IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH THOMAS MONSCVITZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45914

FILED

MAR 13 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of grand larceny. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Joseph Thomas Monscvitz, Jr., to serve a prison term of 15-48 months.

First, Monscvitz contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Citing to Sharma v. State for support,[1] Monscvitz argues that he did not aid or abet and claims that he was no more than "an innocent intoxicated bystander who had no idea what to do when his friend, the person with the keys to his truck, engaged in this outrageous act."

Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a

[1]118 Nev. 648, 655, 56 P.3d 868, 872 (2002) (holding that "in order for a person to be held accountable for the specific intent crime of another under an aiding and abetting theory of principal liability, the aider or abettor must have knowingly aided the other person with the intent that the other person commit the charged crime").

rational trier of fact.[2] In particular, we note that Jane Dubois, an employee at the Wal-Mart in Henderson, testified at trial that Monscvitz and his accomplice, Ian Anderson, entered the store together at approximately 1:00 a.m. and proceeded to the men's clothing department. Within a few minutes, Dubois again noticed the two men, with Anderson pushing a shopping cart full of clothing; she watched them leave the store together without paying for the merchandise. Dubois "went after them," and saw Anderson head towards a vehicle while Monscvitz "stayed up on the sidewalk." Dubois testified that she raised her hands and told Monscvitz, "I want my stuff back," after which, the two engaged in some hand-slapping. Dubois then left to report the incident to her managers, as she watched Monscvitz run in the same direction as Anderson.

Edmund Cook, a customer services manager, and Michael Yturralde, an assistant manager, both testified that a review of the surveillance videotape revealed that Monscvitz and Anderson entered the store together, and within approximately two minutes, exited the store together with a shopping cart nearly full of clothing. The videotape, offered into evidence at trial, showed Anderson running towards a vehicle, while Monscvitz followed behind. It was later discovered that the vehicle, driven by Anderson, belonged to Monscvitz. After Monscvitz and Anderson were apprehended, the stolen items were returned to the store by the police. Cook testified that the price tags on the stolen items were scanned, and as a result, it was determined that the total value of the clothing was $274.80.

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[2]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Monscvitz committed the crime of grand larceny.[3] It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.[4] Therefore, we conclude that the State presented sufficient evidence to sustain the conviction.

Second, Monscvitz contends that the district court violated his right to due process by refusing to allow him to pursue a line of questioning related to the wholesale value of the items stolen. During the cross-examination of a Wal-Mart employee, Monscvitz sought to determine what it would cost Wal-Mart to replace the items stolen. The State objected, arguing that it was irrelevant, and the district court sustained the objection. Monscvitz claims that the wholesale value of the items, as opposed to the amount indicated on the price tags, would not meet the threshold requirement for grand larceny. Monscvitz argues that "the value of the property is a factual question for the jury and replacement cost may be considered by the jury in reaching that factual determination." We disagree with Monscvitz's contention.

For property crimes such as larceny, "the measure of the damages sustained as a result of the theft should generally be the fair market value of the stolen property."[5] However, "where such market value cannot be reasonably determined other evidence of value may be

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[3]See NRS 205.220(1).

[4]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

[5]Romero v. State, 116 Nev. 344, 347, 996 P.2d 894, 896 (2000); Cleveland v. State, 85 Nev. 635, 637, 461 P.2d 408, 409 (1969).

received such as replacement cost."[6] In Calbert v. State, this court stated that the price tags attached to stolen merchandise serve as "competent evidence of the value of the stolen goods for purposes of establishing grand larceny."[7] Therefore, because the fair market value of the items stolen by Monscvitz was easily determined by the price tags, we conclude that the district court did not err in refusing to allow a line of questioning related to the wholesale value. Finally, we note that Monscvitz never challenged the veracity of the price tags used to determine the value of the items.

Having considered Monscvitz's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[6]Cleveland, 85 Nev. at 637, 461 P.2d at 409.

[7]99 Nev. 759, 759-60, 670 P.2d 576, 576 (1983).