

Cite as 2009 Ark. App. 596

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR 09-194AARON MARCUS STIGGER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** September 16, 2009APPEAL FROM THE CLEVELAND
COUNTY CIRCUIT COURT,
[NO. CR08-17-5]HONORABLE LARRY W.
CHANDLER, JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

A jury in Cleveland County found appellant Aaron Marcus Stigger guilty of residential burglary and theft of property, for which he received consecutive five-year sentences for a total of ten years in prison. For reversal, appellant challenges the sufficiency of the evidence, and he argues that the trial court erred by refusing a proffered jury instruction and by ordering consecutive sentences. We affirm.

Evidence at trial disclosed that someone burglarized the home of Myra and Kent Rhinehart while they were at work on December 10, 2007. Taken in the burglary were twenty-two firearms and a jewelry box. The stolen items included a Mossberg .410-gauge shotgun and an amethyst pendant. Appellant pawned those two items at the Money Corner Pawn Shop in Pine Bluff. Based on this information, the police arrested appellant.

Cite as 2009 Ark. App. 596

Deputy Gary Young interviewed appellant following his arrest. Appellant told Deputy Young that he purchased the shotgun from a man named Jason at Robinson's Auction Barn. Young was familiar with the auction barn and advised appellant that his account was not plausible because the auction barn was open only on Saturdays, whereas the burglary occurred on a Monday and appellant pawned the gun the following Friday. Appellant then stated that he bought the gun from Jason at a car wash on a Wednesday and said that he invented the other story because it "sounded better."

Michael Gosnell, who was in the county jail at the same time as appellant, testified on behalf of the State. Gosnell stated that appellant admitted that he participated in the Rhinehart burglary and theft.

Appellant testified that he was at work on the day of the burglary and that he did not break into the Rhineharts' home. He maintained that he purchased the gun and jewelry from a man he knew only as Jason and stated that he did not know that the items were stolen. Appellant also said that he was highly intoxicated and under pressure during the interview with Deputy Young.

Justin Robinson, another inmate at the jail, testified that Gosnell told Robinson that Deputy Young forced Gosnell to testify against appellant. Appellant's mother, Norma Jean Stigger, stated that she took appellant to work the day of the burglary. She further testified that she spoke with Gosnell on April 9, 2008, while visiting appellant at the jail and that Gosnell told her that he did not implicate appellant in the burglary and theft in any statement given to the deputy and that the police were forcing him to do so. In rebuttal, Deputy Young testified

Cite as 2009 Ark. App. 596

that Gosnell was transferred to the department of correction on March 26, 2008, and thus was not housed in the county jail on April 9, 2008.

Appellant contends that there is insufficient evidence that he burglarized the Rhineharts' home and stole their property. He argues that, while he was in possession of items taken from the Rhineharts' home, he was at work when the burglary occurred and purchased the stolen property afterward. He asserts that only the testimony of Gosnell implicates him as a participant in the burglary and theft and that the jury's verdict is based on speculation and conjecture when Gosnell's testimony is weighed against the counterveiling evidence.

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence. *Henson v. State*, 2009 Ark. App. 464, 2009 WL 1544272. Substantial evidence is evidence forceful enough to reach a conclusion one way or the other beyond speculation or conjecture. *Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003). When a defendant challenges the sufficiency of the evidence convicting him, the evidence is viewed in the light most favorable to the State, and only evidence supporting the verdict will be considered.

The record reflects that appellant pawned a gun and a pendant that were stolen from the Rhineharts' home. According to Gosnell, appellant admitted that he participated in the burglary and theft. Although appellant suggests that Gosnell's testimony was not truthful in light of opposing testimony appellant offered at trial, on appeal we do not weigh the evidence, nor do we weigh the credibility of the witnesses. *Polk v. State*, 82 Ark. App. 210, 105 S.W.3d 797 (2003). Also, the jury was entitled to consider and give weight to any false, improbable,

Cite as 2009 Ark. App. 596

and contradictory statements made by a defendant to explain suspicious circumstances. *Ewing v. State*, 85 Ark. App. 411, 155 S.W.3d 715 (2004). We hold that substantial evidence supports appellant's convictions.

Appellant's next argument is that the trial court erred by refusing to instruct the jury that it could recommend probation. Arkansas Code Annotated section 16-97-101(4) (Repl. 2006) authorizes a trial court to instruct the jury on alternative sentences for which the defendant may qualify. Under the statute, the jury may recommend an alternative sentence, but the recommendation is not binding on the trial court. The actual assessment of probation is a matter that lies exclusively within the discretion of the trial court. *Higgins v. State*, 326 Ark. 1030, 936 S.W.2d 740 (1996).

With regard to a trial court's decision on whether to instruct the jury on alternative sentencing, the tone of the statute is distinctly permissive. *See Dale v. State*, 55 Ark. App. 184, 935 S.W.2d 274 (1996). Because the permissive language of the statute does not require a trial court to give an instruction on alternative sentencing, we conclude that the trial court committed no error in declining appellant's request for an instruction recommending probation. Moreover, even if the jury was so instructed, the trial court had the discretion to reject the jury's recommendation for probation. The trial court did not believe that an alternative sentence was appropriate under the facts of this case. We perceive no abuse of discretion in the trial court's decision.

Appellant's final argument is that the trial court erred by imposing consecutive sentences. He contends that the trial court abused its discretion because the jury did not

Cite as 2009 Ark. App. 596

recommend that he serve his sentences consecutively. A trial court is not bound by a jury's sentencing recommendation, and a trial court is not required to explain its reason for running sentences consecutively. *Throneberry v. State*, 102 Ark. App. 17, 279 S.W.3d 489 (2008). The question of whether to impose consecutive or concurrent sentences lies solely within the province of the trial court, and the appellant assumes a heavy burden of demonstrating that the trial court failed to give due consideration to the exercise of its discretion. *Pyle v. State*, 340 Ark. 53, 8 S.W.3d 491 (2000). We will not presume that the trial court did not exercise its discretion in ordering consecutive sentences unless there is some indication otherwise. *Blagg v. State*, 72 Ark. App. 32, 31 S.W.3d 872 (2000).

We find no merit in appellant's argument that the trial court abused its discretion by not adhering to the recommendation of the jury to impose concurrent sentences. Notably, the jury was not instructed on the issue of whether the sentences should be served concurrently or consecutively. As a result, there was no actual recommendation in this case that the court declined to follow. Moreover, even had the jury made a recommendation, it would not have been binding on the trial court. The charges in this case involved a home invasion and the theft of numerous firearms. We cannot say that the trial court abused its discretion in determining that consecutive sentences were warranted under these facts.

Affirmed.

GLADWIN and GLOVER, JJ., agree.