

RENDERED: OCTOBER 11, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000707-MR

MICHAEL E. SHEFFIELD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 16-CR-002053

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Michael E. Sheffield brings this appeal from a March 30, 2018, Judgment of Conviction and Sentence and Order Granting Probation of the Jefferson Circuit Court adjudging Sheffield guilty of theft by unlawful taking over \$10,000 and sentencing him to five-years' imprisonment probated for a period of five years. We affirm.

On Monday, April 25, 2016, it was discovered that approximately 500 cases of meat weighing nearly 18,000 pounds was missing from the JB Swift meat

processing facility on Story Avenue in Louisville, Kentucky. An inventory control system alerted Swift that the meat, valued at approximately \$43,796, became unaccounted for over the weekend. When employees were unable to locate the meat on Monday, the company's controller reported the theft to police.

Detective Jeremy Livers of Louisville Metro Police Department (LMPD) was assigned the case. Shortly thereafter, another detective alerted Livers he had spotted numerous stacks of empty Swift boxes outside of Les's Meat Market also located in Louisville, Kentucky. Detective Livers spoke with the owner of Les's, Elias Estephane. Estephane told Livers he had purchased the Swift meat from a man he believed to be a wholesaler for Swift named "Mike." Estephane provided Livers with the phone number he had for Mike. With this information, a Swift employee identified "Mike" as Michael Sheffield, a seventeen-year employee of Swift.

Livers then obtained video surveillance footage from Swift. The video showed two men walking toward the Swift guard shack at 4:26 a.m. on Saturday, April 23, 2016. One of the men walked through the truck entrance and passed the guard shack without being stopped by security. The man then went to the loading dock ordinarily utilized for receiving shipments at Swift. Shortly thereafter, a Thrifty rental truck entered the parking lot and went to the same

loading dock. About twenty minutes later, the Thrifty truck exited the lot without following Swift's procedure of weighing all departing trucks.

Livers contacted Thrifty rental company and determined that the truck seen on the video surveillance had been rented to Previn Sanford. Sanford was employed by a company Swift had contracted with to wash and move truck trailers. Sanford subsequently testified, pursuant to a plea agreement with the Commonwealth, that he rented the Thrifty truck at Sheffield's request. Sanford testified that Sheffield instructed him to drop off the truck on Washington Street on April 22 and pick it up the following day from the same location. Sanford denied having any knowledge of Sheffield's intended use of the truck. Livers also obtained cell phone records that revealed several calls were made between Sheffield and Sanford and also between Sheffield and Estephane near the time the meat was stolen from Swift.

Sheffield was indicted by a Jefferson County Grand Jury upon theft by unlawful taking over \$10,000 or complicity to commit same (Kentucky Revised Statutes (KRS) 514.030; KRS 502.020). Following a jury trial, Sheffield was convicted of theft by unlawful taking over \$10,000. He was sentenced to five-years' imprisonment, which was probated for a period of five years. This appeal follows.

Sheffield contends the trial court erred by denying his motion for a directed verdict of acquittal upon the offense of theft by unlawful taking over \$10,000. More specifically, Sheffield asserts that for the jury to have found him guilty of theft by unlawful taking over \$10,000 it “would have engaged in building inferences upon inferences in an unreasonably speculative manner.” Sheffield’s Brief at 10. In sum, Sheffield argues the Commonwealth’s evidence was speculative and insufficient to support the jury’s finding of guilt.

The standard of review upon the denial of a motion for directed verdict was articulated by the Supreme Court in *Commonwealth v. Benham*, 816 S.W.2d 186 (Ky. 1991):

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony.

Id. at 187; Kentucky Rules of Civil Procedure (CR) 50.01. Upon appellate review, the test is whether “if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.” *Benham*, 816 S.W.2d at 187. And, as an appellate court, we must be mindful that weight and credibility of evidence are within the

sole province of the jury. *Reynolds v. Commonwealth*, 113 S.W.3d 647, 650 (Ky. App. 2003).

Relevant to this appeal, theft by unlawful taking or disposition is defined in KRS 514.030(1):

(1)[A] person is guilty of theft by unlawful taking or disposition when he unlawfully:

(a) Takes or exercises control over movable property of another with intent to deprive him thereof; or

....

(2) Theft by unlawful taking or disposition is a Class A misdemeanor unless:

....

(e) The value of the property is ten thousand dollars (\$10,000) or more but less than one million dollars (\$1,000,000), in which case it is a Class C felony[.]

In this case, there was evidence presented that Sheffield had been employed at Swift for some seventeen years and was familiar with the facility and aware of its security procedures. Sanford testified that he had rented a Thrifty truck and had left the truck near Swift at Sheffield's request. Cell phone records demonstrated that Sheffield and Sanford were in communication near the time of the early morning theft. By matching the lot and bar code numbers Swift provided for the cases of stolen meat to those found on boxes at Les's Meat Market, LMPD

was able to confirm the boxes were those stolen from Swift. Estephane testified he had purchased 500 cases of meat from Sheffield and paid him \$17,500 in cash. Furthermore, cell phone records demonstrated Sheffield communicated with Estephane and Sanford around the time of the theft from Swift.

Drawing all fair and reasonable inferences in favor of the Commonwealth, there was clearly sufficient evidence to induce a reasonable juror to believe beyond a reasonable doubt that Sheffield was guilty of theft by unlawful taking over \$10,000. Any questions regarding the proper weight to be accorded particular evidence were properly reserved for the jury. Thus, we conclude that the trial court properly denied Sheffield's motion for directed verdict.

For the foregoing reasons, the Judgment of Conviction and Sentence and Order Granting Probation of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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