

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS HUGUELY,

Defendant-Appellant.

UNPUBLISHED

January 16, 2001

No. 218904

Wayne Circuit Court

LC No. 98-012197

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM

Defendant Dennis Huguely was convicted by a jury of larceny over \$100.¹ Huguely appeals as of right. We affirm.

I. Basic Facts And Procedural History

According to the trial testimony, Huguely was part of a three-person cleaning crew that worked at the Eastland Mall. At 5:22 a.m. on October 17, 1998, a security guard at the mall saw Huguely near the Value Cellular kiosk; Huguely was on one knee and his hand was under the tarp that enclosed the kiosk. When Huguely noticed the guard's presence, he quickly got to his feet and began to sweep the floor. The guard reported the suspicious incident to his partner.

A sergeant in the security department of the mall testified that, after two break-ins in the general area of the Value Cellular kiosk, he installed a video camera and VCR to record the activity in the area. On October 16, 1998, he had set up the surveillance equipment at about 8:45 p.m. and inserted a videotape in the VCR. He stated that the VCR did not indicate the correct time on the tapes because the clock function knob was broken. He reviewed the videotape on the morning following the suspicious incident involving Huguely and observed a person approach the kiosk three times and, on the third time, the person reached under the kiosk, pulled out a plastic bag, and placed it in a dust mop. Based on what he saw on the videotape, the sergeant

¹ MCL 750.356; MSA 28.588.

* Circuit judge, sitting on the Court of Appeals by assignment.

requested that the Value Cellular manager prepare an inventory. Value Cellular personnel conducted the inventory, which revealed that merchandise valued over \$100 was missing.

The clarity of the surveillance tape was an issue at trial because the person who could be seen taking items from the kiosk could not be identified with certainty from the tape alone. However, the security guard who had observed Huguely's suspicious activity that morning testified that the physical build and clothing of the person on the tape matched Huguely's build and clothing; no one else who worked that shift had a similar appearance. The guard also stated that the tape indicated a time of 11:30, when in fact the incident had occurred around 5:20 a.m.

Huguely testified on his own behalf, denying that he was the thief. After viewing the videotape in court, Huguely concluded that the thief was a member of the cleaning crew from earlier in the day.

At the beginning of the second day of trial, after the defense had rested, defense counsel requested that the proofs be reopened to allow Huguely to testify as an expert witness "that ever[y] VCR when you plug it in, the time mechanism goes back to 12:00." Huguely asserted that he wanted "to be able to expound on that to the jury," and that he was qualified to offer the expert testimony because he was an electrician who had experience working on VCRs. The trial court denied the request on various grounds.

II. Abuse of Discretion

A. Standard Of Review

Huguely argues that the trial court abused its discretion in denying his request to reopen proofs to allow him to offer expert testimony regarding the general operation of VCRs. A trial court has broad discretion regarding both the admission or exclusion of expert testimony² and a party's request to reopen proofs.³ Thus, we review the trial court's decision on this matter for an abuse of its discretion.

B. The Trial Court's Decision

The trial court articulated four separate reasons for its decision: (1) Huguely lacked personal knowledge of the subject VCR; (2) it was common knowledge that VCRs reset to 12:00 when unplugged; (3) such common knowledge about operating VCRs was the proper subject of closing argument to the jury, rather than expert testimony, and (4) any such testimony was against the advice of counsel, would subject Huguely to cross-examination by the prosecutor, and was not in Huguely's "best interest." That the trial court explained its decision in this issue indicates that it was exercising its discretion. While we are not inclined to hazard a guess regarding the proportion of the population at-large that has a working knowledge of how to set the clock on a VCR, the trial court's characterization of this proposed testimony as argument was

² *People v Beckley*, 434 Mich 691, 711; 456 NW2d 391 (1990).

³ *People v Van Camp*, 356 Mich 593, 602; 97 NW2d 726 (1959).

accurate. Further, Huguely failed to establish that he had particularized knowledge regarding the specific video camera used for surveillance in this case and offered no proof that it was the VCR that would have stamped the time on the tape. Thus, whether the VCR was broken and whether he had expert knowledge of VCRs was irrelevant. We also note that, contrary to his argument, identity, not timing, was the key issue in this case. Accordingly, even if the trial court erred when it refused to allow Huguely to reopen proofs, this error was harmless.⁴

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

⁴ *People v Lukity*, 460 Mich484, 495-496; 596 NW2d 607 (1999).