Cite as 2012 Ark. App. 280

# ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-1073

Opinion Delivered April 25, 2012

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| SHAVONNA GAIL MALONE<br>APPELLANT | APPEAL FROM THE HOT SPRING COUNTY CIRCUIT COURT, [No. CR-11-33-1] |
| V. | HONORABLE CHRIS E WILLIAMS, JUDGE |
| STATE OF ARKANSAS<br>APPELLEE | AFFIRMED |

**LARRY D. VAUGHT, Chief Judge**

Appellant Shavonna Gail Malone was convicted of theft by receiving and theft of property, for which she was sentenced to five years' imprisonment on each conviction in the Arkansas Department of Correction, ordered to run consecutively. On appeal, Malone argues that the trial court erred by denying her directed-verdict motions and failing to instruct the jury on an alternative sentence. We affirm.

Although Malone was arrested on two counts of residential burglary, theft of property, and theft by receiving, she was only convicted of the latter two. Her arrest followed a string of events that began in 2010, when the home of Ronald Ashcraft was burglarized on six separate occasions, resulting in the loss of twenty-two guns, family heirlooms, jewelry, pictures, furniture, electronics, and other household items. During the investigations, Michael Sparks emerged as a suspect in the burglaries. At the time, Sparks was living with Malone in her home, located at 616 McBee Street in Malvern, Arkansas.

When officers arrived at the Malvern home, Sparks allowed officers into the residence and consented to a search of the home. Upon entry into the house, one of the officers immediately spotted a Bible embossed with Ashcraft's name. After returning with a search warrant, which listed twenty-two items stolen from Ashcraft's home, twenty of the stolen items were found in the home during the search.

Officers interviewed Malone about her knowledge and involvement with Sparks and the stolen items recovered in her home. She admitted going to Ashcraft's home on one occasion and claimed that while there she had been given a set of bookends, which were later discovered in her residence. As to the other items, linked to the July 2010 through December 2010 burglaries of Ashcraft's house, she claimed that the items "just appeared" at her house. Despite her claim, she was ultimately convicted of both theft by receiving and theft of property.

Malone's first point on appeal addresses the sufficiency of evidence supporting her theft-by-receiving conviction, and neglects to make any significant challenge to the theft-of-property conviction. In any case, her motions for directed verdict were not specific enough to preserve either challenge to the sufficiency of the evidence. Specifically, at the end of the State's case, she stated:

> With reference to the theft charge, there's insufficient evidence to enable the jury to find, to come back with a verdict of guilty on that charge and we move for a directed verdict.
>
> . . . .

> With reference to Count 4, theft by receiving, the State has rested and there's insufficient evidence for the jury to convict the defendant, Shavonna Malone, of theft by receiving. Therefore, I move for a directed verdict.

Then, after resting, she asked the court, "Can I just renew the motions or do I have to say them all again?" The court responded, " I will direct the court reporter to verbatim type those motions that you made. I furthermore ask the court reporter to make a verbatim finding of fact by the Court and a denial of those directed verdict motions . . . ."

After a careful review of the trial transcript, we have concluded that Malone failed to properly preserve her directed-verdict motions for our review because they were generic in nature. In order to preserve a challenge to the sufficiency of the evidence, an appellant must make a specific motion for a directed verdict that advises the trial court of the exact element of the crime that the State has failed to prove. *Beavers v. State*, 345 Ark. 291, 46 S.W.3d 532 (2001). The reason underlying the requirement that specific grounds be stated and that the absent proof be pinpointed is that it allows the trial court the option of either granting the motion, or, if justice requires, allowing the State to reopen its case and supply the missing proof. *Webb v. State*, 327 Ark. 51, 938 S.W.2d 806 (1997). Finally, a general motion that merely asserts that the State has failed to prove its case is inadequate to preserve the issue for appeal. *Conner v. State*, 334 Ark. 457, 982 S.W.2d 655 (1998).

Here, Malone did not identify specific elements of the crimes that she claimed the State failed to prove. Instead, she merely claimed that the evidence was insufficient in each of her motions. The record reflects that when her motions were renewed, after Malone's case-in-chief, the renewal was a verbatim recitation of the original motions that did not assert specific

flaws in the State's case. Therefore, because Malone's motions were general and did not inform the trial court of the specific issues in the State's case that were being challenged, the question of the sufficiency of the evidence to support her convictions is not preserved for appeal. *Grady v. State*, 350 Ark. 160, 166, 85 S.W.3d 531, 533 (2002).

Malone next argues that the trial court erred in refusing to give her proffered jury instruction on the availability of probation as an alternative sentence. Arkansas Code Annotated section 16-97-101(4) (Repl. 2006) authorizes a trial court to give a jury instruction regarding alternative sentencing, and provides:

> The court, in its discretion, may also instruct the jury that counsel may argue as to alternative sentences for which the defendant may qualify. The jury, in its discretion, may make a recommendation as to an alternative sentence. However, this recommendation shall not be binding on the court[.]

However, Malone's argument on appeal consists of an almost verbatim copy of our opinion in *Benjamin v. State*, 102 Ark. App. 309, 314–15, 285 S.W.3d 264, 268–69 (2008). In fact, Malone has made no effort to explain how the facts of *Benjamin* apply to her own case, or how the alternative-sentence rationale discussed in the methamphetamine case applies to her theft case. She also makes no attempt to draw parallels or develop an argument based on this prior holding. In any event, assuming arguendo that she is claiming that the trial court erred in its refusal to instruct the jury on probation as an alternative punishment, the trial court's decision to allow alternative sentencing is reviewed for an abuse of discretion. *Vanesch v. State*, 343 Ark. 381, 37 S.W.3d 196 (2001).

Abuse of discretion is a high threshold that does not simply require error in the trial court's decision, but requires that the trial court act improvidently, thoughtlessly, or without

due consideration. *Grant v. State*, 357 Ark. 91, 161 S.W.3d 785 (2004). Here, the trial court gave the request for an alternative instruction more than proper consideration. The court noted that Malone had previously been afforded leniency and ordered to drug court. As a condition of that sentence she was prohibited from consorting with felons. However, as the trial court noted, after completing the alternative program, she once again involved herself with known felons, such as Sparks. The court then concluded that because "she put herself back in a position to be involved with people that she was already trained and educated on through Drug Court not to be with . . . she does not earn the right to get a probationary sentence." Because there is both an exercise of discretion and a lack of abuse of that discretion in the trial court's ruling, we affirm on this point.

Affirmed.

GLADWIN and WYNNE, JJ., agree.

*Bob Frazier*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Ashley Argo Priest*, Ass't Att'y Gen., for appellee.