

Third District Court of Appeal

State of Florida

Opinion filed December 18, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1195
Lower Tribunal No. 15-21474B

Dolores Freixa,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Lourdes Simon,
Judge.

Carlos J. Martinez, Public Defender, and James A. Odell, Assistant Public
Defender, for appellant.

Ashley Moody, Attorney General, and Christina L. Dominguez, Assistant
Attorney General, for appellee.

Before LOGUE, SCALES, and GORDO, JJ.

LOGUE, J.

Dolores Freixa challenges her conviction and sentence for grand theft of property with a value of \$10,000 or more but less than \$20,000. Freixa argues that the State failed to provide competent, substantial evidence of the value of the property stolen in the amount necessary to support her conviction. We agree and reverse in part. She also appeals her conviction and sentence for criminal mischief, a first-degree misdemeanor. Based on the State's proper concession that Freixa's criminal mischief conviction was entered in derogation of her right to competent counsel, we reverse that conviction as well.

Background

On September 29, 2015, Alexander Aguirre's home was burglarized. Freixa was arrested for the crime and charged with: (1) armed burglary; (2) grand theft of \$20,000 or more, but less than \$100,000; and (3) criminal mischief of \$200 or more, but less than \$1,000.

At trial, Mr. Aguirre testified about the value of the stolen property. After the State rested, Freixa moved for judgment of acquittal on her charge of grand theft, arguing the evidence was insufficient to establish value. That motion was denied. After Freixa rested her case, she again moved for judgment of acquittal on her grand theft count, which was also denied.

Freixa was convicted of burglary; grand theft of \$10,000 or more, but less than \$20,000; and criminal mischief of \$200 or more, but less than \$1,000. She

timely appealed her convictions for grand theft and criminal mischief. She did not appeal her conviction for burglary.

Standard of Review

This Court reviews the denial of a motion for judgment of acquittal de novo. Gonzalez v. State, 275 So. 3d 766, 768 (Fla. 3d DCA 2019) (citing Pagan v. State, 830 So. 2d 792, 803 (Fla. 2002)). This Court will affirm a denial of a motion for judgment of acquittal “[i]f, after viewing the evidence in a light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt.” Reynolds v. State, 934 So. 2d 1128, 1145 (Fla. 2006).

Analysis

On appeal, Freixa argues that the trial court erred when it denied her motion for judgment of acquittal her conviction for grand theft because the State failed to prove the value of property.

In Florida “[b]ecause the value of the stolen items is an essential element of the offense, the value must be established beyond a reasonable doubt.” Gonzalez, 275 So. 3d at 769 (quoting A.D. v. State, 30 So. 3d 676, 677 (Fla. 3d DCA 2010)); see also Marrero v. State, 71 So. 3d 881, 887 (Fla. 2011). “[V]alue [is] based upon the market value of the property at the time of the crime.” Gonzalez, 275 So. 3d at 769 (quoting Negron v. State, 306 So. 2d 104, 108 (Fla. 1974), receded from on other grounds by Butterworth v. Fluellen, 389 So. 2d 968 (Fla. 1980)). Generally,

“[w]here a witness has personal knowledge regarding the stolen property, the value of the property may be established by direct testimony of its fair market value.” Gonzalez, 275 So. 3d at 769 (quoting K.W. v. State, 13 So. 3d 90, 91 (Fla. 3d DCA 2009)). However, where the value of the property is based on mere speculation or guess, the owner’s evidence is insufficient to prove fair market value. Sanchez v. State, 101 So. 3d 1283, 1286–87 (Fla. 4th DCA 2012) (citing Gilbert v. State, 817 So. 2d 980, 982 (Fla. 4th DCA 2002)).

While the State concedes that it failed to present evidence of the stolen items had a value in the amount of \$10,000 or more, but less than \$20,000, it nevertheless contends this Court should affirm Freixa’s conviction for grand theft because it established value in the amount of \$8,300. The State, however, does not itemize or otherwise attempt to explain its figure of \$8,300.

Our own review of Mr. Aguirre’s testimony indicates there is competent, substantial evidence to support the value of only \$3,200. Specifically, Mr. Aguirre testified to the theft of a chain with his children’s names which he valued at \$500; a white gold ring with a diamond, which he valued at \$350; four watches which he valued, collectively, at \$700; and upgrades for his two daughters’ phones, which he valued at \$1,000. Mr. Aguirre listed other stolen items. But for those other items, he either did not provide a value or he provided a value which he admitted was based on speculation (“worth anywhere between \$4,000 and \$8,000 if I had to guess;”

“Today’s value, I don’t know;” “couldn’t have been more than a couple-hundred-dollars”). The State could have asked Mr. Aguirre additional questions to clarify whether these figures reflected his estimate of fair market value as the owner, but the State failed to do so. See Negron, 306 So. 2d at 108.

For these reasons, Freixa is entitled to an amended judgment which reflects that she was convicted for grand theft of property worth \$300 or more, but less than \$5,000.¹

Reversed and remanded for further proceedings consistent with this opinion.

¹ As part of a motion to correct illegal sentence granted while this appeal was pending, it appears her sentence was already corrected to reflect a proper sentence for such a level two offense under section 921.0011, Florida Statutes.