IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL 1996 SESSION

FILED

August 16, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	
APPELLEE,	)	
	)	No. 01-C-01-9507-CR-00231
	)	
	)	Davidson County
v.	)	
	)	Seth Norman, Judge
	)	
	)	(Theft Over $500)
RONNIE GORDON,	)	
also known as BOBBY BROWN,	)	
	)	
APPELLANT.	)	

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OPINION FILED:_____

AFFIRMED

Joe B. Jones, Presiding Judge

O P I N I O N

The appellant, Ronnie Gordon, also known as Bobby Brown, was convicted of theft over $500, a Class E felony, by a jury of his peers. The trial court found that the appellant was a career offender and imposed a sentence consisting of confinement for six (6) years in a regional workhouse. The appellant presents two issues for review. He contends that the evidence is insufficient to support his conviction. He also contends that the sentence imposed by the trial court is excessive. After a thorough review of the briefs, the record, and the law governing the issues presented for review, it is the opinion of this Court that the judgment of the trial court should be affirmed.

On the evening of February 2, 1994, the victim, Charles Sullivan, parked his 1983 Cadillac in the parking lot of the Maxwell House Hotel in Nashville. When he went to his vehicle the following morning, he discovered that it had been stolen. He subsequently notified the Metropolitan Police Department of the theft.

Officer Killingsworth of the Metropolitan Police Department served as a security officer for a business after his shift as a patrolman. He stopped by the business and talked to a company official. As he was leaving, he noticed a Cadillac proceeding to the rear of the business. He knew that the vehicle did not belong to a company employee. The officer subsequently went to the area where the Cadillac was parked, saw the appellant exit the vehicle, walk to a truck, and return to the Cadillac with something in his hand. The officer exited the patrol car, walked toward the appellant, and told the appellant: “Come here, what are you doing?” The appellant walked to the Cadillac, got inside it, and drove away. Officer Killingsworth pursued in his patrol car.

The appellant traveled approximately two miles before he jumped from the vehicle and began running through the neighborhood. Officer Killingsworth continued to pursue the appellant in his patrol car. When he approached the appellant, he exited the patrol car and chased the appellant on foot. A struggle ensued when the officer tried to apprehend the appellant. The officer arrested the appellant. The appellant told the officer he did not know who owned the vehicle.

Once the report of the victim was channeled to the auto theft bureau, it was discovered that the Cadillac being driven by the appellant had been stolen. The appellant

was charged with theft over the value of $1,000.

The victim testified that the Cadillac was worth $1,500. Later, he testified that the vehicle was worth between $800 and $1,300. The vehicle had been driven almost 200,000 miles. The rear bumper was damaged before it was stolen.

I.

When an accused challenges the sufficiency of the convicting evidence, this Court must review the record to determine if the evidence adduced at trial is sufficient "to support the finding by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). This rule is applicable to findings based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Dykes, 803 S.W.2d 250, 253 (Tenn. Crim. App.), per. app. denied (Tenn. 1990).

In determining the sufficiency of the convicting evidence, this Court does not reweigh or reevaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App.), per. app. denied (Tenn. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859, cert. denied, 352 U.S. 845, 77 S.Ct. 39, 1 L.Ed.2d 49 (1956). To the contrary, this Court is required to afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d at 835. In State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973), our Supreme Court said: "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves conflicts in favor of the theory of the State."

Since the verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused, as the appellant, has the burden in this Court of

illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the facts contained in the record, coupled with the reasonable inferences that can be drawn from the evidence, are insufficient, as a matter of law, for a rational trier of fact to find the accused guilty beyond a reasonable doubt. Tuggle, 639 S.W.2d at 914.

The evidence contained in the record is sufficient to support a finding by a rational trier of fact that the accused was guilty of theft over $500 beyond a reasonable doubt. Tenn. R. App. P. 13(e); see Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A person commits the offense of theft if the person "exercises control over the property [of the owner] without the owner's effective consent." Tenn. Code Ann. § 39-14-103. In this case, the victim's Cadillac was stolen. The appellant was in possession of the vehicle the next morning at approximately 9:00 a.m. He did not have the victim's permission to operate the motor vehicle. The victim testified that the Cadillac was worth between $800 and $1,300. In addition, the appellant fled. The jury was entitled to draw an inference that the appellant fled because he had committed this offense and did not want to be apprehended.

This issue is without merit.

II.

The appellant contends that the sentence imposed by the trial court is excessive. He argues that "he should not have been sentenced to the maximum one can receive in the E felony range and that a total term of 6 years is excessive under the facts of the case. The court should have taken into consideration that this act was committed without the use of threat of violence and other such mitigating factors."

Unfortunately, this Court is unable to review this issue. The record does not contain a transcript of the sentencing hearing or the presentence report. State v. Hayes, 894 S.W.2d 298, 300 (Tenn. Crim. App. 1994), per. app. denied (Tenn. 1995); State v. Ivy, 868 S.W.2d 724, 728 (Tenn. Crim. App. 1993); State v. Brown, 756 S.W.2d 700, 705 (Tenn.

Crim. App.), per. app. denied (Tenn. 1988); State v. Beech, 744 S.W.2d 585, 588 (Tenn. Crim. App.), per. app. denied (Tenn. 1987); State v. Wayne Eugene Boring, Knox County No. 03-C-01-9307-CR-00224 (Tenn. Crim. App., Knoxville, February 9, 1994); State v. Billy Jackson Coffelt and William Todd Caldbeck, Hickman County No. 01-C-01-9212-CC-00387 (Tenn. Crim. App., Nashville, November 18, 1993). There are numerous other opinions that reach this same result. Instead, this Court must conclusively presume that the sentence imposed by the trial court was correct. Brown, 756 S.W.2d at 705; Beech, 744 S.W.2d at 588; State v. Jones, 623 S.W.2d 129, 131 (Tenn. Crim. App.), per. app. denied (Tenn. 1981).

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JOE B. JONES, PRESIDING JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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DAVID G. HAYES, JUDGE