Circuit Court for Allegany County
Case No. 01-K-018151 JC TH

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 668

September Term, 2017

SHIKEYLA HENDERSON

v.

STATE OF MARYLAND

Woodward C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 2, 2018

On April 13, 2017, a jury sitting in the Circuit Court for Allegany County convicted appellant, Shikeyla Henderson, of theft under $1,000 and conspiracy to commit theft under $1,000. The court merged the conspiracy into the theft for sentencing purposes, and sentenced appellant to thirty days of incarceration, with all but five days suspended, to be followed by three years of supervised probation. Appellant was ordered to pay $46.95 in restitution. Appellant appeals, arguing that the evidence was insufficient to support her convictions. We affirm.

BACKGROUND

On August 18, 2016, Michael Graham, an asset protection officer was working at Martins grocery store on Park Street in Cumberland. At approximately 3:20 p.m., he observed two women in the store, one of whom was pushing a baby stroller. He watched as the two women approached the fish counter and placed an order. He continued observing the women and saw that they were handed a bag of fish. Graham then stopped watching the women for about ten to fifteen minutes, as he watched other shoppers in the store. He then resumed watching the two women as they approached the front of the store. The two women then passed the cash registers without paying and exited the store. Graham testified that he did not stop the women at that time, because he did not know whether they had paid for their items during the ten to fifteen minutes that he was not watching them.

After the women left the store, Graham went to the fish counter and spoke to the manager who told him that she had given one of the women four pounds of crab. He then retrieved the surveillance video and watched the women from the time they entered the store, to the time they left the store. He observed that they did not pay for any items during

their time in the store. He also observed that in addition to taking the crab from the fish counter, one of the subjects had also taken a baby bottle from a shelf and had placed it into the baby stroller. Graham then went to the baby supply aisle and discovered the empty container to the baby bottle that one of the subjects had placed in the stroller. Neither of the two women paid for any items before exiting the store.

Officer Brett Leedy of the Cumberland County Police Department responded to the store, whereupon Graham showed him video stills of the two subjects from the surveillance cameras. Officer Leedy was familiar with appellant and was able to positively identify her as one of the subjects in the video stills. Officer Leedy later made contact with appellant in her home, and after advising her of her *Miranda* rights, questioned her about the event. Appellant admitted to Officer Leedy that she had gone to Martins with her friend Kasheema Simmons, but advised him that she did not know Simmons had been stealing. Appellant denied taking anything, but after being told that there was video surveillance, she advised that Simmons had "told her to do so."

The video was admitted and played for the jury at trial. Simmons was identified as the individual who had ordered the crab and placed it in the stroller. Simmons was also identified as the individual who had taken the baby bottle off the shelf.

Appellant testified at trial that Simmons had asked her to go to the store because Simmons had to pick up some items for her baby. She testified that once there, Simmons told her that she wanted to get some crab, and that she told Simmons to keep it away from her because she had a shellfish allergy. She further testified that the two of them went to the makeup aisle and that Simmons took some makeup, but she, appellant, did not wear

makeup for religious reasons. She admitted to taking diapers off the shelf and placing them into the stroller at Simmons's request. As they were leaving the store she asked Simmons at which register she was going to pay. Simmons then responded that she wasn't going to pay, and that she was simply going to leave. Appellant testified that she did not know that Simmons had been stealing until they were walking out of the store.

DISCUSSION

On appeal "we review the evidence in the light most favorable to the prosecution and determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Perry v. State*, 229 Md. App. 687, 696 (2016) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). The reviewing court will affirm the conviction, "[i]f the evidence 'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *Bible v. State*, 411 Md. 138, 156 (1998) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). "It is not the function of the appellate court to determine the credibility of witnesses or the weight of the evidence." *Smith v. State*, 138 Md. App. 709, 718 (2001) (citations omitted). It is the fact finder's "task to resolve any conflicts in the evidence and assess the credibility of witnesses." *Id.*

Md. Rule 4-324(a) requires that a criminal defendant "state with particularity all reasons why" a motion for judgment of acquittal should be granted. "[A] motion which merely asserts that evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with the rule [4-324] and thus does not preserve the issue for

sufficiency of appellate review." *Garrison v. State*, 88 Md. App. 475, 478 (1991), *cert. denied*, 325 Md. 249 (1992) (citation omitted).

At the close of the State's case, counsel for appellant made motion for judgment of acquittal and argued the following:

> As to count one, we would make an argument for sufficiency of the evidence. As to count two, in particular, it is conspiracy to commit theft. There has been no testimony that there is a dialogue or a conversation going on between the Defendant and the Co-Defendant in this matter. I don't think the State has made a prima facie case, especially towards the conspiracy charge.

At the close of the defense case, the court asked if appellant wished to renew her motion, to which counsel for appellant responded, "I would, Your Honor, especially towards the conspiracy charge." Counsel for appellant made no further argument.

Counsel for appellant did not argue with particularity regarding the sufficiency of the evidence on the theft charge, and as a result, that issue is not preserved for our review. Nevertheless, even had it been preserved, we would hold that a rational trier of fact could have found the essential elements of theft beyond a reasonable doubt.

Maryland Code Ann. 7-104 provides in pertinent part:

> (a) A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:
>
> (1) intends to deprive the owner of the property;
> (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
> (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

The jury was instructed that it could convict appellant of theft as an accomplice if the State proved that the theft occurred, and if they found:

> [T]hat the [appellant] counseled, commanded, or encouraged the commission of the crime, or communicated to a participant in the crime that she was ready, willing and able to lend support if needed.

Further, the jury was instructed that they could convict appellant of conspiracy to commit theft if they found that the State proved:

> [T]hat the [appellant] agreed with at least one other person to commit the crime of theft. And two, that the [appellant] entered into the agreement with the intent that the crime of theft be committed.

Appellant admitted she was one of the women in the surveillance video. She also admitted that she saw Simmons take the crabs and makeup and place them in the stroller. She further admitted to taking diapers from the shelf and placing them into the stroller. As they approached the registers, neither woman paid for the items. Further, the surveillance video revealed that the women were together for the entirety of the thirty minute shopping trip. During that time, appellant and Simmons, went to the bathroom two times. Appellant can be seen on the video taking a package of diapers from a shelf and placing it in the basket compartment of the stroller. This compartment is underneath the seat of the stroller, and not easily seen. At the time the baby was out of the stroller and being held by Simmons. A rational trier of fact could have found, despite appellant's self-serving testimony, that she knew that Simmons intended to steal the items taken from the store, that she agreed to steal the items, and that she actively assisted in the theft by concealing the items in the baby stroller.

Appellant further argues that the evidence was insufficient to support a conviction for conspiracy to commit theft. This contention is also without merit. She argues that there was "insufficient evidence that [she] had a common plan with Simmons to commit theft." We hold that a rational trier of fact could have found that appellant entered an agreement with Simmons to steal from the store. Appellant was seen moving throughout the store with Simmons. She can be observed in the surveillance video examining items from the shelves with Simmons, and twice going to the bathroom with Simmons. She can also be seen taking a package of diapers from a shelf and placing it in the bottom compartment of the baby stroller. Appellant is also seen on the video watching as Simmons takes a baby bottle from the shelf, examines it, removes its packaging, and places it in the baby stroller. Finally, the two women are seen passing all the registers without paying for the items and exiting the store. A rational trier of fact could have inferred from this evidence that appellant had entered an agreement with Simmons to take items from the store and leave without paying.

JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.