

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

MARCH 1996 SESSION

<p>FILED</p> <p>July 26, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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STATE OF TENNESSEE,)
)
 APPELLEE,)
)
 v.)
)
 LAVON JONES,)
)
 APPELLANT.)

No. 02-C-01-9504-CR-00105
 Shelby County
 Honorable Bernie Weinman, Judge
 (Theft over \$1,000)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

OPINION

The appellant, Lavon Jones, was convicted of theft of property over \$1,000, a Class D felony, by a jury of his peers. The trial court imposed a Range I sentence consisting of confinement for two (2) years in the Shelby County Correctional Center. The trial court suspended the entire sentence and placed the appellant on probation for two (2) years. The appellant was also ordered to pay restitution in the amount of \$2,500. The appellant contends that the evidence is insufficient, as a matter of law, to support a finding by a rational trier of fact that he is guilty of theft beyond a reasonable doubt. Based upon a thorough reading of the record, the briefs of the parties, and the law governing this issue, it is the opinion of this Court that the judgment of the trial court should be affirmed.

On May 26-27, 1994, Malcolm Garrett was working as a shift supervisor at NKC, a manufacturer of conveyer systems used in automobile manufacturing. The appellant was also employed by NKC but was on vacation at this time. Around midnight, Garrett saw the appellant enter the plant. The appellant asked him where he could find the regular supervisor. He was advised that the regular shift supervisor was on vacation. Garrett watched as the appellant obtained a forklift and drove away. Another employee observed the appellant driving the forklift. Garrett could tell by the sound of the forklift that the appellant was traveling to another part of the factory. Shortly thereafter, Garrett saw the appellant using the forklift to load a welding device into the bed of a pickup truck. Garrett asked the appellant what he was doing. The appellant replied, "You shouldn't have come outside. You should have just stayed in the plant, you know, then you wouldn't have to see this." Garrett told the appellant, "You can't take the welder like that." Garrett watched as the appellant drove away with the welder. While the company allowed employees to borrow equipment from the factory with permission, the appellant did not have permission to borrow the welder. Moreover, the appellant never returned the welder.

Mr. Hatcher, the personnel manager at NKC, testified that the approximate value of the welder was \$2,700. The company had rented the welder for sometime. The company had to pay the owner \$2,500 for the stolen welder. A catalog listing the welder was entered into evidence. The welder was never recovered.

The appellant testified in support of his defense. He denied stealing the welding

device. He explained that he had removed a motor and transmission from a truck earlier in the day. He placed the motor and transmission in the bed of his pickup truck. As a result, the welding machine could not have fit in the bed of the truck. The appellant admitted that he went to the NKC plant on the date in question to visit a friend who had moved to the night shift. He also had uniforms that he wanted to leave at the plant.

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 of the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e).

This rule is applicable to findings of guilt 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 all conflicts in favor of the theory of the State."

Since a 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 verdicts 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 are insufficient, as a matter of law, for a rational trier of fact to find that the accused is guilty beyond a reasonable doubt. Tuggle, 639 S.W.2d at 914.

Before an accused can be convicted of theft of property, the State of Tennessee must prove beyond a reasonable doubt the accused (1) knowingly obtains control of the property, (2) with the intent to deprive the owner of the property, and (3) does so without the consent of the owner of the property. Tenn. Code Ann. § 39-14-103. In this case, the evidence clearly established that the appellant put the welder in the back of his truck and drove away without permission from NKC. The appellant never returned the welder.

JOE B. JONES, PRESIDING JUDGE

CONCUR:

GARY R. WADE, JUDGE

WILLIAM M. BARKER, JUDGE