to the Rowlands' storage building, he only found some of the Camaro parts.

Defendant explained that his contract provided that a customer would forfeit any money or trades if they picked up their vehicle before the agreed upon work was finished. Defendant testified, he "read that to every single customer. . . . So, there's no misunderstanding at all." Defendant said he told all of his customers to call ahead if they wanted to visit his shop to check on the progress of their vehicles because he was often "out looking for cars and parts, going to get parts, . . . and dealing with other customers and going to their houses." Defendant testified, "A lot of times people did not do that and they would just show up and then be mad because I'm not there." Defendant testified he lost "over [$]140,000" in tools, equipment, and materials as a result of the charges against him.

On cross-examination, Defendant testified that "time frames are rough estimates, they are not strict deadlines." Defendant denied that Mr. Wilson locked Defendant out of his shop for failure to pay rent. Defendant moved his shop to Nashville. When asked whether any of the victims deserved to get their money back, Defendant answered, "No, because I was still willing to do the work." Defendant clarified, "I'm not saying there [] isn't any people I would owe, but I wanted that done in a civil court because I want to be paid – everybody wants to be paid for work they do."

After the close of the proof, the trial court dismissed Counts 17, 20, 21, 26, and 27. A petit jury convicted Defendant of two count of theft of property valued at less than $1,000 (Counts 5 and 6); four counts of theft of property valued at more than $1,000 but less than $2,500 (Counts 8, 16, 23, and 30); 15 counts of theft of property valued at more than $2,500 but less than $10,000 (Counts 1, 2, 3, 7, 10, 12, 13, 14, 15, 18, 19, 24, 25, 35, and 36); three counts of theft of property valued at more than $10,000 but less than $60,000 (Counts 22, 28, and 29); and two counts of aggregate theft of property valued at $60,000 or more but less than $250,000.[1] The jury acquitted Defendant of the remaining seven counts. The trial court merged several theft convictions involving the same victims and merged the two aggregate theft convictions.[2] Following a sentencing hearing, the trial court imposed an effective sentence of 20 years as a Range II offender. Defendant filed a motion for new trial, which the trial court denied following a hearing. Defendant timely appeals.

Analysis

Sufficiency of the Evidence

Defendant asserts that the evidence at trial was insufficient to support any of his 26 convictions for theft of property. The State counters that the evidence was sufficient.

Our standard of review regarding sufficiency of the 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also* Tenn. R. App. P. 13(e). After a jury finds a defendant guilty, the presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Consequently, the defendant has the burden on appeal of demonstrating that the evidence was insufficient to support the jury's verdict. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

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[1] Count 37 of the indictment charged Defendant with exercising control, and Count 38 charged Defendant with obtaining property. The judgments reflect that the trial court merged the two convictions.

[2] The trial court merged Counts 5 and 6 (Gay Crabtree), Counts 7 and 8 (Gregory Gibson), Counts 15 and 16 (Andrew Eichorn), Counts 24 and 25 (Robin Heck), and Counts 37 and 38 (aggregate theft counts).

The appellate court does not weigh the evidence anew; rather, "a jury verdict, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts" in the testimony and all reasonably drawn inferences in favor of the State. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, "the State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom." *Id*. (citation omitted). This standard of review applies to guilty verdicts based upon direct or circumstantial evidence. *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (citing *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)). In *Dorantes*, this Court adopted the United States Supreme Court standard that "direct and circumstantial evidence should be treated the same when weighing the sufficiency of such evidence." *Id*. at 381. Accordingly, the evidence need not exclude every other reasonable hypothesis except that of the defendant's guilt, provided the defendant's guilt is established beyond a reasonable doubt. *Id.*

A person is guilty of theft of property where the proof establishes that the defendant knowingly obtained or exercised control over property without the owner's effective consent and with the intent to deprive the owner of the property. T.C.A. § 39-14-103(a). A defendant knowingly obtains or exercises control over property if the defendant is aware or reasonably certain that his actions transferred or purportedly transferred the property. *Id*. § 39-11-106(a)(23), (27)(A). "Effective consent" is express or apparent, giving the defendant authority to control the property. *Id*. § 39-11-106(a)(11), (29). "Consent is not effective when [i]nduced by deception or coercion." *Id*. § 39-11-106(a)(11)(A). A defendant intends to deprive a victim of the property if it is the defendant's "conscious objective or desire" to withhold the property permanently or "for such a period of time as to substantially diminish the value or enjoyment of the property to the owner." *Id*. § 39-11-106(a)(9)(A), (21).

For Count 1, the State elected the theft of Mr. Lewis's money. In the light most favorable to the State, the evidence showed that Mr. Lewis paid Defendant $6,230 to paint and restore his El Camino. Defendant agreed to finish the job within 90 days of Mr. Lewis taking the car to him in March 2018. Mr. Lewis testified that Defendant "was almost impossible to get in touch with." In October 2018, the only work Defendant had done to the car was to remove the engine, and Mr. Hooten had replaced the wiring harness. When Mr. Lewis retrieved his car months after the projected completion date, it was in worse condition than he left it. The jury could have reasonably inferred that Defendant exercised control over Mr. Lewis's property without his effective consent and that Defendant intended to deprive Mr. Lewis of his property.

For Count 2, the State elected the theft of Mr. Daniel's money. The proof showed that Mr. Daniel paid Defendant $3,990 to paint and restore his Cutlass. Defendant had Mr.

Daniel's car for 11 months and did not complete any of the agreed-upon work, despite Defendant's providing Mr. Daniel updates that work was being completed. The jury could have reasonably inferred that Defendant intended to deprive Mr. Daniel of his property when he failed to refund Mr. Daniel's money after not performing the contracted work. Defendant lost Mr. Daniel's effective consent when he failed to complete any work despite telling Mr. Daniel that work was being done.

For Count 3, the State elected the theft of Mr. Wilburn's money. Mr. Wilburn paid Defendant $4,000 to repair his vehicles, and Defendant failed to complete any work agreed upon. Defendant lost Mr. Wilburn's effective consent to exercise control over his property when Defendant refused to refund Mr. Wilburn's money.

For Count 5, the State elected the theft of the Crabtrees' auto parts, and for Count 6, the State elected the theft of the Crabtrees' money. Defendant knowingly obtained and exercised control over the Crabtrees' property by accepting $500 and car parts. Defendant lost their effective consent to exercise control over the property, and he intended to deprive them of their property when he kept their money and never made the agreed-upon repairs to their Ford truck.

For Count 7, the State elected the theft of Mr. Gibson's two vehicles, and for Count 8, the State elected the theft of Mr. Gibson's money. Mr. Gibson paid Defendant $1,500 and traded him two Mustangs, and Defendant never completed any work on Mr. Gibson's car. Defendant lost Mr. Gibson's effective consent when Mr. Gibson inquired about the progress of the work, and Defendant threatened him with the forfeiture clause of his customer contract. Defendant intended to deprive Mr. Gibson of his property when he refused to refund Mr. Gibson's money and sold the two Mustangs. Defendant asserts in his brief that he performed work under the contract with Mr. Gibson by attaching photos not admitted as evidence or contained in the record. However, appellate courts' review is limited to issues that are properly presented and "those facts established by the evidence in the trial court and set forth in the record. . . ." Tenn. R. App. P. 13(b) and (c).

For Count 10, the State elected the theft of Mr. Moore's money. Defendant knowingly obtained and exercised control over Mr. Moore's property when he accepted his down payment of $1,000 to repair and paint the "rear end" of his Pontiac Firebird. Defendant lost Mr. Moore's effective consent to exercise control over the property when Defendant failed to return his money or the "rear end" of the Firebird.

For Count 12, the State elected the theft of Mr. Childers's Model-T Bucket. Mr. Childers traded his 1917 T-Bucket, which Mr. Childers valued at $13,500 and Defendant sold for $2,500, in exchange for Defendant's restoring Mr. Childers's 1949 Mercury, which Defendant failed to complete. When Mr. Childers recovered his Mercury, Defendant had

removed the motor and transmission but had not completed any other work on the vehicle. By Defendant's own account, he did "[s]ome work" to Mr. Childers's Mercury, "but not very much."

For Count 13, the State elected the theft of Mr. Jackson's money. Defendant accepted Mr. Jackson's payment of $7,150 to upgrade and paint his Oldsmobile 98, but Defendant did not complete the work and did not refund Mr. Jackson's money. Defendant failed to return Mr. Jackson's calls. Mr. Jackson received $2,500 of his money back when he disputed the charge; however, when he picked up his car it was "a shell of itself[,]" and Mr. Jackson never recovered the engine or transmission.

For Count 14, the State elected the theft of Dave Miller's money. Defendant accepted a payment of $3,000 from Mr. Miller to paint and restore his 1913 Model 83 Cross Country Rambler that Todd Abraham delivered to him. Defendant was difficult to contact and did not complete the work. When Mr. Abraham picked up the car, no work had been completed, the wheels were rusted, and the radiator shell was missing. Defendant lost Mr. Miller's effective consent when he failed to restore the car or refund Mr. Miller's money.

For Count 15, the State elected the theft of Mr. Eichorn's money and vehicle. Defendant accepted a payment of $3,800 from Mr. Eichorn and a pickup truck valued at $2,000 in exchange for restoring Mr. Eichorn's C-10 truck. When Mr. Eichorn recovered his truck, it was in "worse shape" than when he left it with Defendant, despite Defendant's claims that "he was almost done with this and almost done with that and that he was making progress" on the vehicle. Defendant did not return Mr. Eichorn's money, and Mr. Eichorn did not recover the truck he traded Defendant. Again, the evidence is sufficient for a rational juror to find that Defendant intended to deprive Mr. Eichorn of his property.

For Count 18, the State elected the theft of Mr. Pruitt's money. Defendant accepted $8,300 from Mr. Pruitt to purchase an engine, transmission, and suspension to install on Mr. Pruitt's Dodge Charger. Defendant never installed the parts or refunded Mr. Pruitt's money. The evidence is sufficient to support this conviction.

For Count 19, the State elected the theft of Mr. Williams's money. Defendant accepted between $7,000 and $8,000 from Ronald Williams to rebuild two engines and restore and paint his Mustang, Firebird, and Corvette. Defendant failed to complete the work and failed to return Mr. Williams's money.

For Count 22, the State elected the theft of Mr. Lober's money. Defendant accepted Mr. Lober's payments totaling $17,700 to restore his 1966 Ford F-100. Defendant asserts that he completed most of the work agreed upon; however, Mr. Lober testified that his

truck was in "a lot worse" condition when he retrieved it. The frame and bolts were rusted, and a plastic tarp had melted to the motor. It is the jury's duty to weigh the evidence and make credibility determinations. The evidence was sufficient to support this conviction.

For Count 23, the State elected the theft of Mr. Flippo's two vehicles. Defendant accepted two cars from Mr. Flippo in exchange for painting Mr. Flippo's two trucks. Mr. Flippo estimated the combined value of the two cars at $5,000. Defendant never painted either of Mr. Flippo's trucks, and Defendant sold both traded cars.

For Count 24, the State elected the theft of Mr. Heck's money and vehicle. Defendant accepted $12,500 to paint and convert a Mustang Mr. Heck had purchased to a Fastback. Defendant did not complete the work, nor did he refund Mr. Heck's money. At the time of Defendant's trial, Mr. Heck had not recovered his vehicle from Defendant.

For Count 28, the State elected the theft of Mr. Armstrong's money. Defendant accepted $14,700 and $2,000 to $3,000 worth of parts from Mr. Armstrong's son and daughter-in-law to restore Mr. Armstrong's 1966 Chevelle. When the Armstrongs recovered the car nearly a year after Defendant agreed to complete the job, it was disassembled and "stripped down to nothing."

For Count 29, the State elected the theft of Mr. Hinson's money. Defendant accepted $15,700 to restore and paint Mr. Hinson's 1974 Chevrolet Nova. Defendant disassembled the vehicle and had not replaced the engine, transmission, or interior. Mr. Hinson had not recovered the vehicle at the time of Defendant's trial, and Defendant did not return Mr. Hinson's money.

For Count 30, the State elected the theft of Mr. Beadle's two vehicles. Defendant accepted two trucks from Mr. Beadle in exchange for Defendant's repairing and painting a 1968 Ford Mustang that Mr. Beadle purchased from Defendant. The Mustang "ended up sitting there for over a year and nothing was done to it." Defendant did not return the traded trucks to Mr. Beadle.

For Count 35, the State elected the theft of Mr. Hinson's vehicle and auto parts. Mr. Hinson traded Defendant a motorcycle valued at $5,000 in exchange for Defendant's restoring Mr. Hinson's Challenger and Camaro. Defendant did not restore either of Mr. Hinson's cars, and he did not return the motorcycle.

For Count 36, the State elected the theft of the Rowlands' vehicle and auto parts. The Rowlands gave Defendant a 1968 Camaro from which to take parts and install on another Camaro. The Rowlands also provided an engine for Defendant to install on the Camaro. Defendant did not complete the work and did not return either Camaro.

In summary, Defendant accepted payments or trades from his customers and failed to perform services or return payment. Defendant knowingly obtained and exercised control over the victims' property when he accepted their money or trades. Although Defendant initially had the customers' effective consent, they revoked their consent when Defendant failed to perform the agreed-upon work and the customers filed police reports. A rational juror could find beyond a reasonable doubt that Defendant deprived the victims of their property when he failed to return the victims' money, despite his not having completed the agreed-upon work. The jury heard Defendant's testimony and his reasons for not completing the work, and by its verdict, the jury discredited Defendant's testimony. Therefore, we conclude that the evidence is sufficient to support Defendant's theft convictions.

In Counts 37 and 38, Defendant was convicted under the theft aggregation statute, which allows the State to aggregate "the criminal acts aris[ing] from a common scheme, purpose, intent or enterprise" against one or more victims to determine the punishment pursuant to the theft of property statute. T.C.A. § 39-14-105(b). "A common scheme involves multiple criminal acts committed pursuant to a systematic plan or plot or that are part of a larger, continuing plan or conspiracy." *State v. Jones*, 589 S.W.3d 747, 764 (Tenn. 2019). "[S]imilar thefts of similar items from [identical locations] . . . within a short period" sufficiently demonstrate a "systemic plan" or "artful plot" to deceive with an objective goal or end in mind on each occasion." *Id*. at 760.

The purpose of the statute is "to raise lower grade multiple felony thefts to a single higher grade felony charge." *Id*. at 757. It applies to any theft of property or services. T.C.A. § 39-14-105(b)(1). Where a defendant has been charged with an aggregated theft offense, the jury must determine that the defendant committed at least two of the individual theft offenses; whether the offenses arose "from a common scheme, purpose, intent or enterprise"; and the aggregate value of the property stolen. *Jones*, 589 S.W.3d at 761; *see* T.C.A. § 39-14-105(b)(2) ("The monetary value of property from multiple criminal acts which are charged in a single count of theft of property shall be aggregated to establish value under this section."). As relevant here, if the aggregate amount of property is between $60,000 and $250,000, the aggregate theft is classified as a Class B felony. T.C.A. § 39-14-105(a)(5).

The jury found Defendant guilty of more than two counts of theft. The State asserts that the evidence is sufficient to support Defendant's aggregate theft convictions because the thefts arose from a common scheme or plan. Defendant exercised control of the victims' vehicles at the same location, his shop in Lewisburg. With each customer, Defendant executed a contract containing a clause that customers would forfeit any money paid or trade given if they attempted to retrieve their vehicles before the work was

completed. Defendant disassembled customers' cars without doing further work or repairs, and in several cases, left the vehicles unprotected from the weather, resulting in more damage from rust. Defendant was difficult to contact and gave assurances that work was being completed when it was not. Defendant kept customers' unrestored and unpainted vehicles long past the anticipated completion dates.

We conclude that the proof was sufficient for the jury to have found beyond a reasonable doubt that the thefts arose from a common scheme, purpose, intent, or enterprise. The jury found the aggregate value of the stolen property to be $134,990, making it a Class B felony, *see id.* § 39-14-105(a)(5), and the trial court sentenced Defendant to 20 years' confinement.

Double Jeopardy and Merger

The State observes in a footnote in its brief that Defendant, pro se, does not raise a double jeopardy issue on appeal, but the State suggests that Defendant's individual theft convictions merge into Count 37. We agree. The jury convicted Defendant on 24 counts of theft, which amounts the jury aggregated for the purpose of determining the grade of theft in Counts 37 and 38. The trial court merged certain individual theft convictions as well as the two counts of aggregate theft, but the court did not merge the individual theft convictions into the aggregated theft conviction.

Principles of double jeopardy bar Defendant's convictions for both individual theft and aggregated theft. Tennessee Code Annotated section 39-14-105(b) allows for aggregation of separate theft offenses into a "*single*" count, and subsection (a) "provides the *punishment* for the offenses of theft. These offenses are punished according to the value of the property or services obtained." T.C.A. § 39-14-105, Sentencing Comm'n Cmts. (emphasis added). As explained in *Jones*, the purpose of the aggregation statute was to allow a higher grade of theft. 589 S.W.3d at 757. However, convictions for both the lower grade thefts and the aggregated theft would result in multiple punishments for the same act.

Defendant's individual theft convictions should have merged into the aggregated theft conviction. Accordingly, on remand the judgments of conviction for theft in Counts 1, 2, 3, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 18, 19, 22, 23, 24, 25, 28, 29, 30, 35, and 36 should indicate that these 24 counts are merged into a single count of aggregate theft in Count 37. Each merger should be noted on the "Merged with Count" line, located on the first page of each of the 24 judgment forms.

Subject Matter Jurisdiction

Defendant asserts that the trial court lacked subject matter jurisdiction and that his case involved contract disputes that should have been resolved in civil court. The State responds that the trial court had subject matter jurisdiction. We agree with the State.

Subject matter jurisdiction is "the power of a court to adjudicate the particular category or type of case brought before it[,]" and it cannot be waived. *See Abdur'Rahman v. State*, 648 S.W.3d 178, 187 (Tenn. Crim. App. 2020) (citing *Turner v. Turner*, 473 S.W.3d 257, 269 (Tenn. 2015). "'Subject matter jurisdiction involves the nature of the cause of action and the relief sought, and can only be conferred on a court by legislative or constitutional act.'" *Abdur'Rahman*, 648 S.W.3d at 187 (quoting *State v. Cawood*, 134 S.W.3d 159, 163 (Tenn. 2004)). Whether a court has subject matter jurisdiction is a question of law, and our review is de novo with no presumption of correctness. *Cawood*, 134 S.W.3d at 163 (internal quotation omitted).

Tennessee Code Annotated section 16-10-102 explicitly provides that "the circuit court has exclusive original jurisdiction of all crimes and misdemeanors, either at common law or by statute[.]" T.C.A. § 16-10-102; *Haynie v. Bell*, No. M2006-02752-CCA-R3-CV, 2007 WL 1792534, at *6 (Tenn. Crim. App. June 22, 2007) (citing *State v. Booher*, 978 S.W.2d 953, 597 (Tenn. Crim. App. 1997)), *no perm. app. filed*. Here, theft is clearly a criminal offense under Tennessee law, and the trial court had subject matter jurisdiction over this offense. *See* T.C.A. § 39-14-104.

Remaining Claims Waived

Finally, Defendant contends that Detective McClain improperly investigated his case and interfered in his contracts and that the prosecutor improperly altered certain photographs to black and white. The State asserts that Defendant has waived consideration of these issues. We agree with the State.

Generally, appellate review extends only to issues presented below, and parties waive issues raised for the first time on appeal. *State v. Leath*, 461 S.W.3d 73, 108 (Tenn. Crim. App. 2013) (citing Tenn. R. App. P. 3(e), 36); *see* Tenn. R. App. P. 13(b). Defendant did not raise these issues at trial or in his motion for new trial.[3] Therefore, Defendant has waived appellate review of these issues. Moreover, we decline to extend plain error review to these issues because Defendant does not assert plain error exists and, consequently, has not carried his burden of persuading this Court that the error was of sufficient magnitude that it probably changed the outcome of the trial. *See State v. Bledsoe*, 226 S.W.3d 349,

[3] In his pro se "motion for new counsel" filed pretrial and his pro se "motion for dismissal of counsel" filed post-trial, Defendant makes claims regarding the adequacy of the investigation and states that in his discovery materials, Defendant received "only blurry and grainy black and white copies [of photos] which is not what the State has."

354-55 (Tenn. 2007) (citing *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994)).

CONCLUSION

Based on the foregoing, we affirm the judgments of the trial court but remand for merger of the theft convictions into the single aggregate theft conviction. Because the State, in its discretion, chose to prosecute Defendant ultizing the theory incorporated by the aggregate grading of theft, proscribed in Tennessee Code Annotated section 39-14-105(b), Defendant here stands convicted of one single act of theft of property, with a value of $60,000 or more, a class B felony.

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TIMOTHY L. EASTER, JUDGE