

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000850-MR

RONALD NELSON

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 02-CR-00159

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: This is an appeal from a judgment entered by the Scott Circuit Court after a jury convicted appellant Ronald Ray Nelson of second-degree burglary and felony theft by unlawful taking, and of being a first-degree persistent felony offender. Nelson contends that the trial court erred by failing to find that the evidence was insufficient to support his conviction. For the reasons stated hereafter, we affirm.

It is undisputed that the Scott County home of David and Barbara Knox was burglarized, and that jewelry and family mementos which they valued at over \$300 were stolen, while they were absent between 4:30 or 5:00 p.m. and 10:35 p.m. on July 6, 2002. Further, it is undisputed that the burglar gained access to the house by breaking in through a back kitchen door. Several of the missing items subsequently were found under a nearby tree.

Some eleven weeks after the burglary, while sorting through clothes in the dresser from which the jewelry was stolen, the victim discovered an unfolded blue men's t-shirt which did not belong to any family members. The victim passed the shirt to the police, and Nelson was interviewed by Detective Don Mather on September 26. The transcript of that taped interview, as played for the jury, included the following pertinent admissions by Nelson regarding his actions on the date of the burglary:¹

DM Okay, back on July 6th of this year you were observed by a person coming around from the back side of 615 East Main Street. Does that match your recollection?

RN Yes sir.

DM Why were you in the back of that house?

RN I was taking a short cut to

¹ For ease of reading the written transcript of the audiotape, "uh's," "ah's," "um's," and extraneous ellipses have been deleted, and "a's," commas and periods have been substituted where appropriate.

Electro-Shield to fill an application out cause I live right on 123 Maddox Street and it'd been a whole lot shorter to go that way cause I knew you, you could go over that way, go to the apartments and get on Washington Street, and it's right up on Chambers.

DM Okay, now as you were, I guess you hopped the fence and got into the back yard?

RN Yes sir.

DM Did you see anybody back there?

RN Two young children.

DM Okay, now it had been raised a little while ago, you said something about you'd knocked on the door.

RN Yes sir.

DM The back door.

RN Yes sir.

DM Why were you knocking there for?

RN I was looking for work, mowing lawns, doing anything, cause I was unemployed at the time. That's why I was going to Western Pacific.

DM Okay, okay, so you stop there, you knock at, looking for work. What were you wearing?

RN What was I wearing, I was wearing, well I had, I had a tank top in my back pocket, and I was, I didn't have a shirt on, and I think I had blue jeans on.

DM Okay.

RN Or maybe shorts, I'm not for sure which.

DM Okay, now earlier I showed you this, this blue tank top.

RN Yes sir.

DM Which where is it, it's Fruit of the Loom, extra large, 46-48, and I showed that [to] you and you recognized that as your shirt?

RN It does, yeah, I have had one like that, so it does, yes.

DM Okay, so is this your shirt?

RN More than likely, yes sir.

DM Okay, and where were you carrying that shirt that day?

RN In my back pocket.

. . . .

DM Okay, and at some point were you missing your shirt, or?

RN Yes sir, I, I did not realize I was missing it until I'd done got all the way over towards Chambers.

DM Okay, so on the same day you remember missing your shirt?

RN Yes sir.

DM Okay, so, and you recognize this as your shirt, you were in the back door, you were knocking on the back door?

RN Yes sir.

DM For lawn mowing jobs?

RN Yes sir.

DM Okay, who did you see around there you say?

RN Two young boys.

DM Okay and what were they doing?

RN They was playing.

DM Okay, did you speak to anybody back there?

RN To the two young boys, they, I, I asked them if they had seen a cat because I was kinda paranoid because I knew I was on private property and I should ah known that I shouldn't ah been going through the yard.

DM Okay and what did they, what did you ask them?

RN I asked them if they had seen a white cat.

DM Okay and what did they say?

RN They said no, and I said thank you very much and then I walked on back and went and jumped the fence and then went on over to the apartments that we got over on Washington Street.

DM Okay, now did they talk to you or did you talk to them first?

RN I, that I'm not for sure, I think I might ah asked them first.

DM Well what's with the cat thing, that's why I was wondering, you said.

RN Yeah, I think, I think I asked them first, I think I talked to them first, and they told me no, they hadn't seen no cat.

DM Were they just looking at you or something, I mean?

RN Yeah, they was playing around, they happened to see me as I was walking through and.

DM Okay, so you thought you ought to say something to them or?

RN Yeah.

DM Okay, all right, so let me make sure I get this right, you cut through there to go to Electro-Shield?

RN Yes sir.

DM You hop the fence, come in the back yard, I guess you're, were you knocking before or after you talked to these kids?

RN Before.

DM Okay, so you talk to these kids about a white cat?

RN Yes sir.

DM Okay, then you knock on the door looking for a lawn job, did anybody answer?

RN No sir.

DM Okay, and then what did you do after that?

RN I walked on to the back of the, back of the house there, and jumped the fence there to go over to where the apartments are.

DM Un hun.

RN And then I walked down through the parking lot and went to Washington Street, went down Washington Street, turned and made a right, went to Chambers and went to Electro-Shield.

DM Okay and at what point did you notice this shirt missing?

RN Right before I got to Electro-Shield, because I was wanting to put it on before I went in to talk to them about a job.

DM Okay, now how, how would you account for this, this showing up in the house, your shirt showing up in their house?

RN Sir, I have . . .

DM Do you have any idea how that got in there?

RN I have no, I have no idea about that sir.

DM Okay, but you know you were there and all of these other?

RN Yes, I was in the area.

. . .

DM Okay, so you were there, you did knock but you were looking for lawn mowing?

RN Yes sir.

DM Okay, this is your shirt but you must ah dropped it?

RN Yes sir.

DM Okay, all right, and you say you went to Electro-Shield that day?

RN Yes sir.

DM What did you go there for?

RN To apply for a job.

DM Okay, did you apply for a job?

RN No, they, Mr. Crabtree's uh said that he didn't need no help at that time, he wasn't taking applications.

DM Mr. Crabtree?

RN Yeah.

DM Okay, so on July 6th you were there asking him about a job but he wouldn't give you an app-?

RN Yeah, he said that cause I worked for him at Jordan Plating, it's the same, it was the same thing, Jordan Plating moved to Elizabethtown, and then he said that he, he wouldn't allow me to work for him, cause he didn't like me at Jordan Plating, I was a Foreman at Jordan Plating.

DM Okay, now I'm confused. Is he not taking applications or he didn't like you?

RN I think, I think, he said he wasn't taking applications is what he said, but Duane Morgan, he was my supervisor at Jordan Plating, he worked, when they moved out, he went to Electro-Shield.

DM Un hun.

RN And me and Duane's real good friends, and he said that David Crabtree didn't like me and that's why he wouldn't hire me, so.

DM Okay, did you talk to anybody while you were there?

RN Mr. Crabtree was not there and the, I talked to, I, it was one of their Foreman's or Supervisor's, and he said you know he said Mr. Crabtree would be gone for the rest of the day so I said I'd come back.

DM Okay, well Ronnie, I, I'm confused. You, you, you went there to get an application, but he, you say because

Crabtree didn't like you, you couldn't get one?

RN Yes sir, because I worked, he was.

DM Crabtree wasn't there. You were talking to a Foreman?

RN Yeah or a team leader or one of the two, somebody in charge I guess.

DM How did they know that Crabtree didn't like you to not give you an application?

RN Well he couldn't give me an application. He said Mr. Crabtree had to give the applications.

DM Right.

RN Because of the, they can't go up in the front offices.

DM Right. So he's not there, you couldn't get the application?

RN Right.

DM Then the same question. How do you know, why didn't you just go back and get another application?

RN Because I seen Duane Morgan, and I go down here and do an awareness, and I seen Duane Morgan, which was a Supervisor, and I said would Mr. Crabtree hire me and he said no. And another thing, I called CBS, they said they had a job out there, and before I, you know CBS is a temp service.

DM Yeah.

RN And I called Mr. Crabtree, and I said Mr. Crabtree, I would like to come back, cause I worked for him for a little while.

DM Un hun.

RN And I quit on him, because of, of this supervisor he had out there and we didn't get along, and I said Mr. Crab, Crabtree, CBS has got a job opening for you, would you allow me to come to work for you? And he said no.

DM Hun, okay. When you were done with that, how did you walk home?

RN How did I walk home. I walked straight up from Chambers, walked straight up I guess it is Chambers all the way up to Main Street, right?

DM Un hun.

RN And then made, made a left and come back home.

DM Just straight down Main Street?

RN Yes sir.

DM To Maddox?

RN Yes sir.

DM You didn't cut back through this same yard?

RN No sir.

DM How come?

RN I didn't think nothing about it, didn't want to go back through it cause I knew it was private property and I knew I could probably get in trouble for being on private property.

DM Okay, all right, earlier you said there's a cut through there or something?

RN Yeah, it's toward the back there, there.

DM Does it cut through the property you were on?

RN As you go, as you go up into the house and you go all the way back to the back there's, it's, it's, it's, it's, I, either I climbed the fence, I'm not for sure, it's been a while back. It's a fence, I might ah, I might ah climbed the fence that went over to the apartments, and I didn't want to come back that way, you know and go over the fence, or.

DM All right.

RN After I'd went through it.

DM Okay. Well I'm just trying to understand why you know the path there.

The jury found Nelson guilty of all three charges against him, and he was sentenced to a total of twelve years' imprisonment. This appeal followed.

Nelson contends on appeal that the trial court erred by failing to find that the evidence was insufficient to support the charges against him. Although he asserts that this issue was preserved by motions for a directed verdict, the record in fact shows that Nelson's motions failed to state grounds on which a directed verdict should be granted. More specifically, the partial trial transcript shows that at the close of the Commonwealth's case, Nelson's counsel stated only that "[a]t this time, Your Honor, I would move for a directed verdict." Counsel then announced closed without putting on any proof, and

stated “[s]ince I have closed my case, I will go ahead and move for a directed verdict, out of an abundance of caution.” In neither instance did counsel provide any reasons or argument to support the motion.

CR 50.01 requires a motion for a directed verdict to “state the specific grounds therefore.” Indeed, the Kentucky Supreme Court recently held in *Pate v. Commonwealth*,² in circumstances much like those now before us, that appellate review of the trial court’s denial of directed verdict motions was foreclosed where the defendant’s counsel phrased the motions in terms almost identical to those used by counsel below.

Even if we disregard the failure to preserve the issue and review the claimed error pursuant to RCr 10.26, Nelson is not entitled to relief on the ground that the evidence was insufficient to support his conviction. As reiterated in *Pate*,³ “[t]he jury is allowed reasonable latitude in which to infer intent from the facts and circumstances surrounding the crime.” Here, Nelson admitted that he jumped the fence into the victims’ back yard and knocked on their back door during the period of time when the burglary occurred. Although he told the investigating detective that he intended to inquire about cutting the victims’ grass, he admitted that he indicated to

² 134 S.W.3d 593, 597-98 (Ky. 2004).

³ 134 S.W.3d at 598 (quoting *Simpson v. Commonwealth*, 759 S.W.2d 224, 226 (Ky. 1988)).

nearby children that he was searching for a white cat. Further, he made numerous other inconsistent statements regarding his actions during and after the time when he was in the victims' yard on July 6. Finally, Nelson admitted that he was the owner of the blue shirt found in the victims' dresser some eleven weeks after the burglary and that he had lost the shirt on July 6 while on his way to inquire about employment. As the jury reasonably could have concluded from the evidence that Nelson burglarized and stole items from the victims' house, leaving his shirt behind in the process, he is not entitled to relief on appeal pursuant to RCr 10.26.

The court's judgment is affirmed.

TAYLOR, JUDGE, CONCURS.

KNOFF, JUDGE, CONCURS WITH RESULT.

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