

RENDERED: NOVEMBER 9, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-000470-MR

INIS LEEANN SMITH

APPELLANT

v. APPEAL FROM CLINTON CIRCUIT COURT  
HONORABLE EDDIE C. LOVELACE, JUDGE  
ACTION NO. 04-CR-00049

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: ABRAMSON AND GUIDUGLI, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR  
JUDGE.

ABRAMSON, JUDGE: In the early afternoon of February 20, 2004,  
Sergeant Johnny Garner of the Albany Police Department arrested  
Inis Smith on a charge of receiving stolen property after he  
discovered in the trunk of her car a pull-tab machine and  
several cartons of cigarettes, items that matched the  
description of property stolen earlier that day from the  
Southend Fuel Stop on Tennessee Road in Albany. Following a

---

<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment  
of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky  
Constitution and KRS 21.580.

jury trial on February 9, 2005, the Clinton Circuit Court convicted Smith of receiving stolen property worth more than \$300.00, in violation of KRS 514.110, and sentenced her in accord with the jury's recommendation to five years' imprisonment. Appealing from the trial court's February 21, 2005 judgment, Smith contends that the Commonwealth failed to prove that she was in possession of stolen property worth more than the felony threshold of \$300.00, KRS 514.110(3), and that the court thus erred when it denied her motions for a directed verdict on the felony charge. The Commonwealth maintains that Smith's allegation of error was not properly preserved, but we need not address that point because we are convinced that, even if preserved, the issue Smith raises does not entitle her to relief. The evidence supports the trial court's directed verdict ruling and Smith's felony conviction. Accordingly, we affirm.

As the parties note, the relevant question on review of the denial of a directed verdict is whether, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Potts v. Commonwealth, 172 S.W.3d 345, 349 (Ky. 2005) (citation and internal quotation marks omitted). Here, Smith does not dispute that the Southend Fuel Stop was burglarized during the early morning of February

20, 2004, and that shortly after the burglary the owners told the police that they were missing, among others things, a white pull-tab machine and several cartons of USA Gold, Marlboro, and Marlboro Light cigarettes. She also does not dispute that a few hours later, not far from the Fuel Stop, Officer Garner discovered in the trunk of Smith's car a white pull-tab machine and a plastic bag containing a Fuel Stop bank-deposit slip and three cartons of USA Gold, eight cartons of Marlboro, and six cartons of Marlboro Light cigarettes. The Fuel Stop owners later identified this property as theirs. One of the owners testified that at the time of the theft she sold USA Gold cigarettes for \$16.00 per carton and Marlboro and Marlboro Light cigarettes for \$30.00 per carton. Thus, Smith does not dispute that if all the cigarettes found in her trunk were stolen, then the cigarettes alone were worth more than \$300.00, the threshold for a felony receiving stolen property offense.<sup>2</sup>

Smith contends, however, that the evidence does not support a finding that all of the cigarettes were stolen. She bases this contention on the fact that the owners initially estimated their loss at ten cartons of USA Golds, four cartons of Marlboros, and two cartons of Marlboro Lights. Smith maintains that the owners and the Commonwealth should be bound by that initial estimate and thus that the jury should not have

---

<sup>2</sup> \$16.00 x 3 + \$30.00 x 14 = \$48.00 + \$420.00 = \$468.00.

been permitted to find that the additional cartons of Marlboros were part of the stolen property. As one of the owners testified, however, the initial report was not based on an inventory, but was simply a rough estimate of what was missing based on a brief inspection of what remained in the store compared with the owner's recollection of what had been there the day before. Its inaccuracy, though a factor the jury could consider, was hardly dispositive. On the contrary, the fact that Smith possessed the same brands of cigarettes in roughly the same amounts which had been reported stolen, and the fact that all the cigarettes were found together in a plastic bag in conjunction with the missing pull-tab machine and a Fuel Stop deposit slip constituted more than enough evidence to permit a rational juror to conclude beyond a reasonable doubt that all of the cigarettes had been stolen. The trial court, therefore, did not err when it denied Smith's motions for a directed verdict. Accordingly, we affirm the February 21, 2005, judgment of the Clinton Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Samuel N. Potter  
Assistant Public Advocate  
Department of Public Advocacy  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General  
  
James Havey  
Assistant Attorney General  
Frankfort, Kentucky