IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE DENNISON,	)	
	)	No. 612, 2006
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
STATE OF DELAWARE,	)	Cr. ID No. 0509002483
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: May 23, 2007
Decided: June 25, 2007

Before, **STEELE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

O R D E R

This 25th day of June, 2007, it appears to the court that:

(1) Bruce Dennison, defendant below, appeals the denial of his motion for a new trial following his Superior Court convictions of felony theft, misdemeanor theft, and conspiracy second degree. Dennison contends that the trial judge should have granted his motion for a new trial and reduced his two felony charges to misdemeanor charges because the jury returned an irrational verdict. Because Dennison sought alternative forms of relief, either a new trial or reduced charges, and the trial judge properly reduced his felony charges to misdemeanors, we affirm.

(2) Dennison, a former employee of Sears Department Store, conspired with two codefendants in July and August of 2005, to use customer "Choice Rewards" coupons to purchase items, and then returned some of the items for cash refunds. Sears's Choice Rewards program gives customers a fractional rebate (less than 1 percent) on all purchases made using Sears credit cards. When a customer accrues enough rebates, Sears mails the customer a coupon, which functions as cash when making purchases at Sears. Once a customer uses the coupon, protocol requires the cashier to tear it up and place it in the cash register.

(3) Dennison, using a former employee's register code, used these coupons to make purchases. Instead of tearing up the coupons after their use, however, Dennison and his codefendants continued to make purchases with them. During the month of July 2005, he used $160 in coupons. In August, Dennison used exactly $1,000 in coupons. Dennison and his codefendants returned some of the items for a cash refund.

(4) A grand jury indicted Dennison in October 2005, for misdemeanor theft arising from the July transactions, felony theft for the August transactions, and conspiracy second degree, a felony charge. In the felony theft count, the indictment alleged that Dennison stole "in excess of $1,000." In Delaware, theft is

a misdemeanor "unless the value of the property … is $1,000 or greater."[1] The words "in excess of" were, the parties agree, surplusage.

(5) The trial evidence showed that Dennison stole exactly $1,000 of Choice Rewards in August. Christopher Cooper, the loss prevention manager at the Prices Corner location where the transactions occurred, testified at trial that Dennison used exactly $1000 of coupons, "not a penny more, not a penny less." Because Cooper's statement contradicted the indictment's precise allegation that the defendant stole "in excess of $1000," the State moved to amend the indictment during trial. The trial judge reserved decision.[2] The conspiracy second count derived from this felony theft count. At the conclusion of the State's case, Dennison moved to have the felony theft charge reduced to a misdemeanor. The trial judge denied Dennison's motion.[3] At the conclusion of trial, the judge instructed the jury that it must find that Dennison stole "*in excess of*" $1,000 in order to find him guilty of felony theft, as the indictment alleged, (implicitly denying the state's motion to amend) rather than instructing using *11 Del. C. §*

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1 *11. Del. C. § 841* (2007). § 841(c)(1) states that "theft is a class A misdemeanor unless the value of the property received, retained, or disposed of is $ 1,000 or greater, in which case it is a class G felony."

2 *State v. Dennison*, 2006 WL 2728763, at *1 (Del. Super. Ct. Sept. 25, 2006).

3 *Id.*

841's precise language "$1,000 or greater.".[4] The jury found Dennison guilty of one count of misdemeanor theft, one count of felony theft, and the related conspiracy in the second degree. The evidence did not support a verdict that Dennison stole "in excess of $1,000" in August, the felony theft's cited date.

(6) After the trial, Dennison filed a motion for a new trial and a motion for partial judgment of acquittal on the same day. The motion for partial judgment of acquittal asked the trial judge to reduce the felony theft and related felony conspiracy charge to misdemeanors. Both motions were premised on the same argument: the evidence demonstrated that the value of the stolen goods was exactly $1,000; the trial judge had instructed the jury that they must find the value of the stolen property to be "*in excess of* $1,000," as alleged in the indictment, in order to convict Dennison of felony theft. Dennison contends the jury irrationally found him guilty of stealing "in excess of $1,000" when the evidence showed he had stolen a "mere" $1,000 and "not a penny more, not a penny less." The State conceded that it presented insufficient evidence to support felony theft as alleged in the indictment, but argued that the conspiracy second degree charge remained appropriate. On September 26, 2006, the trial judge, understanding their relationship, reduced both the felony theft and conspiracy convictions to

[4] The record before us does not reveal a formal ruling on the State's motion to amend. It can be inferred, however, from the jury instruction, which is consistent with the original indictment and inconsistent with the State's motion to amend which would have stricken the surplusage, "in excess of," that the trial judge denied the motion.

misdemeanors. As a result, the trial judge declared Dennison's motion for a new trial moot.[5]

(7) Dennison now appeals the trial judge's denial of his motion for a new trial. Dennison claims that the trial judge should have granted his motion for a new trial for the same reason the judge granted Dennison's motion for partial judgment of acquittal: the evidence did not support the jury's verdict and, therefore, the verdict was irrational. Apparently, Dennison believes that he is entitled to a new trial on two misdemeanors – misdemeanor theft and conspiracy to commit misdemeanor theft. The State responds that Dennison's post-trial motions were alternative requests for relief and that he successfully obtained one of those forms of relief. We review the denial of a motion for a new trial for abuse of discretion.[6]

(8) Dennison's argument is without merit. By any rational assessment, Dennison moved for alternative grounds of relief; he asked the trial judge to either reduce the felony charges to misdemeanors or to grant him a new trial. Dennison filed the motions separately, each without reference to the other. Dennison had no reasonable expectation, given the facts at trial, that he would obtain both forms of relief in an all or nothing fashion. The trial judge reduced the felony charges to

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5 *Id.*

6 *Hicks v. State*, 913 A.2d 1189, 1193 (Del. 2006).

misdemeanors, in effect granting the relief Dennison requested in his motion for partial judgment of acquittal. The rationale for doing so paralleled the basis for the motion for a new trial. The motions do not contemplate a new trial on the two reduced to misdemeanor charges.

(9) Indeed, we find it ironic that Dennison now complains after receiving what amounts to a windfall. The evidence clearly showed that Dennison committed felony theft, having used Choice Rewards coupons worth exactly $1,000—the minimum amount *11. Del. C. § 841* requires for a felony theft conviction. In fact, had the trial judge granted the State's motion to amend, striking the surplusage, "in excess of," from the indictment, the evidence clearly would have supported the jury's judgment of conviction on the felony theft. We note that were the trial judge to have granted Dennison the other relief he requested – a new trial – the State likely would have sought to amend the indictment before retrying him and any jury, if the evidence were the same in the new trial, would no doubt convict Dennison of felony theft.

(10) Dennison does not argue that the evidence does not support misdemeanor convictions. How could he? "[A] criminal defendant is afforded protection against jury irrationality or error by the independent review of the

sufficiency of the evidence by the trial and appellate courts."[7] The controlling standard for that review is sufficiency of the evidence.[8] Here, a reasonable jury, acting as trier of fact, at a minimum, could have found Dennison guilty of misdemeanor theft and misdemeanor conspiracy based on the evidence at trial. The State presented recordings and videotapes of the transactions that constituted sufficient evidence for a jury to find Dennison guilty of theft. The jury determined that Dennison committed theft. The testimony about the stolen coupons' monetary value determined the amount of the theft – $1,000. An error, omission, or oversight on the part of the jury in determining the stolen coupons' monetary value does not necessarily render its finding of the underlying crime improper or irrational, as Dennison argues. In fact, the jury correctly found him guilty of felony theft. The trial judge did not abuse his discretion when he reduced Dennison's felony convictions to misdemeanor convictions and denied his motion for a new trial. Dennison cannot conceivably complain legal error to his detriment from that decision.

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[7] *Tilden v. State*, 513 A.2d 1302, 1307 (Del. 1986) (citing *United States v. Powell*, 469 U.S. 57, 67 (1984)).

[8] *Id.*

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED.**

BY THE COURT:

/s/ Myron T. Steele
Chief Justice