UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1407

September Term, 2014

BRANDYN T. GREEN

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Reed,

JJ.

Opinion by Reed, J.

Filed: August 26, 2016

A jury convicted appellant of felony theft of a vehicle with a value of "at least $10,000 but less than $100,000" under Md. Code (2002, 2012 Repl. Vol., 2014 Supp.), § 7-104(g)(1)(ii) of the Criminal Law Article ("C.L."). Appellant was also convicted of burglary in the fourth degree for "Possession of burglar's tool," specifically, bolt cutters, under C.L § 6-205(d). Appellant raises the following questions for our review, which we have condensed and rephrased:[1]

1. Was there sufficient evidence that the value of the stolen vehicle was $10,000 or more at the time it was stolen?

2. Was there sufficient evidence that appellant possessed the bolt cutters with the intent to commit burglary?

We answer both of the above questions in the affirmative. Therefore, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

At 4:00 a.m. on June 5, 2013, the supervisor of Eyewitness Surveillance, the company responsible for monitoring the Kia automotive dealership of Waldorf, saw an intruder on real-time surveillance footage "messing with a tire of an Escalade." Robert

[1] Appellant presented the following questions, as originally stated:

1. Did the trial court err when it denied the motion for judgment of acquittal on count one, theft over 10,000 dollars, when the State did not provide sufficient evidence of the van's value?

2. Did the trial court err when it denied the motion for judgment of acquittal on count four, possession of burglar's tools, when the State did not provide sufficient evidence that Mr. Green intended to use the bolt cutters to commit a burglary?

Connors, supervisor of Eyewitness Surveillance, reported the suspicious activity and provided a description of the individual to the police officers. Sergeant John Burroughs responded to the radio call, which provided that "a suspicious person [was] looking into cars." The call also described the suspect as a "black male wearing a light color shirt, dark color pants." Sergeant Burroughs arrived at the dealership, and as he approached the suspect, he saw appellant rolling two wheels in the opposite direction. As Sergeant Burroughs got closer, appellant began walking in the same direction as Sergeant Burroughs. At this point, Sergeant Burroughs' radio went off, which caused appellant to look at the officer and flee towards the back of the dealership lot.

Sergeant Burroughs dispatched appellant's direction and description over the radio. He also testified that he was aware that tires were being stolen in the area. In response, Sergeant Andrew Schwab and other police officers set up a perimeter. Sergeant Schwab testified that he saw appellant attempting to hide from him. He then gave a verbal command to appellant to "stop, [and] lay on the ground." Appellant ran towards the Shopper's World parking lot. When Sergeant Schwab and appellant reached the parking lot, appellant "turned around, placed [his] hands up from [his] side" in a "fighting stance," and said "I'm not going to jail." Sergeant Schwab then struck appellant with his baton twice in his left leg, which caused appellant to drop to the ground. Appellant was then immediately arrested, and Sergeant Burroughs confirmed that appellant was the same individual he saw in the Kia dealership lot.

Sergeant Burroughs returned to the Kia dealership lot and observed a Cadillac Escalade's front end sitting on cinder blocks while the back end of the car was resting on the asphalt. The vehicle was also missing wheels and tires, and there were lug nuts everywhere. There was also a three-ton floor jack and a battery powered impact driver nearby. There were "four . . . rims and tires propped up against the wall" by the Jiffy Lube store, which was located in the same lot as the Kia dealership.

Sergeant Schwab also found a running Ford Econoline van in the area where appellant was apprehended. It was unlocked and the "ignition cylinder was removed . . . from the steering column." The officers also found a pair of bolt cutters, a case for an impact driver, cinder blocks, and a second floor jack. Sergeant Schwab testified that he ran the VIN number of the Ford van, "which came back as stolen through Prince George's County."

The Ford van is owned by My Own Place, Inc., an organization that provides supports to adults with disabilities. Kerry Kee is the office manager of the company, and he and the CEO are the only individuals authorized to give individuals permission to use the vehicles. Mr. Kee is "in charge of the vehicle fleet for the company." The only evidence of the van's value was the testimony of Mr. Kee, who testified as follows:

> [PROSECUTOR]: [W]hen was that van stolen?
>
> MR. KEE: Somewhere between 11 o'clock on May 29th and 8 a.m. May 30th.
>
> * * *

> [PROSECUTOR]: Now, . . . what was the value of that van? To be best of your recollection. The monetary value?
>
> MR. KEE: I believe we paid over 15,000 for it.
>
> [PROSECUTOR]: And when did you pay 15,000 for it?
>
> MR. KEE: In February of 2013.
>
> [PROSECUTOR]: Okay, so just a few months before it was stolen?
>
> MR. KEE: Yes.
>
> [PROSECUTOR]: All right. And what kind of condition was the van in?
>
> MR. KEE: It was in great condition. It only had[] . . . less than 5,000 miles on it.

On Cross examination, Mr. Kee further testified as follows regarding the condition and value of the van before it was stolen:

> [APPELLANT'S ATTORNEY]: Mr. Kee, when the van was purchased you indicated that it was in new condition, paid over $15,000 back in February of 2013.
>
> MR. KEE: Yes.
>
> [APPELLANT'S ATTORNEY]: And it went missing about three months later.
>
> MR. KEE: Correct.
>
> [APPELLANT'S ATTORNEY]: Was it brand new when you purchased the van?
>
> MR. KEE: No, it was an [sic] used van, it's a 2012 van.

* * *

> [APPELLANT'S ATTORNEY]: Are you aware of the current value of the vehicle?
>
> MR. KEE: Not right at the moment, no. I . . .
>
> [APPELLANT'S ATTORNEY]: Are you aware that . . .
>
> MR. KEE: I can't imagine it would be much less than what it was when we purchased it. It doesn't have many more miles on it than that.
>
> [APPELLANT'S ATTORNEY]: Do you understand that when a vehicle is driven off the lot it usually suffers quite a bit of a derogation of value, correct?
>
> MR. KEE: Yes. Most of that happens in the first two years.
>
> [APPELLANT'S ATTORNEY]: And this is within the first two years?
>
> MR. KEE: Well, it was already two years when we bought it.
>
> [APPELLANT'S ATTORNEY]: But you cannot . . .
>
> MR. KEE: No.
>
> [APPELLANT'S ATTORNEY]: . . . get a fair market value, correct?
>
> MR. KEE: Right.

Mr. Kee also testified that after the vehicle was located, "[t]he van was in reasonably good shape. The steering column was busted out. There was no other real damage to the van other than that and it had to be cleaned up."

DISCUSSION

I. EVIDENCE OF VALUE

A. Parties' Contentions

Appellant contends that the evidence was insufficient to find him guilty of theft of over $10,000 because the State failed to prove that the value of the stolen Ford van exceeded $10,000. Appellant argues that the court's sole reliance on Mr. Kee's testimony, *i.e.*, that he "believe[s] we paid over 15,000 [dollars] for [the van]," was inappropriate because it amounted to nothing more than "mere speculation of the purchase price." In addition, appellant asserts that because Mr. Kee did not know the current valuation of the van, the jury had to speculate about the amount the van had depreciated since it was purchased.

The State counters that Mr. Kee's testimony was sufficient to establish that the value of the 2012 Ford van stolen by appellant was greater than $10,000. The State argues that the jury was presented with testimony that My Own Place, Inc. had purchased the van for over $15,000 just three months earlier, and that he could not imagine that the van would be valued at much less than that. In addition, Mr. Kee testified that although the van was purchased used, it had only been driven 5,000 miles when appellant stole the vehicle. Moreover, because the van was already two years old when it was purchased, the State asserts that, unlike newer cars, it was not subject to steep depreciation when it was driven off the sales lot.

B. Standard of Review

In *Hobby v. State*, 436 Md. 526 (2014), the Court of Appeals explained the standard of review for the sufficiency of evidence to sustain a conviction, stating:

> When determining whether the State has presented sufficient evidence to sustain a conviction, we have adopted the Supreme Court's standard articulated in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original) (citation omitted), namely, 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.

Id. at 537-38 (quoting *Derr v. State*, 434 Md. 88, 129 (2013), *cert. denied*, 134 S. Ct. 2723 (2014)) (citations and internal quotation marks omitted) (emphasis in original).

In *Derr*, 434 Md. at 129, the Court of Appeals described the application of the standard, explaining:

> The purpose is not to undertake a review of the record that would amount to, in essence, a retrial of the case. Rather, because the finder of fact has the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. We recognize that the finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation, and we therefore defer to any possible reasonable inferences the trier of fact could have drawn from the admitted evidence and need not decide whether the trier of fact could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence.

(Citations and internal quotation marks omitted).

C. Analysis

There was sufficient evidence to establish that the stolen van's value was more than $10,000, but less than $100,000, and a rational jury could have found beyond a reasonable doubt, as this jury did, that appellant's conduct satisfied the elements of felony theft in violation of C.L. § 7-104. Accordingly, the circuit court correctly denied appellant's motion to acquit.

For purposes of the theft statute, "value" is defined as "the market value of the property or service at the time and place of the crime" or, "if the market value cannot satisfactorily be ascertained, the cost of the replacement of the property or service within a reasonable time after the crime." C.L. § 7-103.

"The present market value of stolen property may be proven by direct or circumstantial evidence and any reasonable inferences drawn therefrom. Moreover, a property owner's testimony regarding the original purchase price is circumstantially relevant to the present market value of that property." *Champagne v. State*, 199 Md. App. 671, 676 (2011) (citations and internal quotation marks omitted).

Although Mr. Kee was not the individual who purchased the vehicle, he was "in charge" of the vehicle, and only he and the CEO of the company had the authority to permit use of the vehicle. In addition, Mr. Kee was the office manager of the company in charge of the vehicle fleet. Therefore, his testimony as to the original purchase price was relevant to the determination of the market value of the van at the time of the theft.

In *Wallace v. State*, 63 Md. App. 399 (1985), this Court held that the owner's testimony regarding the "respective purchase prices, including installation costs, of the items stolen from the vacant apartment" was "circumstantially relevant to present market value." *Id.* at 410. We further held that the trial court's finding "that the value of the stolen items was in excess of $300.00 should not be overturned merely because there was no direct evidence of market value, since the court could draw a fair inference, from evidence of the original purchase prices, that the items were worth more than $300.00." *Id.* (citations omitted).

Here, there was no direct evidence to the value of the van, but Mr. Kee's testimony provided sufficient circumstantial evidence from which the jury could find, beyond a reasonable doubt, that the van was worth more than $10,000 in May 2013, the time the vehicle was stolen. *See Hall v. State*, 119 Md. App. 377, 393 (1998) ("Circumstantial evidence is entirely sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused."); *accord Painter v. State*, 157 Md. App. 1, 11 (2004) (holding that circumstantial evidence was legally sufficient to support a theft conviction).

Mr. Kee testified that the company had purchased the vehicle for $15,000 in February 2013, just three months before it was stolen. In addition, Mr. Kee testified that since the van was purchased, they had not put "many more miles on it." The van had less than 5,000 miles on it, so he could not "imagine [the current value of the van] would be much less than what it was when [it was] purchased []." Finally, on cross-examination,

appellant's attorney stated that "when a vehicle is driven off the lot it usually suffers quite a bit of a derogation of value[.]" Mr. Kee agreed, but clarified that "[m]ost of that happens in the first two years." In the present case, the van was already two years old when the company purchased it. Faced with Mr. Kee's testimony, and the fact that only three months had lapsed from the time when the van was initially purchased and when it was stolen, the jury reasonably concluded that the van had not depreciated more than $5,000 in that short time frame.

We point out that the evidence of the car's purchase price and present market value was readily available and easily ascertainable at the time of trial, as the Ford van was not unique or sold in a limited market. The State could have produced evidence such as a sales receipt, indicating the original price paid. In this case, however, only three months had passed since the van was purchased and when it was stolen. Therefore, we hold that Mr. Kee's testimony was sufficient to establish the present market value of the van. But if a longer length of time had passed, Mr. Kee's testimony, alone, would have been insufficient, and a jury could not have inferred the present market value of the stolen van based solely on that testimony.

After viewing the evidence in the light most favorable to the State, we conclude that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. We, therefore, hold that Mr. Kee's testimony was sufficient to establish that the van's value was more than $10,000, but less than $100,000, and the circuit court correctly denied appellant's motion to acquit.

II. BURGLAR'S TOOL

A. Parties' Contentions

Appellant contends that there was insufficient evidence to convict him for possession of burglar's tools because there was no evidence that he either used or intended to use the bolt cutters in the commission of the burglary. Appellant argues that possession of burglar's tools requires specific intent, citing *Jones v. State*, 440 Md. 450, 455 (2014), which can only be shown by evidence that appellant used the tools while committing a burglary or, where no direct evidence of use of the tools exists, by pointing to a nexus between the tools and the specific crime committed. Citing *Randolph v. State*, 14 Md. App. 278, 280-84 (1972). Appellant concludes that the State failed to provide evidence that the bolt cutters were recently used in the commission of a burglary or, in the alternative, that the State failed to show a nexus between the bolt cutters and a specific crime.

The State counters that the jury was permitted to infer that the stolen van was used as a "mobile work site for a professional auto thief," and that the pair of bolt cutters found in the van was one of the tools appellant planned to use in this theft or in a future theft because "the offense reaches possession of a burglar's future use of the tools." (Citing *Crossland v. State*, 252 Md. 70, 73-74 (1970)). The State also points to the fact that Sergeant Burroughs found appellant's van, *i.e.*, the very stolen van in which the bolt cutters were found, parked in the Kia dealership lot where appellant was stealing tires off of the Cadillac Escalade that was "sitting up on . . . cinder blocks."

B. Analysis

There was sufficient evidence to establish that appellant possessed the bolt cutters with the intent to commit burglary, and therefore, a rational jury, viewing the evidence in the light most favorable to the State, could have found, and did find, that the State proved beyond a reasonable doubt that appellant violated C.L. § 6-205. As a result, the circuit court correctly denied appellant's motion to acquit.

In addition to felony theft, appellant was convicted of "Possession of burglar's tool" under C.L. § 6-205, which provides:

> **Burglary in the fourth degree.**
>
> Prohibited--Breaking and entering dwelling
> (a) A person may not break and enter the dwelling of another.
>
> Prohibited--Breaking and entering storehouse
> (b) A person may not break and enter the storehouse of another.
>
> Prohibited--Being in or on dwelling, storehouse, or environs
> (c) A person, with the intent to commit theft, may not be in or on:
>
> (1) the dwelling or storehouse of another; or
>
> (2) a yard, garden, or other area belonging to the dwelling or storehouse of another.
>
> Prohibited--Possession of burglar's tool
> *(d) A person may not possess a burglar's tool with the intent to use or allow the use of the burglar's tool in the commission of a violation of this subtitle.*
>
> Penalty
> (e) A person who violates this section is guilty of the misdemeanor of burglary in the fourth degree and on conviction is subject to imprisonment not exceeding 3 years.

* * *

(Emphasis Added). Appellant's proposition that, in order to support the conviction of fourth-degree burglary, the State was required to show (1) that appellant used the tools while committing a burglary; or (2) that there was some nexus between the tools and a specific crime, is not supported by law.

The Court in *Randolph* found sufficient evidence of defendant's intent to commit burglary where authorities found burglar's tools in the defendant's vehicle near the scene of a burglary. 14 Md. App. at 279-80. In that case, the larceny had not yet been completed. *Id.* at 286-87. This Court reasoned that "[a]lthough a criminal intent cannot be brought forward from the past to correspond with present possession, that criminal intent nonetheless continues and prevails not only while the intended act is *in futuro* but also while it is *in praesenti." Id*. at 287. The purpose of the theft statute "is to give the enforcement officers a tool to apprehend and suppress more aggravated criminal conduct prior to its actual commission." *Id.* at 285 (quoting *Crossland v. State*, 252 Md. 70, 73-74 (1970)). Therefore, contrary to appellant's argument, and in support of the State's argument, the offense is not limited to crimes already committed, but covers a burglar's present and future use of the tools to commit a crime.

The evidence, viewed in the light most favorable to the State, supports the jury's finding that appellant was guilty beyond a reasonable doubt of the offense of possessing a burglar's tool. There is ample direct and circumstantial evidence of intent. *See Martin v. State*, 203 Md. 66, 76 (1953) (explaining that burglarious intent by possession of tools can

be established by direct or circumstantial evidence); *see Wilson v. State*, 7 Md. App. 41, 50 (1969) ("the intent [to steal] may . . . be inferred from the circumstances under which a person is found in or upon the proscribed areas [under former Article 27 § 490 of the Maryland Code, predecessor to C.L. § 6-205)]. But the evidence must show directly or support a rational inference from which the trier of fact could be fairly convinced, beyond a reasonable doubt, that the person was there with an intent to steal goods or chattels." (citation omitted))[2]; *see Shipley v. State*, 243 Md. 262, 270 (1966) (holding that intent to break into the building may be presumed under the predecessor to C.L. § 6-205 where the appellants were found in a "relatively isolated and deserted [area] after midnight, in proximity to the Synagogue, closed at that hour, and the implausible stories of why they were where they were told to the police by the appellants, permitted an inference . . . that

[2] Former Article 27 § 490, predecessor to C.L. § 6-205, provided:

> 1) If he shall be apprehended possessed of tools or implements at places and under circumstances from which a felonious intent to break and enter a dwelling or storehouse may be presumed;
>
> 2) If he shall be apprehended possessed of offensive weapons at places and circumstances from which may be presumed an intent feloniously to assault any person.
>
> 3) If he shall be found in or upon any dwelling house, warehouse, stable or outhouse, or in any enclosed yard or garden or area belonging to any house, with an intent to steal any goods or chattels.

Wilson v. State, 7 Md. App. 41, 49 (1969).

the mechanic's tools, the pinch bar and the nail-studded board were had by them to be used to break into a building[.]" (citation omitted)).

Here, the Eyewitness Surveillance Company caught appellant engaging in suspicious activity near the vehicles on the Kia dealership lot on real-time video footage at 4:00 a.m., after the dealership's normal business hours. When Sergeant Burroughs responded to the call, appellant was seen on the dealership lot, *i.e.*, in an area where tire theft is common, rolling tires away towards the Jiffy Lube store. As appellant walked in the direction of Sergeant Burroughs, appellant heard Sergeant Burroughs's radio, which prompted him to flee. Shortly thereafter, when Sergeant Schwab found appellant attempting to hide, he directed appellant to "stop, [and] lay on the ground." Appellant ignored this command and ran towards the Shopper's World parking lot. When Sergeant Schwab and appellant reached the parking lot, appellant "turned around, placed [his] hands up from [his] side" in a "fighting stance," and said "I'm not going to jail." The evidence also showed that the tires and wheels of a Cadillac Escalade on the Kia dealership lot had been removed. The front of the Cadillac Escalade rested on cinder blocks, and the back of the vehicle rested on the asphalt. A three-ton floor jack was also under the Cadillac Escalade, and lug nuts were strewn everywhere. There were "four . . . rims and tires propped up against the wall" by the Jiffy Lube store, which was located in the same lot as the Kia dealership.

The van stolen by appellant was found near the area where appellant was apprehended. The stolen van was stocked with tools commonly used for committing burglary, including the bolt cutters at issue, an impact driver container (the impact driver

was found near the Escalade vehicle), and a second floor jack. *See Randolph*, 14 Md. App. at 280-84 (1972) (explaining that tools including "bolt cutters" and "impact tools" "are singularly adapted to the purposes of house breaking or burglary." (citation and internal quotation marks omitted)). The van also contained cinder blocks, which were similar to the ones found under the Cadillac Escalade.

It is not required that appellant used the bolt cutters in the commission of a crime, and the evidence showed the requisite intent to commit burglary in the present or in the future. We are satisfied that a rational trier of fact viewing the evidence in the light most favorable to the State could have found that the State proved beyond a reasonable doubt that appellant possessed the bolt cutters with the intent to commit burglary. We, therefore, affirm the circuit court's judgment denying appellant's motion for acquittal.

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