NO. COA01-1298

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v. Wake County
No. 00CRS089432, 094489

MARLETTE TOOMER

Appeal by defendant from judgment entered 21 March 2001 by Judge Donald W. Stephens in Wake County Superior Court. Heard in the Court of Appeals 13 May 2002.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Ted R. Williams, for the State.

Rosemary Godwin for defendant-appellant.

HUNTER, Judge.

Defendant was found guilty of felony larceny and was sentenced as an habitual felon to a minimum term of 92 months and a maximum term of 120 months.

The State presented evidence tending to show that on 5 October 2000, the Hudson Belk store at Crabtree Valley Mall in Raleigh employed off-duty police officers to stop a series of larcenies in which the thief would enter the store through an exterior exit door, grab a pile of clothing, and immediately exit the store. Sergeant Andrew Lull and Officer Paul Boyer maintained surveillance of the north exit door of the store, where previous thefts had

occurred. They saw defendant exit a vehicle, walk into the store, and come running out of the store carrying an armful of shirts. The officers apprehended defendant. They counted thirty shirts in the pile of clothing. Each shirt had a price of fifty dollars ($50.00).

Defendant first assigns error to the admission of testimony of an officer as to the price recorded on the tags of the shirts. He argues the testimony was inadmissible hearsay. He acknowledges that price tags have been held admissible under the business records exception, but he submits an inadequate foundation was laid because the police officer was not a store employee or custodian of the records.

The decision which holds price tags are admissible as business records, *State v. Odom*, 99 N.C. App. 265, 273, 393 S.E.2d 146, 151, *disc. review denied*, 327 N.C. 640, 399 S.E.2d 332 (1990), contains the following language:

> That the price tags in this case were business records kept in the course of a regularly conducted business whose regular practice it was to make such records is indisputable. That retail stores and consumers rely on such records is equally indisputable. Nothing indicates the source of information or circumstances of preparation of the price tags in this case lacked trustworthiness. . . . [T]hat [the witness'] knowledge was gained from price tags themselves cannot be a bar to its admission as evidence of value.

Id. Here, the questions to which defendant objected asked the witness for the basis of his knowledge of the value of the shirts. As in *Odom*, the fact that the witness gained his knowledge from the

price tags did not bar admission of his testimony. This assignment of error is overruled.

Defendant next contends that the court erred by denying his motion to dismiss the charge of felonious larceny for insufficient evidence. A motion to dismiss requires the court to determine whether substantial evidence is presented to establish every element of the offense charged. *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). In deciding a motion to dismiss, the court must examine the evidence in the light most favorable to the State and give the State the benefit of every reasonable inference that may be drawn from the evidence. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992). Contradictions and discrepancies in the evidence are to be disregarded and left for resolution by the jury. *Id.*

Commission of the offense of felony larceny is proved when the State produces evidence that the value of the stolen goods is more than one thousand dollars ($1,000.00). N.C. Gen. Stat. § 14-72(a) (1999). Defendant argues there was no competent evidence to establish the value of the shirts as exceeding $1,000.00. He cites evidence that at the time of trial, the shirts had a price tag of $11.99, having been marked down from the original price of $50.00.

For the purposes of N.C. Gen. Stat. § 14-72(a), value is the fair market value of the goods at the time of the theft. *State v. Shaw*, 26 N.C. App. 154, 157, 215 S.E.2d 390, 392 (1975). The retail price established by a merchant is evidence of fair market value sufficient to survive a motion to dismiss. *State v.*

Williams, 65 N.C. App. 373, 375, 309 S.E.2d 266, 267 (1983), *disc. review denied*, 310 N.C. 480, 312 S.E.2d 890 (1984). The State's evidence shows that the thirty stolen shirts had a retail price of $50.00 each, or a value of $1,500.00, at the time they were stolen. Based upon this evidence, a jury could find that defendant stole goods valued at more than $1,000.00. The court properly denied the motion to dismiss.

No error.

Judges MARTIN and BRYANT concur.

Report per Rule 30(e).