

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,	)	No. ED90630
	)	
vs.	)	Appeal from the Circuit Court of
	)	the City of St. Louis
THOMAS MCGEE, Appellant.	)	Filed: March 24, 2009

### OPINION SUMMARY

Thomas McGee (“Defendant”) appeals from the judgment of the Circuit Court of the City of St. Louis, following a jury trial, convicting him of second degree robbery, kidnapping, attempted stealing over \$25,000, stealing by deceit, and two counts of false impersonation of a police officer. Specifically, Defendant claims that trial court erred by: (1) permitting the prosecution to reference Defendant’s other names during *voir dire*, (2) overruling his motion for mistrial and permitting Detective Neske to testify to inadmissible hearsay, (3) permitting police officers to testify to inadmissible hearsay, (4) accepting the jury’s guilty verdict because the State presented insufficient evidence to prove the attempted stealing charge, (5) accepting the jury’s guilty verdict because the State presented insufficient evidence to prove the second degree robbery charge, (6) finding Ms. Sharpe “unavailable” because the State presented insufficient evidence to prove that Ms. Sharpe was unavailable to testify at court due to sickness or infirmity, (7) accepting the jury’s verdicts because the verdicts were inconsistent in that they acquitted Mr. Wilks while convicting Defendant, (8) accepting the jury’s verdicts because the verdicts were inconsistent in that the jury found that Defendant both robbed Ms. Sharpe and obtained her money by impersonating a police officer, (9) finding Defendant to be a prior offender because the State presented insufficient evidence to prove Defendant’s prior felony, (10) finding Defendant to be a persistent offender because the State presented insufficient evidence to prove Defendant’s two prior felonies in that the trial court failed to comply with the procedural requirements provided by MO. REV. STAT. § 558.021. (2000), and (11) entering a written judgment that materially differed from its oral pronouncement of Defendant’s sentence for the stealing by deceit charge.

AFFIRMED AS MODIFIED

Division One Holds: The trial court: (1) did not abuse its discretion when permitting the State to reference Defendant’s other names during *voir dire* because it was for the purpose of identifying jurors acquainted with Defendant by a different name, and the State’s use of Defendant’s aliases did not result in a “real probability” of prejudice; (2) did not abuse its discretion in permitting Detective Neske to testify to Mr. Tidwell’s out-of-court statements because the statements were offered not for their truth, but to explain Detective Neske’s subsequent investigation; (3) did not err in permitting the police officers’ testimony regarding Ms. Sharpe’s out-of-court statements because the statements were cumulative of other properly admitted evidence; (4) did not err in entering judgment on the charge of attempted stealing

because the evidence was sufficient for a reasonable juror to conclude that Defendant attempted to steal more than \$25,000 while impersonating a police officer; (5) did not err in entering judgment on the charge of second degree robbery because the evidence was sufficient for a reasonable juror to conclude that Defendant threatened physical force against Ms. Sharpe and took U.S. currency belonging to Ms. Sharpe; (6) did not abuse its discretion when finding that Ms. Sharpe was “unavailable” to testify at trial due to sickness and/or infirmity; (7) did not err in accepting the jury’s verdicts finding Defendant guilty and acquitting co-defendant Wilks because the verdicts were not inconsistent and no prejudice resulted.; (8) did not error in accepting the jury’s verdicts finding Defendant guilty of second degree robbery and impersonating a police officer because the verdicts were not inconsistent; (9) did not err in relying on Defendant’s 1966 Tennessee conviction to find Defendant was a prior offender; (10) erred by sentencing Defendant as a persistent offender when Defendant’s status as a persistent offender was not properly pled and proven before the trial court submitted the case to the jury as required by MO. REV. STAT. § 558.021 (2000), but Defendant did not establish that the court’s error prejudiced him with respect to the sentence imposed, and therefore we correct the judgment to reflect sentencing only as a prior offender; and (11) erred when it orally pronounced Defendant’s sentence as five years and entered a written judgment designating Defendant’s sentence for stealing by deceit as seven years, and we therefore correct Defendant’s judgment to reflect the five year sentence.

Opinion by: Patricia L. Cohen, J.                      Kurt S. Odenwald, P.J. and Glenn A. Norton, J., concur.

Attorneys for Appellant:            Michael A. Gross and Joseph F. Yeckel

Attorney for Respondent:        Shaun J. Mackelprang

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