IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

ELOY MONTANEZ, **APPELLATE CASE NO: 2014-AP-21-A-O**

Appellant, **Lower Case No. 2013-MM-8917-A-O**

vs.

STATE OF FLORIDA

Appellee.

_____/

Appeal from the County Court
for Orange County, Florida
Deb S. Blechman, County Court Judge

Robert Wesley, Public Defender
and Katie Treski, Assistant Public Defender, for Appellant

Jeffrey Ashton, State Attorney
And Gregory J. Mroz, Assistant State Attorney, for Appellee

Before H. RODRIGUEZ, MUNYON, EGAN, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant seeks review of his conviction for petit theft and for request for a refund with a false receipt.

Appellant first contends that the trial court made improper remarks to the potential jurors during voir dire that suggested they should lie to the court. As the alleged error was not preserved by a contemporaneous objection, Appellant must demonstrate the error was fundamental, namely that it is an error that "reache[s] down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." *Brinson v. State*, 153 So. 3d 972, 975 (Fla. 5th DCA 2015).

The alleged error occurred when the court addressed the panel to give them some background about the voir dire process. The court told the panel:

> So if you don't want to be on the panel, just tell them that you're biased and you're prejudiced and you hate everybody who's charged with a crime, 'cause that will work. If you want to be on the jury, tell them that you can apply the law to the facts without any extremely strong feelings for the State or the Defense or against the State or the Defense if you really want to see what the jury trial would be like.

The court's remark, while perhaps subject to other interpretations when taken out of context, was part of an introduction clearly designed to help put the panel at ease and give them information about the sort of questions they would be asked. To assume the potential jurors interpreted this as an invitation to lie concerning their true feelings about jury duty would be to assume that they ignored the oaths they had taken to answer truthfully. There is no evidence in the record suggesting any of them lied. Appellant fails to demonstrate that the court's remark rises to the level of fundamental error and casts doubt on the verdict.

Appellant next contests the admission of two pieces of evidence. The standard of review for admissibility of evidence is abuse of discretion but that discretion is limited by the rules of evidence. *Lassonde v. State*, 112 So. 3d 660, 662 (Fla. 4th DCA 2013).

Appellant contends that the trial court erred in admitting into evidence a document which was identified by the loss prevention officer as the store's return receipt. It was allegedly generated at the time of the return, giving the value of the stolen property. Since the State charged Appellant with petit theft of an item valued at $100 or more, it had the burden of proving the value of the merchandise beyond a reasonable doubt. In a retail theft, value is defined as the price at which the item was being sold. *F.T. v. State*, 146 So. 3d 1270, 1272 (Fla. 3d DCA 2014).

The store's loss prevention officer testified that he saw Appellant enter the store, get a shopping cart and go to the automotive department, where he took a car battery off the shelf, placed it in the cart and took it to the automotive clerk. He asked for a refund for the battery. The witness testified that he observed the clerk perform the refund and give Appellant cash. He (the loss prevention officer) immediately detained Appellant for theft of the battery and called the police. He said he recovered documents and cash at the time, either from Appellant or from the counter where the refund took place.

The loss prevention officer was asked by the prosecutor if he knew the value of the battery. The witnesses stated that it was $128. Defense counsel objected, citing hearsay and best evidence. Although the witness did not mention a receipt at this point, the court made the remark that cash register receipts are an exception to the hearsay rule and overruled the objection. There is no such blanket exception and a cash register receipt is admissible as a business record only if properly authenticated. *Lassonde*, 112 So. 3d at 663.

Sometime later in the witness's testimony, the State introduced a composite picture which the witness identified as photographs of the battery and the return receipt generated at the time the clerk handed cash to Appellant. At that point, defense counsel specifically stated he had no objection to the introduction of these photographs into evidence. Because counsel failed to renew the objection at that time, the objection was waived. *Guerra v. State*, 53 So. 3d 1185, 1186 (Fla. 4th DCA 2011)(finding that an earlier objection is waived by a failure to renew it at the time the evidence is introduced). As what had been identified as the store-generated return receipt was admitted without objection, the jury had this document from which it could conclude that the value of the merchandize was over $100.

Appellant next asserts that the court erroneously allowed admission of a second receipt into evidence. This disputed document was another one which the loss prevention officer testified he recovered at the time he detained Appellant. On its face, the document (introduced by photograph) appeared to be a receipt for a battery purchased at another store on another date and allegedly was the receipt Appellant used to "return" the battery he had just taken off the shelf. Counsel objected at the time the State attempted to introduce a photograph of this receipt into evidence on the basis of hearsay and authentication.

This receipt was not being introduced as a business record to demonstrate the truth of the information on it, for instance, to prove that Appellant purchased a battery at another store on a different date. Rather, it was being introduced as the paper that Appellant allegedly brought into the store and used to "return" merchandise he had not purchased. The witness testified that he observed the entire refund transaction from about ten feet away and that he immediately recovered several documents at the scene, including the paper Appellant handed to the clerk when asking for a refund. This was sufficient to authenticate the document as a relevant piece of evidence; whether the document, in fact, was a false receipt being used to obtain a refund was a question for the jury.

As Appellant has failed to demonstrate reversible error, it is hereby **ORDERED AND ADJUDGED that the trial court is AFFIRMED.**

DONE AND ORDERED in Orlando, Orange County, Florida this 19th **day of** June**, 2015.**

/S/
HEATHER PINDAR RODRIGUEZ
Presiding Circuit Judge

MUNYON and EGAN, J.J. concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **the Honorable Deb S. Blechman.,** Orange County Courthouse, 425 North Orange Avenue, Orlando, Florida 32801**; Gregory J. Mroz, Assistant State Attorney,** 435 N Orange Avenue, Orlando, Florida 32801-1526; and to **Katie Treski, Assistant Public Defender**, 415 N. Orange Avenue, Orlando, Florida 32802-1673 this 19th day of June, 2015.

/S/
Judicial Assistant