

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs July 17, 2007

**STATE OF TENNESSEE v. BUDDY MCDONALD THOMAS**

**Appeal from the Criminal Court for Putnam County  
No. 05-0477A Leon Burns, Judge**

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**No. M2006-02744-CCA-R3-CD - Filed February 6, 2008**

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The defendant, Buddy McDonald Thomas, was found guilty by a Putnam County Criminal Court jury of facilitation of theft of property valued at \$60,000 or more, a Class C felony. See T.C.A. §§ 39-11-403(a) (facilitation); 39-14-103 (theft of property). The trial court imposed a four-year, Range I sentence, to be served on ten years of probation. In this appeal, the defendant challenges the sufficiency of the convicting evidence and the propriety of a jury instruction on the permissive inference relative to possession of recently stolen property. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JERRY L. SMITH and JAMES CURWOOD WITT, JR., JJ., joined.

David Neal Brady, District Public Defender, and H. Marshall Judd, Assistant Public Defender, for the appellant, Buddy McDonald Thomas.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; William Edward Gibson, District Attorney General; and Beth Elana Willis, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

Matthew McClain testified that he had known the defendant since 2001 or 2002 and had done excavation work for him on two occasions. He said he thought the second time was in the summer or fall of 2003. He recalled that on that occasion, the contract price for the work was to be \$1,600. He said that after the second time he did work for the defendant, the defendant later mentioned to him that he had a truck bed Mr. McClain might be interested in buying. He said he saw the truck, which was a new, “reddish color” Ford, on the defendant’s property in front of the defendant’s house trailer. He stated the defendant told him he wanted to put a dump bed onto the truck. He said the

defendant did not tell him he owned the truck. He said he purchased the truck bed for \$600 in November 2003. He said he also saw a trackhoe on the property but did not think he discussed purchasing it. McClain estimated the trackhoe's value at \$30,000 and said that it would cost \$40,000 new. He said the defendant led him to believe the trackhoe belonged to the defendant. He said he originally planned to put the truck bed on his truck but ultimately sold it to Danny Roberts for \$700.

McClain testified that he was contacted by Officer Troy Human in March 2004 about the truck bed being stolen. He said he cooperated with Officer Human. He said that around the same time he was contacted by Officer Human, the defendant also contacted him and told him the truck bed was stolen.

Jimmy Carl Ball testified that he was employed by the National Insurance Crime Bureau. He said that organization assists law enforcement and insurance companies in recovering stolen vehicles. He said he was contacted by Officer Human on March 8, 2004, regarding a Ford pickup truck. He said he checked the vehicle identification number against his records and determined that the truck had been stolen. He said the owner was registered as John Grice of Morganton, Georgia and that it had been reported stolen to the police department and to Progressive Insurance. He said Progressive Insurance was the owner of the truck, having paid \$35,122 to Ford Motor Credit, the lienholder, and Paula Hooper, the insured. He said he had no information which connected the defendant to the truck. He said he never spoke with John Grice or Paula Hooper.

Colleen Douglas testified that she was a claim representative with Auto Owners Insurance Company. She said Auto Owners Insurance had paid claims for three pieces of equipment which were reported stolen. The first was a Taki Cho TB-135 trackhoe, which was reported to have been stolen on August 16, 2003. She said Auto Owners Insurance paid \$15,823 to the lienholder, New Holland Credit, and \$18,059.10 to the insured, Grice Construction. She said Auto Owners Insurance also paid Grice Construction \$3,500 for a trailer and \$4,819.24 for a utility bed. She said Auto Owners Insurance Company's records indicated that Grice Construction was owned by John David Grice of Morganton, Georgia. She said that after the utility bed and trackhoe were recovered, Auto Owners Insurance received \$4,564 for salvage.

Jeff Sills testified that he was formerly employed by the Tennessee Highway Patrol and was the agent in charge of the investigation of the three pieces of stolen property and the defendant. He said that on March 8, 2004, the THP flew a helicopter over an area where it was suspected that stolen equipment was located. He said the equipment was a Ford F-350 pickup truck and a 2001TB-135 trackhoe. He said they did not know about the trailer at the time. He said that while the flyover was taking place, he received a call from his supervisor, Randy Gothard, that the defendant was driving away from his trailer and that he should stop him. He said that he stopped the defendant as the defendant turned onto the road where the stolen property was located and that the defendant said he was going to check on a trailer or some property his friend had down the road. He said he took a written statement from the defendant.

Mr. Sills identified the statement and read it into the record. In it, the defendant stated that he had known David Grice for several years and that Grice had a partial ownership interest in 53.24 acres on which the defendant lived. The defendant stated that Grice owned 45.25 acres of adjoining property. The defendant said he talked to Grice weekly and saw him about one time per month. The defendant said that he and his children had built a shed on his property in early October and that he noticed a Ford truck and trailer parked "at my place" later in October. He said there was a backhoe about fifteen to twenty yards behind his trailer, which he assumed had been left there by Grice. He said the keys were in the truck and the backhoe. The defendant stated that Grice had said he would bring a trackhoe for the defendant to use to "put in [his] septic." The defendant stated that he had seen the trailer and truck in Grice's shop in Blue Ridge, Georgia. The defendant stated that he told Grice in June or July he had a purchaser for the truck bed but that the defendant later traded the truck bed for "dozer work" and \$600. The defendant stated that he removed the truck bed in December, that he had parked the truck at the road with the keys in the ashtray, and that he noticed the truck was missing after Christmas. The defendant stated that he saw the truck parked under his shed on Groundhog Day and that he had not discussed the truck with Grice. The defendant stated that he had the backhoe at his house until the previous day, that he had used the backhoe, and that he did not know how the trailer "got down to the hollow."

Mr. Sills testified that the defendant said he and Grice were "best friends." He said the area of the defendant's property where the shed was located was remote and difficult to access. He said it was wooded and in a "steep hollow." He said that the Ford truck was in the shed and that it did not have its bed. He said the defendant told him he had assumed when the truck disappeared that Grice had taken it back to Georgia.

Mr. Sills testified that he learned during the investigation that Matt McClain bought the truck bed in November 2003. He said the defendant said he moved from Georgia to Tennessee in October 2003. He said Grice did not cooperate with him in the investigation. He said he did not check the defendant's banking or telephone records. He said the defendant assisted the authorities by driving the trackhoe out of its location and by helping get the trailer out, as well.

Troy Human testified that he was employed as a criminal investigator with the Tennessee Highway Patrol. He said he assisted with the aerial surveillance of the defendant's property on March 8, 2004, with regard to a report from Georgia of stolen property consisting of a truck, trailer, and trackhoe. He identified photographs he took during the aerial surveillance, which depicted the red Ford truck under a canopy shed. He said they located the trailer and trackhoe in separate locations. He said that after the helicopter landed, he drove from the airport to the defendant's property, where other officers were already talking to the defendant. He said the defendant consented to a search of his property. He said that there was a "no trespassing" sign which had the defendant's name written on it posted on the property and that the trailer was "turned cross-ways" to block the rough road to the place the trackhoe was stored.

Investigator Human testified that the defendant initially said the trailer was his but that as the officers showed more interest in it, the defendant said he had borrowed it and did not know who

owned it. He said they identified the truck by its vehicle identification number and frame number. He said the truck bed had been removed but was located during the investigation having been repainted and installed on a truck belonging to Danny Roberts Construction. He said Mr. Roberts had purchased the truck bed from Matt McClain, who had done work for the defendant. He said the serial numbers had been removed from the trackhoe, but they were able to identify the trackhoe by secondary numbers. He said the identification numbers on the trackhoe matched a stolen machine that was sold by Mason Tractor to Grice Construction in Georgia.

Randy Gothard testified that he was the special agent in charge of twenty-nine counties with the Tennessee Highway Patrol Criminal Investigations Division. He said that he received a report on March 3, 2004 that the defendant had stolen property, and that he drove to the property and saw the trackhoe in the defendant's driveway. He said that he went to the defendant's property on March 8 and that the trackhoe had been moved. He said the officers conducted a helicopter fly-over and located the stolen property. He said the stolen property was in an isolated, remote, wooded area that was accessible by a "pig path." He said there were "no trespassing" signs bearing the defendant's name in the area.

Agent Gothard testified that recovery of the property was difficult and took several hours. He said a towing service "burned up two wreckers trying to pull the stuff out."

The defendant testified that he was born in Fannin County, Georgia, and that he moved to Putnam County, Tennessee on October 31, 2003. He said he had worked for David Grice "[o]n and off for about [fifteen] . . . years." He said he designed mold and trim inside homes built by Mr. Grice and did odd jobs for Grice until his health prohibited it. He said he became very ill in 2003 and was hospitalized for chronic diverticulosis hematois. He said that he was totally disabled due to the condition and that Mr. Grice told him to move his home to the Putnam County property until he recuperated or passed away. He said the property had been in his family for about sixty years but "wound up in David [Grice]'s name." He said he "had purchased it basically for David, and they had put the property in [the defendant's] name by mistake instead of David's name." He identified a deed to the property on which he lived and to the adjoining tract. He said they were purchased by Mr. Grice in 1999 and that he deeded the property to Mr. Grice on February 14, 2003. He said he was "just the care-taker of the property." He said there were problems with motorcyclists and four-wheeler riders using the property and leaving behind litter and burning fires. He said this was the reason Mr. Grice sent him to live on the property. He said that he purchased a mobile home and had it moved to the property and that he had Mr. McClain do the excavating for the mobile home.

The defendant testified that the truck "came right off the showroom floor" without a bed. He said he put a bed on the truck and later removed it in order that "an electric dump" could be installed. He said that Mr. Grice knew he was selling the bed and that this was the reason he thought Mr. Grice left the truck on the property for so long.

The defendant testified that on March 8, 2004, he cooperated with the authorities. He said he gave a statement and took them to the property they suspected was stolen. He said he was "as

surprised as [he] could be” to learn the property had been reported stolen. He said he had telephoned Mr. Grice on one occasion at the request of the authorities but did not obtain helpful information. He said, “I can’t seem to get a phone call through to [Mr. Grice].” He said he had cooperated with the authorities in Georgia, as well as those in Tennessee.

The defendant testified that he did not receive any of the money that Mr. Grice received from the insurance company. He said that he was a widower with a little boy and that his only source of income was \$603 a month from Social Security.

On cross-examination, the defendant said he told the agents on March 8 that “we,” not “I,” owned the property. He claimed he was not asked specifically about the ownership. The defendant said he had never been an employee of Mr. Grice but had done work for him as a contractor. He said the truck, trailer, and trackhoe were on the adjoining property when he arrived in Putnam County in October 2003. He said the truck had a bed attached. He said Mr. Grice had purchased the truck bed, which he said was fourteen years old, and that the defendant had installed it. He said he did not tell Agent Sills this because he was not asked. He said the three pieces of equipment were parked at 15865 Tucker Ridge Road and that the address for his mobile home was 15283 Tucker Ridge Road. The defendant testified that he expected the equipment to be there because Mr. Grice had promised to help him install a septic system to his mobile home. He said the trailer was needed to transport the trackhoe and the truck was needed to haul the tank, pipes, and plumbing for the septic system. He said Agent Sills never asked him whether Mr. Grice had given him permission to use the truck.

The defendant testified that Matthew McClain was mistaken when he testified that the defendant solicited him to purchase the truck bed. He said Mr. McClain called him in June, said he was going into business for himself, and asked if the defendant knew where he could purchase a utility truck.

The defendant testified that he told Agent Human that he had made the trailer himself and that it was his. He denied that he later told him he did not know who owned it. He said there was no way to identify the trailer because it did not have a serial number.

The defendant testified that the structure where the truck was found was a duck blind, not a shed. The defendant denied that he was hiding the equipment for his friend.

After receiving the evidence, the jury found the defendant not guilty of the charged offense of theft of property valued at \$60,000 or more and guilty of the lesser included offense of facilitation of theft of property valued at \$60,000 or more. The trial court imposed a four-year sentence and suspended it, placing the defendant on probation for ten years.

## I

The defendant's first issue challenges the sufficiency of the convicting evidence. Our standard of review when the sufficiency of the evidence is questioned on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). This means that we do not reweigh the evidence but presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). "A crime may be established by direct evidence, circumstantial evidence, or a combination of the two." State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998).

Circumstantial evidence alone may be sufficient to support a conviction. State v. Richmond, 7 S.W.3d 90, 91 (Tenn. Crim. App. 1999); State v. Buttrey, 756 S.W.2d 718, 721 (Tenn. Crim. App. 1988). However, to warrant a criminal conviction on circumstantial evidence alone, the evidence "must be not only consistent with the guilt of the accused but it must also be inconsistent with his [or her] innocence and must exclude every other reasonable theory or hypothesis except that of guilt." Pruitt v. State, 3 Tenn. Crim. App. 256, 267, 460 S.W.2d 385, 390 (1970). While following these guidelines, we must note that the jury decides the weight to be given to circumstantial evidence and that "[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury." Marabel v. State, 203 Tenn. 440, 452, 313 S.W.2d 451, 457 (1958) (quoting 2 Wharton's Criminal Evidence 1611).

Tennessee Code Annotated section 39-14-103 provides, "A person commits theft of property if, with the intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Section 39-11-403(a) provides, "A person is criminally responsible for the facilitation of a felony, if, knowing that another intends to commit a specific felony, but without the intent required for criminal responsibility under § 39-11-402(2), the person knowingly furnishes substantial assistance in the commission of the felony."

In the light most favorable to the state, the evidence demonstrates that the trailer, trackhoe, and truck had been reported as stolen, and the insurers had paid claims in excess of \$60,000 to various insureds and lienholders of the equipment. The defendant was a friend of David Grice, the owner of the equipment before the insurance payoffs, and the defendant had done work for Grice for several years. The defendant was the residential caretaker of property the defendant had conveyed to Grice. There were "no trespassing" signs on the property where the equipment was stored that stated the defendant was the property owner. The defendant spoke to Grice weekly, and Grice visited the property about once a month. The defendant had authority to use Grice's equipment. The equipment was stored in a remote, wooded, inaccessible area, and the truck was underneath an open-

sided shed. The trailer was parked across the crude road which led to the other equipment. When the authorities conducted a helicopter fly-over, the defendant got into his truck and drove to the road where the equipment was located. He told the authorities he was going to check on his friend's property.

The defendant argues that there is neither evidence that David Grice, the owner of the equipment, had not given him permission to exercise control over the property nor evidence the defendant knew the insurance companies had paid the stolen property claims and taken ownership of the equipment. With respect to the defendant's first argument, the undisputed evidence established that David Grice or Grice Construction was no longer the owner of the equipment because the insurance companies had paid the claims and taken ownership. Thus, Grice's permission to exercise control over the property had ended. With respect to the defendant's second argument, there was circumstantial evidence from which a rational trier of fact could conclude that the defendant knew that the equipment had been reported stolen and that the insurance companies had paid the claims. The defendant talked to his friend Grice weekly, and he was concerned about the equipment during the helicopter fly-over. The defendant testified, and the jury had the opportunity to assess his credibility relative to his claim he knew nothing about the property having been reported as stolen. In the light most favorable to the state, the evidence supports the defendant's conviction.

## II

In his second issue, the defendant argues that the trial court erred in instructing the jury that it could infer that the defendant gained possession of the stolen equipment by theft or that he knew that the property was stolen based upon his possession of the recently stolen property. He claims there is no proof he had knowledge that the property had been reported stolen and that ownership had been transferred to the insurance companies. The state responds that the instruction was proper based upon the defendant's guilty knowledge from the location of the shed, the difficulty in accessing the shed, and the defendant's inconsistent statements.

It is well established that the unsatisfactorily explained possession of recently stolen goods, in light of the surrounding circumstances, permits an inference that the individual in possession stole the property or knew the property was stolen. See, e.g., Barnes v. United States, 412 U.S. 838, 843-44, 93 S. Ct. 2357, 2362 (1973); Bush v. State, 541 S.W.2d 391, 394 (Tenn. 1976); State v. Anderson, 738 S.W.2d 200, 202 (Tenn. Crim. App. 1987). The trier of fact may choose to apply the inference, even in the face of contradictory evidence or the defendant's contrary explanation. State v. Land, 681 S.W.2d 589, 591 (Tenn. Crim. App. 1984); see Bush, 541 S.W.2d at 395.

"It is the duty of a trial judge to give a complete charge of the law applicable to the facts of a case." State v. Harbison, 704 S.W.2d 314, 319 (Tenn. 1986) (citing State v. Thompson, 519 S.W.2d 789, 792 (Tenn. 1975)). In the present case, the state sponsored proof that the defendant was in possession of stolen property. Although there was proof that the defendant had no knowledge

that the property was stolen, there was circumstantial evidence tending to support the conclusion that the defendant was aware that the property was stolen. The jury instruction was proper.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE