Circuit Court for Talbot County
Case No. C-20-CR-17-000169

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 342

September Term, 2018

SHONTELLE GOLDSBOROUGH

v.

STATE OF MARYLAND

Meredith,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: January 29, 2019

A Talbot County jury convicted appellant Shontelle Goldsborough ("Goldsborough") of theft and conspiracy after $2,790 in checks were written from her closed bank account. Finding sufficient evidence to convict her of both charges, we affirm.

FACTS AND PROCEDURAL BACKGROUND

The essential facts are not in dispute.[1] In December 2015, Goldsborough opened a bank account with SunTrust Bank in Easton.[2] Soon after, in January 2016, SunTrust closed the account after the account accrued a negative balance.[3] Nevertheless, in the later months of 2016, seven checks subsequently written from Goldsborough's closed account were deposited into accounts maintained by Kierney Nichols and Tyrell Phillips

[1] Goldsborough does not contest the facts, but rather that the facts fail to show the requisite intent. For instance, at trial, during closing argument defense counsel argued, "I want you to look at the same evidence and say if possible that Ms. Goldsborough had her checks stolen by somebody she knew, [and] that person wrote checks on her account."

[2] After opening the account on December 17, 2015 with no deposit, Goldsborough made a cash deposit of $170 on December 24. Later on the 24th, at a different location, there was a $160 withdrawal. The SunTrust branch manager testified that opening the account with no deposit on the 17th would allow time for a debit card to be received in the mail by the 24th.

[3] The State entered into evidence Goldsborough's bank statement from SunTrust for the period between December 17, 2015 and January 19, 2016, which stated, among other information, that the checking account was "***CLOSED***". When examining the statement during defense counsel's motion for judgment of acquittal, the trial judge observed, "I think it's tough for anyone to discern from [the statement] that this account has been closed." However, the trial judge also noted that the statement said the account was closed, and the trial judge ultimately accepted that the statement provided *prima facie* evidence that Goldsborough knew the account was closed. Though Goldsborough was charged with theft under § 7-104 of the Criminal Law Article, when making this finding, the trial judge also pointed to § 8-104 (the Bad Check Statute), which states that an individual is presumed to know whether he or she has sufficient funds in an account.

at Shore United Bank in Easton. This was possible because Shore United offers immediate access to funds when a check is deposited (i.e., there is no required waiting period to withdraw money after depositing a check to make sure that it clears). Accordingly, despite Goldsborough's account being closed, funds were capable of being withdrawn upon depositing the checks from her account. In all, seven checks totaling $2,790 from Goldsborough's account were deposited into Nichols and Phillips's accounts (four checks totaling $1,401 into Nichols's account; three checks totaling $1,389 into Phillips's account).

Shore United eventually became aware that the funds were being withdrawn in this manner. The bank then discovered that various combinations of questionable checks from (1) Goldsborough, (2) Tasheka Gibson, and (3) Shakira Williams were going into the accounts of (1) Nichols, (2) Phillips, and (3) Travel Hayman. To link this web of activity as connected—as more than mere miscellany—the State introduced video footage from the bank's ATM that showed Goldsborough withdrawing funds from Hayman's account during this period when the checks were being written.

After a one-day trial in January 2018, the jury convicted Goldsborough of theft between $1,000 and $10,000, and conspiracy to commit theft between $1,000 and $10,000.[4] At a subsequent sentencing, the court sentenced Goldsborough to three years

[4] Goldsborough was charged in July 2017 for the scheme occurring on or between October 19, 2016 and December 14, 2016. We note that, effective October 1, 2017, the relevant figures specified in § 7-104(g)(1)'s penalty range are now "at least $1,500 but less than $25,000." 2016 Laws of Md., ch. 515.

for theft, suspended in its entirety, with three years of supervised probation.[5] The court merged the conspiracy count to the theft.[6] Goldsborough timely appealed.

DISCUSSION

Goldsborough argues that the evidence was insufficient to support convictions for both theft and conspiracy. She argues that, as described above, the State only proved that checks from her account were presented to the bank, not that there was any conspiracy between the six individuals named above, nor criminal intent on her part.

In reviewing for sufficiency of the evidence, we ask "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." *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)). In doing so, we give due regard to the trial court's factual findings and do not "re-weigh" the evidence. *Spencer v. State*, 422 Md. 422, 434 (2011). Deferring "to any possible reasonable inferences [that] the trier of fact could have drawn from the . . . evidence," *Grimm*, 447 Md. at 495 (quoting *Jones v. State*, 440 Md. 450, 455 (2014)), appellate courts "need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Grimm*, 447 Md. at 495 (quoting *State v. Mayers*, 417 Md.

[5] The court also ordered restitution of $2,790.

[6] Though not raised by the parties, we note that "a conspiracy to commit a crime is entirely separate from the substantive crime." *Savage v. State*, 226 Md. App. 166, 174 (2015).

449, 466 (2010)). "In short, the question is not whether we might have reached a different conclusion from that of the trial court, but whether the trial court had before it sufficient evidence upon which it could fairly be convinced beyond a reasonable doubt of the defendant's guilt of the offense charged," *Spencer*, 422 Md. at 434 (quoting *Dixon v. State*, 302 Md. 447, 455 (1985)) (Internal quotation marks and emphasis omitted).

To convict Goldsborough of theft, the State had to prove that she willfully or knowingly obtained control over someone else's property. Md. Code (2002, 2012 Repl. Vol., 2018 Supp.), Criminal Law Article ("Crim. Law"), § 7-104. For the purposes of the theft statute, "[p]roperty can be 'obtained[]' . . . even when it is transferred to a third party." *State v. Coleman*, 423 Md. 666, 673 (2011). Next, proving conspiracy "requires a showing of 'an unlawful agreement,' which is 'a combination of two or more persons to accomplish some unlawful purpose[.]'" *Bordley v. State*, 205 Md. App. 692, 723 (2012) (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). "The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose or design." *Id*. Nor is direct proof of such an agreement required. "[A] conspiracy may be shown by circumstantial evidence, from which a common design may be inferred[.]" *Bordley*, 205 Md. App. at 723 (quoting *Mitchell v. State*, 363 Md. 130, 145 (2001) (Internal quotation marks omitted).

When viewed in the light most favorable to the State, the jury could have reasonably inferred that Goldsborough was guilty of both theft and conspiracy. As the state elicited at trial, various combinations of checks were deposited into three bank

accounts from Goldsborough and two other individuals' frozen accounts. The value of the checks deposited from Goldsborough's closed account totaled $2,790. *See* Crim. Law § 7-103(f) ("When theft is committed in violation of this part under one scheme or continuing course of conduct . . . the value of the property or services may be aggregated"). As the trial court noted, the jury could also infer that Goldsborough's actions were knowing in light of the January 2016 statement from SunTrust that showed her account was "***CLOSED***". Additionally, video evidence showed Goldsborough withdrawing money from Hayman's account during the relevant time period when the questionable checks were being deposited into the three accounts. As such, the jury could reasonably infer that the actions were not merely miscellaneous transactions, but rather tied together into one conspiracy to write the checks, and to take advantage of Shore United's policy allowing immediate access to funds without having to wait for a check to clear. The law makes no distinction between direct or circumstantial evidence, and no greater degree of certainty is required of circumstantial evidence than of direct evidence. From the evidence described above, the jury could find the essential elements of theft and conspiracy beyond a reasonable doubt.

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