Circuit Court for Baltimore County
Case No. 03-K-16-6167

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1039

September Term, 2017

JAMES BROOKS, II

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: June 8, 2018

*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 jury trial in the Circuit Court for Baltimore County, James Brooks, appellant, was convicted of first-degree burglary; attempted theft of property in amount more than $1,000 and less than $10,000; and malicious destruction of property with a value of less than $1,000. Brooks's sole claim on appeal is that there was insufficient evidence to sustain his convictions. For the reasons that follow, we affirm.

BACKGROUND

At trial, the State presented evidence that, on the morning of November 16, 2016, Mr. and Ms. Borrasso left their home in White Hall, Maryland. When they returned approximately three hours later, they observed an unfamiliar vehicle parked in their driveway. Mr. Borrasso told his family to stay in the car, went to the front door to investigate, and determined that the front door was locked. Mr. Borrasso then walked toward the side of his house, at which point he observed Brooks walking up the hill from behind his house, where the basement door was located.

Mr. Borrasso asked Brooks if he needed help and Brooks responded that he had been "looking around [the] property because he was interested in doing some yard work" and "noticed some leaves on the ground" that he would clean up for $75. Mr. Borrasso declined Brooks's offer. Brooks then asked Mr. Borrasso if he already had someone for the job, and Mr. Borrasso indicated that he did. Thereafter, Brooks got into his car and drove away. During their entire conversation, Brooks did not stop walking and moved continuously toward his car. He also did not provide Mr. Borrasso with his name, contact information, or a business card. Mr. Borrasso did not observe any rakes or lawn care equipment in Brooks's car.

After Brooks drove away, Mr. Borrasso entered his home and observed that the television from his upstairs bedroom had been moved downstairs and placed near the front door. Additionally, the doors to his entertainment center had been opened and several pieces of electronic equipment were "pulled out" and "half hanging out of the entertainment center." Mr. Borrasso also observed a canvas duffel bag next to the entertainment center which contained an Apple "hard drive and router" that had been removed from his entertainment center. Although these items had been moved, nothing had been taken from the residence.

Mr. Borrasso called 911 and provided a description of Brooks's vehicle. Officer Michael Lynch responded to the residence and observed that a window screen on the side of the house had been cut. However, the window was still locked and had not been opened. Officer Lynch then went to the rear of the house and noticed that the basement door was ajar and that there was a pry mark, which appeared to be from the head of a screwdriver, on the door frame next to the lock. The police eventually detained Brooks and Mr. Borrasso identified him as the person he had encountered in his yard.

DISCUSSION

Brooks first contends that the evidence was insufficient to sustain his convictions because the State failed to prove his criminal agency. Specifically, he asserts that the State only demonstrated his "mere presence in the yard, coupled with the rational explanation that he was trying to solicit clients for yardwork." The standard for appellate review of evidentiary sufficiency 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. That standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone. Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence. This is because weighing the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact. Thus, the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.

Darling v. State, 232 Md. App. 430, 465, *cert. denied*, 454 Md. 655 (2017) (quotation marks and internal citations omitted; alterations in original).

Viewed in a light most favorable to the State, we are persuaded that there was sufficient evidence to prove Brooks was the perpetrator of the charged offenses. First, when the Borrassos pulled into their driveway home, Brooks was not simply standing at their front door or in their front yard. Rather, he was observed walking up the hill from behind their house, a location where a solicitor would not normally go and where the basement door had been recently forced open. And, although Brooks provided an explanation for his presence in the backyard, his behavior was suspicious, in that he continuously walked toward his car when confronted by Mr. Borrasso; did not provide his name or contact information; and had no visible lawn care equipment in his vehicle. Most

importantly, the Borrassos did not return home to find a completed burglary that could have presumably occurred at any time during the three hours that they were away from their home. Although their television had been moved from the upstairs bedroom to the front door and the Apple router had been placed in a duffle bag, no property had yet been removed from the premises. Therefore, the jury could reasonably infer that the Borrassos had interrupted the burglary and that Brooks had exited the house from the basement door and tried to return to his vehicle upon seeing the Borrassos pull into their driveway.

Brooks also claims that: (1) there was insufficient evidence to sustain his attempted theft conviction because the State failed to prove that the value of the property he attempted to steal was greater than $1,000 and (2) there was insufficient evidence to sustain his conviction for malicious destruction of property because the "damage to the back door was so minor that it did not require any repair" and Mr. Borrasso "was not sure whether the screen [on the window] had been cut prior to [the day of the burglary]." However, Brooks did not raise these arguments in making his motion for judgment of acquittal. Instead, he only asserted that the State had "not proven that [he] was at any time going inside that house to touch or remove or disturb anything. All that they have proven is that he was on the grounds when the State's witnesses came home." Consequently, these claims are not preserved for appellate review. *See Peters v. State*, 224 Md. App. 306, 354 (2015)

("[R]eview of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal." (citation omitted)). [1]

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

[1] Although Brooks does not specifically ask us to do so, we decline to exercise our discretion to engage in "plain error" review of these claims pursuant to Maryland Rule 8-131(a).