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Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-001579-MR

BOBBY RILEY — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DOUGLAS M. STEPHENS, JUDGE
ACTION NO. 04-CR-00183-001

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; WINE, JUDGE; PAISLEY, SENIOR JUDGE.[1]

PAISLEY, SENIOR JUDGE: This is an appeal from a final judgment of the Kenton Circuit Court, which sentenced Bobby Riley to serve one year after he was found guilty of complicity in receiving stolen property valued at $300.00 or more. Riley argues that the Commonwealth failed to provide sufficient evidence of (1) his complicity in the commission of the offense, (2) the value of the stolen items, and (3) the venue where the crime occurred.

[1] Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Riley's conviction stemmed from an incident where various items were stolen from parked cars in the Lakeside Park area of Kenton County. On January 26, 2004, Deputy Jeremy Adams of the Kenton County Sheriff's Office received a request for assistance from Lakeside police officers. They had received an anonymous complaint that a car was being driven slowly in a suspicious manner in the Lakeside Park area. When Deputy Adams arrived, the vehicle had already been stopped. The car was parked in front of a dark house. There were two open, forty-ounce bottles of beer on the front floorboard on the passenger's side. There were also footsteps in the snow leading from the passenger's door of the car to the rear of the darkened house. Deputy Adams questioned the driver and sole occupant of the car, Henrietta Bravard. Bravard consented to a search of the car, which yielded several items including a compact disc player, several compact discs, a leather computer bag, a laptop computer, a DVD drive and a label maker. The articles had identification on them which enabled Bravard to contact their owners, Donald Starnes and Shawn Traylor, who confirmed that the items had been stolen from their cars. Bravard was arrested and made a statement to the police that implicated Bobby and Stanley Riley in the thefts. Bobby Riley was picked up shortly thereafter, arrested and charged with complicity in receiving stolen property.

At Riley's trial, Bravard testified that the Rileys had been in the car with her that evening, and that they had driven around looking for "Mike's house." Bobby Riley had made her stop a couple of times, while he attempted to visit "Mike." She also recalled Bobby Riley throwing something into the back seat which she described as a

cardboard box and a bunch of papers. When she was asked whether she saw Riley place any of the stolen items in the car, she explained that she could not see anything because she was resting her head on the steering wheel due to an earlier head injury. The jury found Riley guilty of the complicity charge, and he received a sentence of one year.

On appeal, Riley argues that the trial court erred in failing to grant his motion for a directed verdict based on insufficiency of the evidence.

Our standard of review with respect to the sufficiency of evidence to support a criminal conviction 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.

Potts v. Commonwealth, 172 S.W.3d 345, 349 (Ky. 2005) *citing Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 2788-89, 61 L.Ed.2d 560 (1979).

The statute which defines the elements of the offense of receiving stolen property states in pertinent part as follows:

> (1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, or having reason to believe that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.
>
> (2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.
>
> (3) Receiving stolen property is a Class A misdemeanor unless the value of the property is three hundred dollars ($300) or more, in which case it is a Class D felony[.]

KRS 514.110.

> Complicity is defined as follows:
>
> (1) A person is guilty of an offense committed by another person when, with the intention of promoting or facilitating the commission of the offense, he:
>
> (a) Solicits, commands, or engages in a conspiracy with such other person to commit the offense; or
>
> (b) Aids, counsels, or attempts to aid such person in planning or committing the offense; or
>
> (c) Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.

KRS 502.020.

Riley contends that the Commonwealth failed to prove that he had placed the stolen items in Bravard's car, and that it failed to introduce testimony identifying the property found in the car as the same property that was stolen from the victims.

The jury heard that Riley had been riding with Bravard in the car, that the car made suspicious stops at Riley's request, at which time he exited the car, and that he placed a box in the back of the car. Bravard was unable to explain at trial the inconsistency between her trial testimony (that she did not see Riley place anything in the car except the cardboard box and some papers) and her statement to police on the night of the arrest that the Rileys were in the area breaking into vehicles, stealing items and placing the stolen items into her vehicle. The essential elements of a crime may be proven by circumstantial evidence. *See Johnson v. Commonwealth*, 184 S.W.3d 544,

548-49 (Ky. 2005). In Riley's case, ample circumstantial evidence was offered for a reasonable jury to infer that Riley had placed the stolen items in Bravard's car.

As to Riley's accompanying argument that insufficient evidence was offered to prove that the items found in the car were the items actually stolen from Starnes and Traylor, we note that Officer Adams found Starnes' business card inside the leather computer bag, which also contained the laptop computer, the DVD drive, and the label maker. Adams immediately called Starnes who confirmed that these were the items that had been stolen. There was also identification in the compact disc storage case recovered from Bravard's car which enabled Deputy Adams to contact Traylor, who confirmed that the compact disc case and compact disc player had been stolen from his car. Under these circumstances, a reasonable jury could conclude that the items found in Bravard's car were those belonging to Starnes and Traylor.

Riley next argues that the Commonwealth failed to establish the value of the stolen items with sufficient specificity to satisfy the requirement for a felony that the property be valued at over $300.00. The only evidence as to the value of the items came from the testimony of Traylor and Starnes. Traylor testified that his compact discs were worth "about $200.00" and his compact disc player was worth between $150.00 and $200.00. Starnes assigned the following values to his property: $250.00 for the DVD drive, $75.00 to $99.00 for the leather computer bag, $39.00 for the label maker, and $1500.00 for the laptop computer. Riley has acknowledged "that the testimony of the owner of stolen property is competent evidence as to the value of the property."

Commonwealth v. Reed, 57 S.W.3d 269, 270 (Ky. 2001) *citing Poteet v. Commonwealth*, 556 S.W.2d 893, 896 (Ky. 1977). The testimony of Traylor and Starnes was sufficiently detailed to establish the value of the stolen items: they testified with specificity as to the value of each individual item from their own personal knowledge. It was not necessary, as Riley contends, for the witnesses to provide information as to the brand of the items, the time of purchase or the purchase price.

Riley further argues, relying on *Commonwealth v. Reed*, 57 S.W.3d 269 (Ky.App. 2001), that while an owner may testify to the value of the items stolen, that testimony must be limited to items actually found in the defendant's possession. In other words, testimony by an owner that establishes a total value for all the items stolen, without regard for or limited to the items found in the defendant's possession, cannot support a conviction for receiving stolen property.

The *Reed* holding is inapplicable here. All of the items stolen from Traylor and Starnes were indisputably found in Bravard's possession, and Riley was found to be in complicity with her. The situation is clearly distinguishable from *Reed*, where only a few of the stolen items were found in the defendant's possession whereas the owner testified only as to the total value of all the items stolen. *Commonwealth v. Reed*, 57 S.W.3d at 271.

Finally, Riley argues that venue was not properly established because the Commonwealth failed to prove that the crime occurred in Kenton County.

> Venue must be proved, but since it does not affect the issue of guilt or innocence, although the instructions submit it as one

> of the elements to be proven beyond a reasonable doubt, in this jurisdiction it has been consistently held that **slight evidence**, supported by inferences and reasonable presumptions of knowledge by local jurors, **is sufficient**. . . .
>
> What is slight evidence may itself give rise to a difference of views. **If the evidence discloses the offense was committed in a city, town or village, or at or near some well-known landmark or public place, or in a particular district or locality, it has been regarded as sufficient. The reason is that the jury being of the vicinage are presumed to have knowledge of local geography.** It is recognized, however, that they may not know the location of private places, such as the homes of particular persons.

Woosley v. Commonwealth, 293 S.W.2d 625, 626 (Ky. 1956)(emphasis added; internal citations and quotation marks omitted).

The jury was repeatedly informed that the theft took place in the Lakeside Park area. They were also made aware that the call from Lakeside Park police regarding the suspicious car was answered by Jeremy Adams, a Kenton County Sheriff's Deputy. *See Justice v. Commonwealth*, 294 S.W. 1046 (Ky. 1927). This constituted sufficient evidence for the jury to infer that the crime was committed in Kenton County.

For the foregoing reasons, the final judgment and sentence of imprisonment imposed by the Kenton Circuit Court is affirmed.

COMBS, CHIEF JUDGE, CONCURS.

WINE, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

WINE, JUDGE, DISSENTING: Respectfully, I dissent from the majority opinion. As stated by the learned trial judge, the prosecution "made this case more difficult than it needed to be." At the conclusion of opening statements, the appellant's

counsel moved for a directed verdict because the Assistant Commonwealth's Attorney failed to state the elements of the crime charged against the appellant, including value, venue, and the name of the charged offense. RCr 9.42(a). However, the court properly denied the motion. *Hourigan v. Commonwealth*, 883 S.W.2d 497 (Ky.App. 1994).

The court reminded the Assistant Commonwealth's Attorney of the need to establish value after the appellant's counsel finished cross-examination of the first witness, Mr. Traylor. Without objection, the prosecutor then established the value of two items stolen from Traylor's auto.

Ms. Bravard testified the appellant and his brother Stanley got in and out of the car several times. She could not remember who placed a box filled with papers in the car, but thought the appellant might have. She never testified seeing either brother place any of the stolen items in her car. The arresting officers never testified that the stolen items were found in the box.

The Assistant Commonwealth's Attorney showed her a previously handwritten statement, however never used the statement properly for impeachment purposes or to refresh her recollection. Therefore, the content of the statement never became substantive evidence. KRE 801(a)(1). *Jett v.* Commonwealth, 436 S.W.2d 788 (Ky. 1969). *See also Hillard v. Commonwealth*, 158 S.W.3d 758, 766 (Ky. 2005). When asked by the prosecutor if she saw

Bobby "put something in the car," she responded, "according to this I did." The arresting officer was never recalled to impeach her with her statement made at the time of her arrest.

Mere presence at the scene of a crime is insufficient to implicate an individual in criminal activity. *Hayes v. Commonwealth*, 175 S.W.3d 574, 590 (Ky. 2005). *See also Moore v. Commonwealth*, 282 S.W.2d 613, 615 (Ky. 1955).

The appellant, who was arrested outside of the vehicle, was not in possession of any stolen items. The Commonwealth failed to introduce at trial any of the stolen items or pictures of same. Nor did either of the victims testify they saw the items recovered from the Bravard car. However, name tags on the stolen items allowed the investigating officers to contact the owners who confirmed the thefts.

I agree with the majority that a value of $300 was established by the testimony of the prosecuting witnesses, Traylor and Starnes. Further, circumstances established that Kenton County was the venue of the stop.

Thus, not only did the Commonwealth make the case more difficult than it needed to be, the Commonwealth also failed to establish a crucial element – that the appellant was ever in possession of the stolen items. Therefore, I would reverse and remand with directions to enter a directed verdict of acquittal.

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