

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2009*

**LINDA DIANE JACKSON,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D08-3425

[December 2, 2009]

FARMER, J.

This appeal deals with evidence about the value of stolen goods. The issue is whether the evidence supports a verdict of grand theft. We conclude that it is insufficient to support the threshold value and reverse.

The charges involved shoplifting — a euphemism for stealing — at Bealls Department Store. We pass by the evidence of defendant's involvement in the taking, which was substantial and essentially uncontradicted.

On the issue of value of the stolen goods, the State introduced a "receipt" generated by the store after the offense showing that the actual retail price of the goods stolen was \$230. The State also offered the testimony of the then store manager, now a loss prevention specialist for the company. His testimony was this. Bealls offers goods at reduced prices. These goods are booked in inventory at the "manufacturer's suggested retail price" (MSRP), but are actually sold at reduced prices as shown on a receipt given at the time of sale. He testified that Bealls considers the value of stolen goods to be the MSRP rather than the actual sale price because the sale price is intended only for customers who purchase at that price, not for those who take the goods without paying.

The statute defines value as "the market value of the property at the time and place of the offense." § 812.012(10)(a)1, Fla. Stat. (2007). Evidence of value is essential to a conviction for grand theft; the State

must prove value beyond any reasonable doubt. *Carnley v. State*, 89 So. 808 (Fla. 1921).

We take the statutory term *market value* to mean the price actually charged and received by the merchant in usual, customary sale of the goods stolen. The cases hold that when the theft is from a department store and salability at a specific price is established, the retail price is deemed the market value. *Emshwiller v. State*, 462 So.2d 457 (Fla. 1985) (jury instruction that retail price establishes market value); *Negron v. State*, 306 So.2d 104, 108-09 (Fla. 1975) (evidence should have shown retail prices of all stolen items and salability at that price near the time of the alleged theft to demonstrate their market value).<sup>1</sup> We repeat: a cash register “receipt” generated by Bealls shortly after the theft showed the usual, customary retail price of the stolen goods to be \$230.

It follows that the only competent evidence of value is the retail price actually charged customers at the time of the offense. The internal policy of the department store may book the value of stolen goods at the MSRP, even though they are actually sold below that value, but that does not affect the statute’s requirement that stolen goods be given *market value*. Defendant’s conviction for grand theft must be reduced to petit theft.

*Reversed for consistent proceedings.*

WARNER and LEVINE, JJ., concur.

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Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Robert Belanger, Judge; L.T. Case No. 562007CF004399A.

Carey Haughwout, Public Defender, and Barbara J. Wolfe, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Jeanine M. Germanowicz, Assistant Attorney General, West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing.***

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<sup>1</sup> The Court has receded from *Negron* on other grounds in *Butterworth v. Fluellen*, 389 So.2d 968 (Fla. 1980), and *F.B. v. State*, 852 So.2d 226 (Fla. 2003), but not as to the basis for determining the market value of goods stolen from department stores.