

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000453-MR

DEWAYNE EDWARD COOPER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
INDICTMENT NO. 02-CR-01072

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, MINTON, AND TACKETT, JUDGES.

MINTON, JUDGE: Dewayne Edward Cooper appeals following his conviction of receiving stolen property over \$300.00. On appeal, he argues that the circuit court improperly refused to instruct the jury on the misdemeanor offense of receiving stolen property under \$300.00.

The facts of the case are fairly simple. Cooper was with Josh Tincher at the Camelot East strip club in Lexington. When Tincher ran out of money, he asked Cooper to go across the

street to The Castle, a local jewelry store and pawn shop, to sell several pieces of jewelry. Cooper initially sold four pieces of jewelry to The Castle for \$35.00, and two hours later pawned a large gold necklace (described as a solid gold rope chain approximately thirty-one inches in length and five millimeters in diameter) for \$200.00. It was later discovered that the jewelry was stolen from the home of Judy Greathouse.¹

Cooper presents two arguments on appeal regarding why the jury should have been instructed on the misdemeanor offense of receiving stolen property under \$300.00. His first argument is that the jury was presented with sufficient evidence from which to conclude that the jewelry in question was worth less than \$300.00. Alternatively, he argues that the jury could have concluded that he did not believe nor have reason to know that the larger necklace was stolen, thereby making the value of the remaining property less than \$300.00.

"In a criminal case it is the duty of the court to prepare and give instructions on the whole law and this rule requires instructions applicable to every state of case deducible or supported to any extent by the testimony."²

¹ We do not know, nor is it relevant to this appeal, whether charges were brought against Tincher relating to the theft of the jewelry.

² Kelly v. Comm., Ky., 267 S.W.2d 536, 539 (1954).

Therefore, Cooper was entitled to an instruction on the misdemeanor count if there was evidence or testimony presented from which the jury could have concluded that the jewelry was worth less than \$300.00.

The only evidence presented regarding the value of the jewelry was either in the form of an appraisal which estimated the replacement value of the necklace to be \$1,700.00, or in the testimony surrounding the sale and pawn at The Castle. While it is true that he only received \$235.00 in cash, the assistant manager of The Castle explained that The Castle only extends one third of what it considers to be the value of any item, whether it be through a pawn loan or outright sale.³ Therefore, according to her testimony, the jewelry was worth \$705.00.

Depending upon which evidence the jury chose to rely on, the value of the stolen jewelry was between \$705.00 and \$1,700.00. Under any interpretation, the value is greater than \$300.00, thus not entitling Cooper to an instruction on the misdemeanor offense.

Turning to Cooper's second argument, his claim is that the jury could have believed that he thought the large necklace belonged to Tincher. Therefore, if the jury did not find him

³ For purposes of valuation, The Castle treats both types of transactions identically.

guilty with respect to that item, he would only have been guilty of a misdemeanor with respect to the other items.

However, Cooper's testimony did not distinguish between the items to the extent suggested on appeal. He alternatively stated that he thought the smaller items may have belonged to Tincher, but he also conceded that he thought they might have been stolen. In fact, Cooper at one point stated to the police that in order to have that much jewelry, Tincher would probably have had to steal it.

The jury was presented with conflicting statements from Cooper. In one version, he thought that the large necklace was Tincher's because Tincher was wearing it and often wore jewelry, and the other items he believed belonged to Tincher's girlfriend. According to the other version presented to the police and acknowledged during cross-examination, he assumed all the jewelry was stolen.

Cooper's differing accounts present an all or nothing sort of scenario for the jury's resolution. Either he knew the jewelry was stolen or he did not, but he presented no basis from which the jury could reasonably conclude that his state of mind was different with respect to different items of jewelry. Therefore, the only options available were conviction of the felony or total acquittal. The circuit court was correct that a misdemeanor instruction was improper.

Accordingly, the circuit court's judgment of conviction is affirmed.

ALL CONCUR.

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