IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE 1995 SESSION

STATE OF TENNESSEE,	)	NO. 02C01-9410-CR-00237
	)	
Appellee	)	MADISON COUNTY
	)	
V.	)	HON. FRANKLIN MURCHISON
	)	JUDGE
JAMES BRUGGEMAN,	)	
	)	(Theft and Criminal Impersonation)
Appellant	)	

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OPINION FILED: _____

AFFIRMED

Mary Beth Leibowitz
Special Judge

OPINION

This is an appeal as of right by the appellant, James Bruggeman, following a jury verdict finding him guilty of theft and criminal impersonation. The appellant argues that:

(1) The evidence was insufficient to support a verdict of guilty.

(2) The trial court erred in allowing the State to present demonstrative evidence without establishing a proper chain of custody.

(3) The trial court failed to sentence the appellant in a timely manner in accordance with Tennessee Code Annotated section 40-35-209.

(4) The trial court gave the appellant an excessive sentence after determining that there were no significant enhancing or mitigating factors.

Following a review of the record, we affirm the trial court.

The evidence at trial established that on April 12, 1993, a 1993 Mediterranean green Dodge Dynasty automobile was stolen in Memphis from William Larry Homsley. The automobile had been provided to Mr. Homsley by his employer. Mr. Homsley testified that he parked his automobile near the front door of a Mapco convenience store shortly after 1:00 p.m. and went into the store. He left his keys in the car. Approximately three to five minutes later, Homsley exited the store and found his car missing. An unidentified man came up to Homsley and said, “Well, I seen a guy that was standing over by the phone booth with what seemed to be a sleeping bag or a little bedroll, run over to the car, look in it, throw his bedroll in it, jump in the car and drive off.” Homsley testified that he recalled seeing a man standing at the phone booth by the corner of the store when he first drove into the convenience store parking lot. He described that man as white, wearing shabby clothes, and wearing a cap covering long hair. Homsley testified that he took possession of the automobile in January of 1993, and that it had a value of $18,000. He further testified that a

telephone had been mounted inside the automobile. He also testified that he gave no one permission to take his car.

Four days after the theft, Homsley received a telephone call from the Madison County Sheriff's's Department advising him that his automobile had been recovered. Homsley visited Bob Parker's Service Center in Jackson, Tennessee, where his car had been towed and discovered that the automobile was muddy, had been scratched and scraped, and that all of the files he kept in the car had been "trashed." The car phone and mount were missing as well as his camera and checkbook. When he first viewed the car after its recovery, Homsley also found items that did not belong to him inside the car. These items included a food processor, a sleeping bag, a motel key, several items of clothing that were still in their original packaging, several papers, and a Western Union money transfer with the appellant's name on it. Homsley subsequently turned these items over to Madison County Sheriff's investigator, David Woolfork.

Sergeant Asa Duncan of the Madison County Sheriff's Department testified that he responded to a call on April 15, 1993, concerning an automobile that was parked in a field off Highway 412 East in Madison County. Sergeant Duncan testified that the car was some thirty yards off the road in a very muddy field, and that when he approached the car, the windows were fogged. Duncan said that when he walked up to the driver's window, the appellant was found sleeping in the automobile. After awaking the appellant, Duncan asked the appellant to show his hands and open the car door. The appellant complied. When asked by Sgt. Duncan why he was parked in the field, the appellant told him that he had had too much to drink the night before and had pulled over in the field to sleep it off. When asked to produce identification, the appellant responded that he had none. When asked to give his name and date of birth, the appellant advised Sgt. Duncan that his name was John Birch, and that his date of birth was April 18, 1965. He gave his address as Denver, Colorado. Sergeant

Duncan saw no one else around the automobile, and observed no footprints or car tracks nearby.

At about that time, Sgt. Duncan was notified over his radio that the car had been stolen in Memphis. At that point, the appellant was arrested and placed in the patrol car. While waiting on a wrecker to arrive to tow the automobile, Duncan briefly looked through the automobile to verify that no drugs, weapons or contraband were inside, and while conducting this brief inspection, several business cards and other items were found which caused Duncan to eventually learn that the owner of the automobile was Mr. Homsley.

On cross-examination, Sgt. Duncan testified that the appellant told him an unknown white male had been with him, but the appellant said he did not know the other man's name. The appellant also said that he and the other man had met at a bar in Memphis. Sergeant Duncan said that the defendant may have also advised him that he fought with the other man because the other man's girlfriend had stolen his wallet, and that the other man left after the fight.

Investigator David Woolfork of the Madison County Sheriff's Department testified that he processed the appellant at the sheriff's department following his arrest. Woolfork testified that the appellant identified himself as John Birch and signed four fingerprint cards to that effect. After taking the fingerprints of the appellant, Woolfork faxed those fingerprints and a photograph to the FBI office in Washington. Woolfork then received information indicating the appellant's real name was John Allen Bruggeman, and that his actual date of birth was April 18, 1966. When confronted by Woolfork with this information, the appellant laughed and stated, "Well you had to work a little bit."

Finally, Woolfork testified that while in custody, the appellant had, on several occasions, asked for the food processor found in the car. He testified that the

appellant advised him that the other man owed him the food processor because he had stolen the appellant's wallet.

No evidence was introduced on behalf of the appellant, and based on the foregoing, the appellant was found guilty of theft of property over ten thousand dollars ($10,000) and criminal impersonation.

The appellant argues that the State did not present evidence which would support a finding beyond a reasonable doubt that he knowingly obtained or exercised control over the vehicle. He argues that the evidence, in the light most favorable to the State, established only that he was found sleeping in the vehicle after a night of drinking and fighting.

On appeal, the appellant bears the burden of showing why the proof at adduced at trial was insufficient to support the verdict of the trier of facts. State v. Gregory, 862 S.W.2d 574, 577 (Tenn. Crim. App. 1993).

When an appellant challenges the sufficiency of the convicting evidence, the appellate court is to review the record to determine if the evidence adduced at trial is sufficient to support the jury's verdict beyond a reasonable doubt. T.R.A.P. 13(e); State v. Gregory 862 S.W.2d at 577. This Court will not disturb a guilty verdict for lack of sufficient evidence unless the facts and any inferences therefrom are insufficient, as a matter of law, for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. Id. Questions concerning credibility of witnesses, the weight to be given to the evidence, as well as factual issues raised by the evidence, are resolved by the trier of fact, not this Court. State v. Carter, 832 S.W.2d 300, 301 (Tenn. Crim. App. 1991).

This Court does not reweigh or reevaluate the evidence and is required to afford the State the strongest legitimate view of the evidence contained in the record, as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Gregory, 862 S.W.2d at 577. A verdict of guilt rendered by the trier of fact

and approved by the trial judge accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the State's theory. State v. Smith, 868 S.W.2d 561, 568-69 (Tenn. 1983). A verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt. Id.

The offense of theft of property requires a showing that the defendant, with the intent to deprive the owner of the property, knowingly obtained or exercised control over the properties without the owner's effective consent. Tenn. Code Ann. § 39-14-103 (1991 Repl.). It has long been the law in this State that proof of the possession of recently stolen goods, if not satisfactorily explained, gives rise to the inference that the possessor has stolen them. Bush v. State, 541 S.W.2d 391 (Tenn. 1976); State v. Land, 681 S.W.2d 589, 591 (Tenn. Crim. App. 1984).

The evidence in this case established that the appellant was found in possession of the automobile, stolen only three days earlier, and upon his arrest he gave the police a false name and date of birth. The evidence also established that several items were found in the automobile not belonging to the victim, but belonging to the appellant. Specifically, there was a food processor claimed to be owned by the appellant and a Western Union money transfer with the appellant's name appearing on it. Additionally, the appellant admitted to Sgt. Duncan that he had been in Memphis, where the car had been stolen, a few days before he was arrested.

Weighed against this evidence was the appellant's explanation that he had met another man at a bar in Memphis, the other man's girlfriend had stolen his wallet, he had fought with the other man, and the other man had left the car. The appellant was unable to provide the name for this other man, however, and Sgt. Duncan testified that he was unable to locate any footprints or car tracks around the stolen vehicle when he arrested the appellant.

Under these circumstances, we conclude that the evidence was more than sufficient to support the defendant's convictions for theft of property with a value in

excess of ten thousand dollars ($10,000) and for criminal impersonation. This issue is without merit.

Next, the appellant argues that the trial court erred in allowing the State to present demonstrative evidence without establishing a proper chain of custody. The appellant contends that the chain of custody was not established as to the identity and integrity of the objects located within the car. The State argues that the only item introduced at the trial to directly implicate the appellant was the Western Union money transfer found in the stolen vehicle. The item directly links the appellant and based upon the appellant's own argument that a chain of custody would not be necessary if the object were easily identifiable, this object was properly before the jury. With regard to the food processor, its label indicated that it had been purchased at a K-Mart in Memphis which created an inference that the appellant had been in Memphis prior to his arrest. Moreover, the record does not indicate that the appellant made a timely objection to the admission of the food processor; thus this issue has been waived. Even if there was error in its introduction, it is harmless in the light of the appellant's overwhelming guilt. Bolen v. State, 544 S.W.2d 918 (Tenn. Crim. App. 1976).

The appellant next asserts that he was not sentenced in a timely manner and was prejudiced by that delay for the reason that he was incarcerated in the local jail awaiting sentencing, and that since he was not in the custody of the Department of Corrections was not eligible for time credit for good behavior. He also complained because of difficulty with certain civil litigation in which he was involved. This Court finds that the delay in sentencing was partially due to the appellant's repeated requests to represent himself, followed by his withdrawal of those requests, and his insistence upon certified copies of certain documents from out of state in support of the presentence report. All such documents were subsequently obtained and found to be accurate.

With regard to his claim of prejudice in the delay in transferring him to the Department of Corrections so that he could begin to earn good-time credits, we note that the acceptance by the Department of Corrections of any sentenced offender is not within the purview of the trial court but within the purview of the Department of Corrections, and there is no guarantee that the appellant would begin to earn those credits at any specific time, nor that the appellant's behavior would be such as to earn credits. Further, because the appellant may have been inconvenienced by some civil litigation, such inconvenience does not amount to prejudice sufficient to require reversal. State v. Jones, 729 S.W.2d 683 (Tenn. Crim. App. 1986); State v. Johnson, C.C.A. No. 01C01-9208-CC-00258, opinion filed February 18, 1993, at Nashville; State v. Boone, C.C.A. No. 01C01-9202-CC-00048, opinion filed January 7, 1993, at Nashville. In fact, the record in this case indicates that the appellant did benefit from the delay because after the certified copies of certain records were obtained from California, the trial judge concluded that the appellant was not a Range III offender as urged by the State, but was in fact a Range II offender, and sentenced him accordingly. The appellant was not prejudiced by delay in his sentencing, and this issue is without merit.

The last issue presented by the appellant is that the court disregarded certain mitigating factors and improperly sentenced the appellant to the maximum sentence within his range. The appellant asserts that the trial judge did not find any enhancing or mitigating factors, and thus should have sentenced the appellant to the minimum within Range II. This Court reviews the trial judge's sentence de novo with the presumption that the determination of the trial court was correct. Tenn. Code Ann. § 40-35-401(d) (1990Repl.). See also State v. Byrd, 861 S.W.2d 377 (Tenn. Crim. App. 1993). Procedurally, the trial court is to start with the statutory minimum sentence and enhance the sentence within the range as appropriate for enhancement factors which are found, and then reduce the sentence as appropriate for mitigating

factors present. The weight to be given to each mitigating or enhancing factor is left to the trial court's discretion. Tenn. Code Ann. § 40-35-210 (1990Repl.); State v. Moss, 727 S.W.2d 229 (Tenn. 1986). The burden is upon the appellant to show that the sentence imposed was improper. Tenn. Code Ann. § 40-35-401(d) (1990Repl.); State v. Ashby, 823 S.W.2d 166 (Tenn. 1991); State v. Fletcher, 805 S.W.2d 785 (Tenn. Crim. App. 1991). After considerable discussion and review of the record, the trial court determined that the defendant should be sentenced as a multiple offender based upon his two prior convictions in the State of Colorado. The trial court refused to sentence the appellant as a persistent offender because it was not sure whether previous convictions received in California were felonies or were in fact misdemeanors for purposes of determining the appropriate range. However, the trial court did find that the convictions from California, as well as several others from other states, which are a part of the record, indicated that the defendant had an extensive criminal record and was in fact on parole from the State of Colorado at the time he committed this offense. It is therefore this court's opinion that the extensive criminal record of the appellant above the requirement for Range II justified the sentence imposed by the trial court.

Having found no error in the record, the judgment of the trial court is in all respects affirmed.

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MARY BETH LEIBOWITZ, SPECIAL JUDGE

CONCUR:

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PAUL G. SUMMERS, JUDGE

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WILLIAM M. BARKER, JUDGE