

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GAYLEN DARRELL BOND,

Defendant-Appellant.

UNPUBLISHED

October 30, 2008

No. 280616

Saginaw Circuit Court

LC No. 06-027629-FH

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction of larceny by false pretenses between \$1,000 and \$20,000, MCL 750.218(4)(a). The trial court sentenced defendant as a third habitual offender, MCL 769.11, to a term of 24 months to 10 years in prison. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

The evidence presented at trial established that defendant falsely represented that he had an association with Safe Haven, a shelter, to obtain food items from Hidden Harvest, a nonprofit organization that distributed food to shelters and other assistance programs. Defendant contends on appeal that the prosecution introduced insufficient evidence of the fair market value of the items he took from Hidden Harvest. “The test for determining the sufficiency of evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt.” *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). “The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *Id.* at 400.

The prosecution introduced several lists detailing the items defendant accepted from Hidden Harvest in February and March 2006, which he did not deliver to Safe Haven. Additionally, the prosecution presented testimony by Patricia Galbraith, a part-owner and longtime employee of a Saginaw County market, whom the trial court certified as an expert qualified to estimate the fair market value of grocery items in Saginaw County. According to Galbraith, the listed items taken by defendant, most of which were beverages, had wholesale values between February and March 2006 totaling in excess of \$1300: the 52 cases of Pepsi products taken by defendant for his personal use valued \$803.40, and the quantities of Gatorade he took valued \$243.30.

Defendant theorized that the items he took were past their “sell-by dates,” and thus had fair market values less than estimated by Galbraith. But no evidence at trial specifically tended to demonstrate that the products taken by defendant in February and March 2006 had passed their sell-by dates, and a Hidden Harvest employee characterized the Gatorade and soda pop as “nonperishable.” Moreover, “[i]t is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002); see also *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006), aff’d 482 Mich 851 (2008) (observing that the prosecution need not negate every potential reasonable theory of innocence). In conclusion, the prosecution introduced ample evidence regarding the value of the items taken by defendant, and a rational juror viewing this evidence in the light most favorable to the prosecution reasonably could have determined beyond a reasonable doubt that defendant absconded with items valued at more than \$1,000.

Defendant also maintains that the trial court improperly limited his cross-examination of Galbraith, in violation of the Confrontation Clauses of the federal and Michigan constitutions, US Const, Am VI; Const 1963, art 1, § 20. Defendant complains that the trial court erred by sustaining the prosecution’s objections to defense counsel’s questions regarding sell-by dates. Because defendant did not object to the trial court’s rulings by asserting a violation of the Confrontation Clause, we consider his claim only to determine whether any plain error affected his substantial rights. *People v Walker (On Remand)*, 273 Mich App 56, 65-66; 728 NW2d 902 (2006).

“The right of cross-examination does not include a right to cross-examine on irrelevant issues and may bow to accommodate other legitimate interests of the trial process or of society.” *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). “(T)rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Id.*, quoting *Delaware v Van Arsdall*, 475 US 673, 679; 106 S Ct 1431; 89 L Ed 2d 674 (1986).

That the trial court allowed defense counsel to cross-examine other witnesses regarding the sell-by dates of the items defendant stole does not render improper the court’s limitation of the cross-examination of Galbraith. The previous trial witnesses had testified in limited respects about whether the items taken were in fact beyond their sell-by dates. The testimony of these witnesses, who were employees of Safe Haven or Hidden Harvest, established that some products Hidden Harvest received had passed their expiration dates, although Hidden Harvest did not keep track of these past-date items in any regard. Galbraith offered testimony concerning a different topic, the value of grocery items, and had no contact with the actual items taken by defendant; she was called as an expert to approximate their value on the basis of the evidence presented at trial and her familiarity with and knowledge of the local grocery market.

The trial court sustained several relevance-based prosecution objections to defense counsel’s inquiries of Galbraith, namely questions whether (1) a retailer “[c]an . . . actually sell the merchandise . . . as you’re coming up close on the sell-by date”; (2) “the retailer . . . experience[s] any financial loss when things are nearing the sell-by dates”; and (3) Galbraith’s store “donate[d] pop to Hidden Harvest.” Defendant suggests that had Galbraith admitted under

further questioning that a significant portion of the grocery items taken by defendant had passed their expiration dates, and that no market existed for food that had reached its expiration date, Galbraith's estimate regarding the value of those items may have changed, or her credibility may have been called into question. However, defendant's reasoning rests wholly on speculation, and is based on an assumption itself, that a significant portion of the items taken by defendant had in fact passed their sell-by dates; this contention has no basis in the evidence.

Furthermore, the trial court did permit defense counsel to pose to Galbraith several questions about sell-by dates, successfully eliciting testimony concerning their significance, that product manufacturers designated the dates, and a store's procedure for replacing past-date goods. Considering the broad discretion vested in the trial court to impose reasonable limitations on a party's right to cross-examination, we conclude that the court selected a reasonable and principled outcome in finding that some of Galbraith's testimony regarding sell-by dates qualified as irrelevant and, as such, properly subject to limitation. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Because the trial court did not deprive defendant of a "reasonable opportunity to test the truth" of Galbraith's testimony, no plain error occurred. *Adamski, supra* at 138.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher