

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000480-MR

RONI GIBSON

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE LEONARD L. KOPOWSKI, JUDGE
ACTION NO. 03-CR-00275

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BUCKINGHAM, JUDGE: Roni Gibson appeals from her conviction and two-year sentence in the Campbell Circuit Court for the offense of receiving stolen property over \$300.¹ The sole issue is whether the evidence at trial was sufficient to prove that the property had a value of at least \$300. We believe it was, and we thus affirm.

On June 5, 2003, Gibson was riding as a passenger in the front seat of a vehicle that was stopped by a police officer

¹ Kentucky Revised Statutes (KRS) 514.110.

for speeding 79 mph in a 55 mph zone. The driver of the car did not have a driver's license, and she was arrested for the offense of operating a motor vehicle with a suspended license. The officer searched the car incident to the arrest and found clothing that had been stolen from a retail store or stores.

Gibson and a co-defendant (the driver) were jointly tried for receiving stolen property over \$300. At the conclusion of the trial, the court instructed the jury on the principal offense as well as a lesser-included offense of receiving stolen property under \$300. The jury found Gibson guilty of the greater offense, and she agreed to take a two-year sentence rather than proceed through a penalty phase in the trial. Following formal sentencing, this appeal followed.

As we have noted, the sole issue is whether the evidence was sufficient to support a guilty verdict on the greater offense or whether the court should have granted Gibson a directed verdict on that charge. The standard for a directed verdict is as follows:

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the

jury questions as to the credibility and weight to be given to such testimony.

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). "On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal." Id.

Numerous items of clothing were introduced into evidence, and one group of items from a T.J. Maxx store had nine specific articles of clothing with discount price stickers totaling \$155.91. A store manager from the T.J. Maxx store testified that the discount on items could be from 20% to 60% off the manufacturer suggested retail price (MSRP) and that it was possible the discount could be even more than 60% in some cases. A separate group of items was introduced into evidence with MSRP totaling \$742.75.² These items did not have discount stickers on them and apparently did not come from a T.J. Maxx store, although there was no testimony concerning the store from which they came. Nonetheless, based on the statement made by Gibson to the officer and on the fact that a majority of the items still had security tags on them, there was sufficient evidence that the items were stolen. At any rate, Gibson has not challenged the sufficiency of the evidence concerning her

² Our review of the testimony indicates the items in this group totaled \$830.75 rather than \$742.75, but the slight difference is irrelevant.

possession of the stolen items and her knowledge that they were stolen. Rather, she challenges only the sufficiency of the evidence concerning their value.

In support of her arguments that the Commonwealth did not present sufficient evidence to establish a value of the clothing at over \$300, Gibson cites Commonwealth v. Reed, 57 S.W.3d 269 (Ky. 2001). As the Reed court noted, the Commonwealth has the burden of proving that the items found in possession of the person charged are valued at more than \$300. Id. at 270. "In establishing this, the Commonwealth must prove the market value of the stolen items at the time and place of the theft." Id., citing Perkins v. Commonwealth, 409 S.W.2d 294, 296 (Ky. 1966). Further, "the testimony must have sufficient detail for the jury to make a value determination." Id. at 271.

Gibson also argues that the jury was instructed that the Commonwealth had to prove that only the items taken from T.J. Maxx had a value over \$300 and that the value of those items was only \$155.91. Gibson's argument is incorrect, although understandably so. The original indictment charged Gibson with receiving property stolen from a T.J. Maxx store. However, the proof was that some of the stolen items were not from that store. Therefore, the Commonwealth was allowed to amend the indictment at the conclusion of the trial to conform

to the proof. The trial court then instructed the jury accordingly and with no reference to a specific store from which the items were stolen.³

We conclude that the evidence as to the value of the clothing was sufficiently detailed to support a guilty verdict on the greater offense. Assuming that all the articles which totaled \$742.75 had actually been priced at a discount of 60% off, then the total value of all stolen items, including those T.J. Maxx items with discount price stickers, would easily exceed \$300 in value. In short, we conclude that the evidence passes the test set forth in the Benham case.

The judgment of the Campbell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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³ The court's record before us includes tendered instructions that referred only to T.J. Maxx items. Those instructions were not those given to the jury.