

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

DECEMBER 1996 SESSION

STATE OF TENNESSEE,)
)
 APPELLEE,)
)
 v.)
)
 EDDIE JOE MANN,)
)
 APPELLANT.)

No. 02-C-01-9512-CC-00395

Dyer County

Joe G. Riley, Judge

(Theft)

FILED
Jan. 16, 1997
Cecil Crowson, Jr.
 Appellate Court Clerk

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OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

OPINION

The appellant, Eddie Joe Mann, was convicted of theft under \$500, a Class A felony, by a jury of his peers. The trial court imposed a sentence consisting of a \$1,000 fine and confinement for eleven months and twenty-nine days in the Dyer County Jail. The appellant is required to serve twenty (20) days of the sentence with the balance of the sentence suspended. In this Court, the appellant contends the evidence introduced during the trial is insufficient, as a matter of law, to support his conviction, the trial court erred by permitting the state to cross-examine him about the number of guns he observed when Scotty Twitty approached him, and the sentence imposed by the trial court is excessive. After a thorough review of the record, the briefs of the parties, and the authorities governing the issues presented for review, it is the opinion of the Court that the judgment of the trial court should be affirmed.

During the early morning hours of November 3, 1994, there was a burglary at the Homestead in Union City, Tennessee. Two pistols were among the items stolen. Later, Scotty J. Twitty approached the appellant and asked if he was interested in purchasing a pistol. He showed the appellant two pistols. The appellant saw two or three additional pistols inside Twitty's car. The appellant told Twitty he was not interested because he did not have sufficient funds to purchase one of the weapons. However, he told Twitty he had friends who might be interested in purchasing a pistol.

The appellant and Twitty went to Robert Earp, who owned a used car lot. Earp purchased a .44 Colt pistol, which had been stolen from the Homestead, for \$200. The gun changed hands several times during a short period of time. The Dyer County Sheriff's Department recovered this weapon from the last person who purchased the weapon.

According to the appellant, Twitty gave him a .38 caliber pistol, which had been stolen from the Homestead. The appellant let a friend, Kenneth Chism, take possession of the pistol. Chism wanted to test fire the pistol before he purchased it. The Sheriff's Department recovered the weapon from Chism.

The Homestead paid \$425.41 for the .44 caliber pistol and \$112.99 for the .38 caliber pistol.

I.

The appellant contends the State of Tennessee failed to establish he acted knowingly and with intent to deprive the owner of the weapons and he exercised control over the pistols. The State of Tennessee argues the evidence is clearly sufficient to support the jury's verdict.

When an accused challenges the sufficiency of the convicting evidence, this Court must review the record to determine if the evidence adduced at the 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 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 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 to evidence, and 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 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 and any inferences which may be drawn from the facts 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.

In this case, the evidence is clearly sufficient to support a finding by a rational trier of fact that the appellant was guilty of theft under \$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). The evidence established the weapons were stolen the same day Twitty approached the appellant. It was strange how Twitty found him at the residence of another person whose vehicle he was repairing. The appellant admitted he knew Twitty; Twitty had previously sold him an old motor vehicle. The appellant was placed on notice the pistols may be stolen when he saw four or five pistols in Twitty's vehicle, and Twitty was attempting to sell the pistols for less than the fair market value of the pistols. The appellant took Twitty to see Earp, he negotiated the sale with Earp, and the appellant gave Chism the other pistol. According to the appellant, Twitty gave him the .38 caliber pistol "out of the goodness of his heart." The value of the pistols exceeds \$500.

This issue is without merit.

II.

The appellant contends the trial court committed error of prejudicial dimensions by permitting the assistant district attorney general to ask him if he saw more than two pistols in Twitty's motor vehicle. The appellant testified he saw a total of four or five pistols in Twitty's possession.

This issue has been waived. The appellant has failed to cite authority to support the argument advanced for this issue. Tenn. R. App. P. 27(a)(7).

III.

The trial court sentenced the appellant to pay a \$1,000 fine and serve eleven

months and twenty-nine days in the Dyer County Jail. However, the trial court suspended all but twenty days of the sentence, and the court placed the appellant on probation for the balance of the sentence. The appellant contends the sentence was excessive. He argues the trial court should have suspended the entire sentence and placed him on probation.

Based upon a de novo review of the record, this Court is of the opinion the sentence imposed by the trial court was appropriate. The court's comment regarding the ability of the appellant to rehabilitate himself -- a negative factor -- in essence is a comment upon the appellant's credibility. Lack of candor by an accused can result in the denial of an alternative sentence.

In this case, the trial court imposed an alternative sentence. The trial court could have denied an alternative sentence due to the appellant's lack of candor. Instead, the court imposed a lenient sentence. The court was justified in requiring the appellant to serve a part of the sentence based upon his lack of candor.

JOE B. JONES, PRESIDING JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

JERRY L. SMITH , JUDGE