**ENTRY ORDER**



SUPREME COURT DOCKET NO. 2009-091

JANUARY TERM, 2010

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| State of Vermont | } | APPEALED FROM: |
| | } | |
| v. | } | District Court of Vermont, |
| | } | Unit No. 3, Franklin Circuit |
| | } | |
| Raymond E. Mills | } | DOCKET NO. 427-4-08 Frcr |
| | | Trial Judge: Michael S. Kupersmith |

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a judgment of conviction, based on a jury verdict, of five separate charges, including burglary and grand larceny. He contends the evidence was insufficient: (1) to prove that he committed burglary and grand larceny, or (2) to establish the value of the stolen property. We affirm.

The record evidence may be summarized as follows. On the evening of April 19, 2008, the victim awoke to the sound of a side-door to his garage opening. The victim went to investigate, heard the garage door open, and saw his car—a white Ford Taurus—backing out of the garage. The victim did not see the driver's face, but observed that the individual was wearing a baseball or race-car style hat with red on the side. The victim returned to his bedroom and discovered that his car keys and $90 from his wallet were missing.

The victim alerted the police, who later that evening spotted his car traveling at a high rate of speed outside St. Albans. The police gave chase until the driver of the vehicle pulled over, exited the vehicle, and ran into a nearby corn field, eluding capture. Officers observed that the individual was small of stature, wore a dark hooded sweatshirt, and lost a sneaker while running away. A search of the car revealed a screwdriver, tape measure, fishing gear, and a package of pork chops. The driver's seat was pulled far forward, indicating that the last person to drive the car was small of stature. Later that evening, another officer searching the area found a set of keys in the corn field about ten feet from the car. The keys contained a Price Chopper Advantage tag. The officer took the tag to a local Price Chopper store to be scanned, and defendant was identified as the owner. The following morning, the police located defendant in a wood north of St. Albans. He was wearing a dark hooded sweatshirt and a red-and-black Nascar baseball cap and was barefoot. The officer testified that defendant was small of stature.

It was later discovered that the victim and defendant were co-workers at a business in St. Albans. The victim had on occasion given defendant rides to work, and had once returned home with defendant to retrieve something he forgot. In conversations with defendant, the victim had learned that defendant's favorite food was pork chops.

Defendant was charged with burglary, grand larceny, operating a vehicle without consent, attempting to elude a police officer, and driving with a suspended license. The jury returned guilty verdicts on all five counts. This appeal followed.

Defendant first contends that the evidence was insufficient to prove that he committed the burglary and grand larceny. In support of the claim, defendant notes that the victim could not identify the person who drove off with his car, the police could not find any signs of forced entry, and there was no evidence that the victim's missing money was found in defendant's possession. Thus, defendant contends there was insufficient evidence to prove that he was the person who actually entered the victim's home, took his money, and stole his car, noting that several hours elapsed between the break-in and the high-speed chase, in which he essentially admits involvement.

Defendant concedes that he failed to raise the sufficiency-of-the evidence issue at trial, but asserts that the trial court should have dismissed the charges sua sponte. "A court must move for acquittal by its own motion only when the record reveals that the evidence is so thin that a conviction would be unconscionable." State v. LaFlam, 2008 VT 108, ¶ 4, 184 Vt. 629 (mem.). A motion for acquittal must be denied when the evidence, viewed in the light most favorable to the State, and disregarding any modifying evidence, fairly and sufficiently supports a finding of guilt beyond a reasonable doubt. Id. Furthermore, as we have explained, "[t]he law makes no distinction between the weight given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence." State v. McAllister, 2008 VT 3, ¶17, 183 Vt. 126; see also State v. Martin, 2007 VT 96, ¶ 8, 182 Vt. 377 ("[C]ircumstantial evidence may serve as proof . . . beyond a reasonable doubt.").

Assessed in light of these standards, the evidence here was more than sufficient to support a reasonable inference that defendant committed the burglary and grand larceny. Ample circumstantial evidence established that defendant was the driver of the stolen vehicle, including the fact that his physical stature matched the police description of the driver, that defendant's keys with his identification tag were found near the abandoned car, that defendant's clothes matched the driver's, that the driver lost a shoe while running from the police and defendant was found hiding in the woods barefoot in the middle of April. From these facts, as well as the fact that defendant worked with the victim, knew where he lived, and was wearing a hat that matched the victim's description, the jury could easily and reasonably infer that it was defendant who entered the victim's home, took his car keys, and stole the vehicle out of his garage. As we have observed, in assessing circumstantial evidence the jury is entitled to "draw rational inferences" to determine the facts, and that is precisely what occurred here. Martin, 2007 VT 96, ¶ 8 (quotation omitted). Accordingly, we find no merit to defendant's claim that the evidence was insufficient to support the verdict.

Defendant further contends that the evidence was insufficient to establish that the value of the victim's vehicle exceeded $900, a necessary element for grand larceny. 13 V.S.A. § 2501. The sole evidence presented by the State on this point was the victim's opinion testimony that the vehicle was worth $1800, based upon his knowledge that it had multiple new components and his awareness of the value of new cars. It is well settled that the owner of personal property is competent to testify to its market value. State v. Driscoll, 2008 VT 101, ¶ 12, 184 Vt. 381; State Hous. Auth. v. Town of Northfield, 2007 VT 63, ¶ 10, 182 Vt. 90; 12 V.S.A. § 1604. The

weight to be accorded such testimony is a question committed to the discretion of the trier of fact. Wood v. Wood, 143 Vt. 113, 119 (1983). We thus find no support for the claim that the evidence was insufficient to establish the value element of grand larceny and therefore no basis to disturb the judgment.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice