

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2230

September Term, 2014

KEVIN WADE HOCKER

v.

STATE OF MARYLAND

Graeff,
Friedman,
Sharer, J., Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: September 24, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Worcester County, appellant, Kevin Hocker, was convicted of first-degree burglary and theft of property with a value greater than \$1,000 and less than \$10,000.¹ Appellant noted a timely appeal and presents a single question for review, as follows: “Was the evidence insufficient to sustain the convictions for burglary and theft?”

Because we conclude that the evidence was sufficient to support appellant’s convictions, we affirm the judgments of the circuit court.

BACKGROUND

The charges stemmed from a burglary that occurred on August 8, 2013, at 12827 Murray Road in Worcester County, where Mylinh Miller resided with her husband, Robert Miller. On the morning of August 8th, Mrs. Miller locked her house and went to work a 12-hour shift. While at work, she received a phone call that her husband, then a patient in a hospital in Baltimore, went into cardiac arrest. She left work and drove to the hospital in Baltimore, but by the time she arrived, her husband had passed away.²

Later that night, when Mrs. Miller returned home, she noticed that the front door was still locked, but observed that the back door was open about four inches. She discovered that

¹ The court sentenced appellant to fifteen years, with all but five years suspended, for first-degree burglary and ten years, with all but five years suspended, concurrent, for theft. Additionally, the court ordered appellant to complete two years of supervised probation, imposed a \$500 fine and court costs, and ordered appellant to pay restitution in the amount of \$5,500.

² Mr. Miller was hospitalized on August 6, 2013, for a leg injury. He had surgery on August 7th, and then passed away after the surgery on August 8th.

a television and a black steel safe were missing from the house. Mrs. Miller testified that the contents of the safe included: gold coins, silver coins, ivory, an old German gun, figurines, silver certificates, old bills, and approximately \$2,000 in cash.³

Mrs. Miller reported the missing items to the Worcester County Sheriff's Office. About a week later, Detective Burnett contacted Mrs. Miller and reviewed the list of items that were recovered with her. At trial, Mrs. Miller testified that the items listed in State's Exhibit 1 were the same items that were in the safe that was taken from her home.

Timothy Betterly, the co-owner of First State Coin Company, a store that purchases and sells gold, silver, coins, collectible paper money, and other items of that nature, explained that any individual with a valid state-issued identification can sell items to the store. Upon receipt of the items for sale, the store makes a copy of the individual's photo identification and requires the individual to sign a receipt that states that they are legally authorized to sell the merchandise. The items are entered into the Rapid Reporting system, which gives law enforcement agencies access to the records of every item that is presented for purchase. The purchased items are held at the store for 18 days.

Betterly identified State's Exhibit 1 as a copy of the Rapid Report, dated August 9, 2013, that was provided to law enforcement agencies; State's Exhibit 2 as "a copy of a

³ Mrs. Miller testified that the television cost about \$400, the safe itself cost about \$1,500, and the items in the safe, other than the cash, were valued between \$2,500 and \$3,000.

receipt[, dated August 9, 2013,] for \$100 purchased from Kevin Hocker[,]”; State’s Exhibit 3 as “a copy of a receipt[, dated August 9, 2013,] for \$756 in merchandise purchased from Kevin Hocker[,]”; and State’s Exhibit 4 as “a photocopy of Kevin Hocker’s Delaware state-issued I.D.” The court admitted all four exhibits into evidence as business records of First State Coin Company.

At the conclusion of the case, defense counsel moved for judgment of acquittal, arguing that there was “a lack of evidence that the Defendant was the one who sold these items to the coin store, and that there was no nexus between the items that were stolen from the Millers’ property – or from the Millers’ safe [and] the items that were sold at the coin store.” The court denied the motion, and explained:

[T]here’s documentary evidence which indicates that the person that came in and sold these items was, in fact, Kevin Hocker. The address is identical to the address of the Defendant. . . .

In addition to that, using common sense to view these items that are stolen and a day or two later are then sold . . . would lead one to believe, through common sense, that those items stolen from the safe and then sold several days later are the ones that came out of the safe. It defies logic and common sense to say otherwise, so I’ll deny your motion.

Thereafter, the court, relying on *Molter v. State*, 201 Md. App. 155 (2011), found, beyond a reasonable doubt, “that Mr. Hocker was the person that perpetrated the breaking and entering.” The court sentenced appellant, as discussed above, and this appeal followed.

DISCUSSION

Appellant argues that the evidence was insufficient to conclude “that the items sold were the same as the items stolen, or . . . that the seller was in fact Mr. Hocker[.]” Appellant further argues that “[e]ven if one were to feel that the trial judge’s ruling was in accord with common sense, that does not rise to the level of proof beyond a reasonable doubt.” The State responds that the evidence was sufficient, “the presence or absence of *common sense* notwithstanding[.]” for a rational trier of fact to conclude “beyond a reasonable doubt that Hocker had been in possession of the stolen items, and was therefore the burglar.”

“In reviewing a question regarding the sufficiency of the evidence presented at trial, the primary question we ask 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.’” *Haile v. State*, 431 Md. 448, 465 (2013) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). As an appellate Court, “[w]e do not re-weigh the evidence,’ but, instead, seek to determine ‘whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.’” *Id.* at 466 (quoting *Smith*, 374 Md. at 534).

In *Molter v. State*, 201 Md. App. 155, 160 (2011), the theft in question also occurred in the course of a burglary. The victims of the burglary were not home at the time of the break-in, but reported several items stolen and evidence of a forced entry when they returned

home. *Id.* Although there was testimony that the defendant knew the home would be unoccupied and was spotted at the home by neighbors during the critical time frame, we determined that the “clincher was the inference, from his unexplained possession of recently stolen goods, that he was the thief of those stolen goods.” *Id.* at 161-62. In holding that the evidence was sufficient to support the convictions, we reaffirmed that the “unexplained exclusive possession of recently stolen goods permits an inference that the possessor is the thief . . . and *when it is shown that the property was stolen as a consequence of a breaking, the trier of fact may further infer that the thief was involved in the breaking.*” *Id.* at 170 (quoting *Grant v. State*, 318 Md. 672, 680-81 (1990)) (emphasis added in *Molter*).

In *Molter*, the stolen goods were found in the trunk of appellant’s vehicle between seven and nine days after the burglary. *Id.* at 166. In the instant case, the police did not arrest appellant while he was still in possession of the recently stolen goods; however, the State’s evidence was sufficient for a rational trier of fact to conclude that appellant possessed the items taken from the Millers’ safe when he presented them for sale at the coin store the day after the burglary.

The evidence established that the clerk at the store checked appellant’s state-issued photo identification, photocopied the I.D. for the store’s records, documented the items that appellant presented to sell, and prepared receipts for the items. The receipts were dated August 9, 2013, the day after the reported burglary. The list of items appellant presented to sell matched the items that Mrs. Miller reported missing, and Mrs. Miller testified at trial that

the items listed were the same items that were taken from the safe in her home. This evidence, coupled with appellant's unexplained presence at the coin shop with those items, was sufficient for a rational trier of fact to presume that appellant was the thief. *See Molter*, 201 Md. App. at 166.

Mrs. Miller's testimony that she locked the house before she left, and that she came home to find the back door open, supported the inference that the theft occurred during a burglary, which supports the inference that appellant was both the thief and the burglar. After viewing the evidence in the light most favorable to the State and, as a result of the permissible inferences, which have not been rebutted, we agree that the evidence was sufficient for a rational trier of fact to find, beyond a reasonable doubt, that appellant broke into and entered the Millers' home with the intent to commit a theft.⁴ *See* Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL"), § 6-202(a).

**JUDGMENTS OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

⁴ Theft is defined as willfully or knowingly obtaining or exerting unauthorized control over property with the intent to deprive the owner of the property. *See* CL § 7-104(a).