NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 KA 2291

STATE OF LOUISIANA

VERSUS

ERIC WHITFIELD

On Appeal from the 20th Judicial District Court
Parish of East Feliciana, Louisiana
Docket No. 06-CR-763, Division "B"
Honorable William G. Carmichael, Judge Presiding

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BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Judgment rendered May 7, 2010

PARRO, J.

Defendant, Eric Whitfield, was charged by bill of information with one count of illegal possession of stolen things with a value of $500 or more, a violation of LSA-R.S. 14:69(B)(1). Defendant entered a plea of not guilty and was tried before a jury. The jury determined defendant was guilty of the lesser-included offense of illegal possession of stolen things with a value of $300 or more, but less than $500, a violation of LSA-R.S. 14:69(B)(2). The trial court subsequently sentenced defendant to a term of two years of imprisonment at hard labor.

Defendant appeals, contending as his sole assignment of error that the state failed to present sufficient evidence to uphold the conviction. We affirm defendant's conviction and sentence.

FACTS

On October 23, 2006, Edward Miller, a resident of Jackson, Louisiana, realized his Murray push weed trimmer was missing from his residence. At the time, the weed trimmer was not in working order, but Miller had ordered some parts to repair it.

Around this same time, Roger Cockerham, another resident of Jackson, learned that certain tools were missing from his truck. Specifically, a Black and Decker miter saw and a Paslode nailing framer were both missing from Cockerham's truck. Both Cockerham and Miller reported these missing items to law enforcement.

On October 24, 2006, in connection with the reports of these missing items, Robert Sanders, the assistant chief in the Jackson Marshal's Office, executed a search warrant at 2810 Charles Drive in Jackson. This residence was occupied by defendant. Upon execution of the search warrant, Sanders recovered a Murray push weed trimmer, a Black and Decker miter saw, and a Paslode nail gun. According to Sanders, the weed trimmer was recovered from a bedroom at the end of the mobile home. In that same room, but inside a

closet, Sanders located the Paslode nail gun. The Black and Decker miter saw was recovered from a different bedroom in the residence.

At trial, Miller testified he purchased the weed trimmer in the spring of 2006 for approximately $300. Miller identified the weed trimmer seized from defendant's residence as the one he owned. Cockerham identified the miter saw and nail gun, which were seized from defendant's residence, as the tools he owned. Cockerham testified that the nail gun had been purchased in 2004 or 2005 for $350 and the miter saw had been purchased in 2004 for $289. Cockerham testified that both tools were in working order and he used them on a daily basis.

The state also presented testimony from Russell Bendily. At the time of this incident, Bendily lived in close proximity to defendant and frequently visited him. Bendily worked for Cockerham and stated he witnessed his cousin, Jacob Conerly, steal the tools from Cockerham's truck.

Bendily admitted he had three prior felony convictions. According to Bendily, he was visiting defendant and defendant showed him the tools and asked him to estimate their value. Bendily recognized the tools as belonging to his boss and asked defendant where he had gotten them. Bendily testified that defendant told him Conerly had given him the tools. Knowing Conerly had stolen the tools (miter saw and nail gun) from Cockerham, Bendily knew that with his criminal record he would be the prime suspect, so he told defendant that he would not "take the lick" for him and Conerly.

Defendant presented testimony from Phillip Newton, his father. Newton testified that he overheard a conversation between Bendily and defense counsel prior to trial, where Bendily denied ever discussing with defendant the fact that the tools were stolen.

Defendant did not testify.

SUFFICIENCY OF THE EVIDENCE

Defendant argues the evidence was insufficient to support his conviction for two reasons. As the first reason, defendant asserts the state failed to prove

the value of the stolen items. Regarding the second reason, defendant claims the state failed to prove he knew or had good reason to believe that the items were stolen.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the state proved the essential elements of the crime and defendant's identity as the perpetrator of that crime beyond a reasonable doubt. The **Jackson v. Virginia,** 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), standard of review incorporated in LSA-C.Cr.P. art. 821 is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that, in order to convict, the fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. **State v. Dyson**, 98-1387 (La. App. 1st Cir. 4/1/99), 734 So.2d 786, 788-89.

Louisiana Revised Statute 14:69(A) provides:

> Illegal possession of stolen things is the intentional possessing, procuring, receiving, or concealing of anything of value which has been the subject of any robbery or theft, under circumstances which indicate that the offender knew or had good reason to believe that the thing was the subject of one of these offenses.

Accordingly, the crime has these elements: (1) intent, (2) possessing, procuring, receiving, or concealing stolen goods, and (3) knowledge that the goods are stolen. **State v. Dyson,** 734 So.2d at 789.

Value of Items

In his first argument, defendant contends the state failed to prove the value of the items was $300 or more, but less than $500. We disagree.

Miller testified that he purchased the weed trimmer in the spring of 2006 for approximately $300. Although Miller conceded the weed trimmer was not in working condition at the time it was stolen, he also testified he had ordered the necessary parts to repair it and return it to a working condition.

Cockerham testified that he purchased the nail gun for approximately $350 in 2004 or 2005 and that the miter saw was purchased in 2004 for $289. Cockerham testified these tools were in proper working order and he used them on a regular basis. Cockerham conceded that there was a big difference in price between new and used equipment. However, neither Miller nor Cockerham testified as to the value of these items at the time of this incident.

Defendant argues such testimony fails to establish the value of the stolen items. We disagree. At the outset, we note that "[w]hen the offender has committed the crime of illegal possession of stolen things by a number of distinct acts, the aggregate of the amount of the things so received shall determine the grade of the offense." LSA-R.S. 14:69(B)(4). An owner's testimony as to the value of an item is relevant to the jury's determination of the value of the item stolen. Although the jury was provided with the purchase price of these items at a point in time preceding this incident, the fact that one of the items was in need of repair and the other items had one to two years of use were all factors relevant to the weight of such evidence. See **State v. McCray**, 305 So.2d 433, 435 (La. 1974). Moreover, we note that the state introduced photographs of these items and the jury could determine whether their condition at the time of the offense could be depreciated due to use and functionality. See **State v. Lambert**, 475 So.2d 791, 795 (La. App. 3rd Cir. 1985), writ denied, 481 So.2d 1345 (La. 1986). The jury's verdict determining that the value of all of the items was $300 or more, but less than $500, clearly indicated the jury engaged in such a determination. Further, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **State v. Ordodi**, 06-0207 (La. 11/29/06), 946 So.2d 654, 662.

Accordingly, this argument is without merit.

Knowledge that Items Were Stolen

In his second argument, defendant contends the state failed to prove he knew or had good reason to believe that the items were stolen.

The state presented testimony from Bendily that he saw Conerly actually take the items, and that when defendant asked him to value the items, he recognized the miter saw and nail gun as belonging to Cockerham. Bendily stated he recognized the items while at defendant's residence for the purpose of conducting an illegal drug transaction. Bendily testified he told defendant that the owners of those items would be reporting them as stolen. Moreover, when the search warrant was executed, all of the items, including the weed trimmer, were located inside the bedrooms of defendant's residence.

After a thorough review of the record, we are convinced that a rational trier of fact, viewing the evidence presented in this case in the light most favorable to the state, could find that the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of possession of stolen things valued $300 or more, but less than $500. The verdict rendered against defendant indicates that the jury accepted the testimony offered against defendant, while rejecting defendant's attempts to discredit the witnesses giving that testimony. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the victim alone is sufficient to prove the elements of the offense. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. **State v. Lofton**, 96-1429 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby errs in overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. **State v. Calloway**, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). This portion of the assignment of error is without merit.

REVIEW FOR ERROR

Defendant asks that this court examine the record for error under LSA-C.Cr.P. art. 920(2). This court routinely reviews the record for such error,

whether such a request is made by a defendant. Under LSA-C.Cr.P. art. 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. Based on our review, we find no such reversible error.

CONVICTION AND SENTENCE AFFIRMED.