

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2210

September Term, 2014

MICHAEL MURPHY

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: January 7, 2016

*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.

Accused of stealing a lawn tractor, Michael Murphy (hereinafter “appellant”) was convicted by a jury in the Circuit Court for Montgomery County of theft over \$1,000 to under \$10,000.¹ He thereafter noted this appeal, presenting one question for our review: Was the evidence, adduced at trial, sufficient to sustain his conviction for that offense? As we find that it was, we affirm.

I.

The evidence presented at trial established² that Steven White owned an orange Kubota BX 2350 lawn tractor that his wife, Deborah Lewis, had purchased for him in 2006. Though the tractor was also owned by Lewis, we shall hereafter refer to it as “White’s tractor” to avoid confusion. White’s tractor had a 54-inch mowing deck and a “front loader attachment”³ that the tractor was custom-equipped to support. When not in use, White stored the tractor in an unlocked shed on his property and kept the keys to the tractor inside his house.

¹ Appellant was originally charged with theft over \$10,000 to under \$100,000, however, at the conclusion of the first day of trial, the charge was amended to theft over \$1,000 to under \$10,000.

² “The standard for our review of the sufficiency of the evidence is whether, after reviewing 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.” *Neal v. State*, 191 Md. App. 297, 314 (2010) (internal citations omitted).

³ A front loader is an “attachment that goes on the front of the tractor for dirt, mulch, anything that [the operator] would want to scoop.”

On July 23, 2012, White discovered that his tractor was missing and notified the police. At the time of its disappearance, the tractor was “scarred” from years of mowing alongside spruce trees on his property; it had a broken headlight and scrapes were all over the mower deck; its roll over protection bar had significant wear and tear; its “grass catcher” screen⁴ was missing a rubber handle; and its fuel tank contained “the top of [his] diesel fuel can,” which had fallen into the tank when White was putting gas into his tractor. His tractor also had a noticeable “tilt” or “lean” toward the left, which was a result of different size tires, and its “turn signal lenses”⁵ and part of the “plastic hood cowling”⁶ had been knocked off. These pieces, along with the gas can and front loader attachment, were in his possession at the time his tractor was stolen and would be later used by the State to prove the tractor in appellant’s possession was White’s.

Nearly a year after the tractor’s disappearance, White and his wife saw appellant driving an orange Kubota lawn tractor outside a house, which was roughly “2 blocks” from where they lived. White immediately identified the tractor as his “because of the condition that it was in,” observing that it “was missing the tail lights, missing the turn signal lenses,” and “it was missing the cowling.” In short, “it just looked like [his] old

⁴ The “grass catcher” screen (also referred to as a “radiator screen”) is a screen that “slips down between the radiator and the tractor.”

⁵ “Turn signal lenses” are the plastic, translucent covers that “clip on” the tractor’s turn signal lights. The parties and witnesses at trial referred to these by different terms (plastic turn signals, turn signal covers, rear turn signal lenses), but for ease of reference we refer to them throughout the opinion as “turn signal lenses.”

⁶ A hood cowling is a plastic piece that fits “around the front of the tractor.” It “basically surrounds the engine.”

tractor.” White’s wife agreed with her husband’s assessment and she also noticed that the serial numbers, which are normally visible on the outside of the tractor, had been removed. White reported to the police the next day what he and his wife had seen.

Responding to this report, Detective Kye Pak, of the Montgomery County Police Department, went to appellant’s home, where he was given permission to inspect the tractor. He observed that the tractor in question had “hookups for a front loader”; markings on the roll over protection bar; two different size rear tires, causing the tractor to “lean” to the left; and was missing a head light, part of its hood cowling, and turn signal lenses. When asked, by the detective, about these impairments, appellant was unable to produce the missing parts or account for the two different size tires. Although Detective Pak did not find any “of the three serial numbers” that are typically on such tractors, he did locate “a stamp number” on the engine, the importance of which shall be evident shortly. Appellant insisted that he had an “invoice” for the tractor, though was unable to locate it at the time. But, after the detective departed from appellant’s residence, he did receive an email from appellant with an invoice from Gaithersburg Equipment Company.⁷

Several weeks later, Detective Pak returned to appellant’s house, with a search warrant and found that the condition of the tractor had been significantly altered. Indeed, “as soon as [he] got close enough to the tractor, it was very apparent to [him] that the engine had been painted over, cleaned and painted over,” and the number that he had

⁷ It is unclear from our review of the record whether that “invoice” is the same as appellant’s “sale agreement” that was entered as evidence later in the trial.

previously seen on the engine was “completely grinded down, filed away, smoothed over, and repainted over.” Detective Pak further observed that the size numbers, which he had seen on the wall of the tires, when he first inspected the tractor, were “completely scratched off . . . obliterated.”

The tractor was then transported to the Police Impound Lot. There, Detective Pak determined that the lawn tractor had a 54 inch mowing bed and that the internal grass catcher screen was missing its black rubber handle. He then conducted, what he called, a “fit test” with several of the pieces that had fallen off of White’s tractor and concluded that the turn signal lenses fit “with no problem” and the hood cowling piece was a “perfect fit” for the tractor’s body.

Detective Pak then had the tractor transferred to Gaithersburg Equipment Company, where an employee of the company, experienced in lawn tractor repairs, drained the fuel tank and found a “fuel gas cap lid” inside, which he acknowledged was an object that he had never before found inside a fuel tank. Detective Pak then performed a “fit test” with White’s gas can and the cap recovered from inside of the fuel tank of the tractor and concluded that the cap “screwed on perfectly.”

At trial, the State produced expert testimony⁸ that established that a Kubota BX 2350 lawn tractor can be purchased with either a 60 inch or 54 inch mowing deck and can also be custom-ordered to include a front loader, though, to support such an attachment,

⁸ Ronald Hedges, an employee of Gaithersburg Equipment Company, testified as a witness for the prosecution and was admitted as an “expert in the area of specifications, physical attributes, in the operation of Kubota tractors and equipment.”

“loader support arms” must be included on the tractor. Both of these features—the mower deck size and front loader equipment—would ordinarily be noted, according to the expert, on a Kubota “sale agreement.” Yet, appellant’s sale agreement, for a Kubota BX 2350 lawn tractor that he purchased in 2006, described the tractor as having a 60 inch mowing deck but gave no indication that it was purchased with a front loader attachment or support arms. Moreover, the tractor that Detective Pak removed from appellant’s premises had a 54 inch mowing deck and was equipped with “loader support arms.” Finally, it was established that “BX tractors all use the same key,” such that “the owner of one Kubota Model BX2350 could use the key for a different BX2350.”

After the appellant was convicted of theft of property greater than \$1,000 but under \$10,000, the circuit court sentenced him to five years of imprisonment, with all but eighteen months of that sentence suspended, to be followed by three years supervised release. As a part of his probation, appellant was ordered to pay \$1,000 in restitution to White and his spouse.

II.

Appellant contends that the evidence was insufficient to sustain his theft conviction. “In reviewing the sufficiency of the evidence presented . . . we consider the evidence in the light most favorable to the prosecution.” *Painter v. State*, 157 Md. App. 1, 10 (2004) (internal citations omitted). “We then determine whether, based on that evidence, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Painter*, 157 Md. App. at 10-11 (internal citations

omitted). “The test 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.’” *Painter*, 157 Md. App. at 11 (internal citations omitted).

“When we apply that test, we consider circumstantial as well as direct evidence.” *Id.*

And as to circumstantial evidence, it alone may be “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,” *id.* (internal citations omitted), a point worth stressing here, as the evidence presented below was entirely circumstantial, but it nonetheless amply supports appellant’s conviction of the crime charged.

Indeed, there was more than sufficient evidence for the jury to find that the tractor in appellant’s possession belonged to White, as it had the same unique defects and was in the same condition as White’s tractor. Like White’s missing tractor, the tractor in appellant’s possession had scratches and markings on its body, consistent with years of mowing alongside tree branches; its roll over protection bar was damaged; and it had mismatched tires, causing the vehicle to lean to the left. Moreover, like White’s tractor, the tractor in appellant’s possession was missing the rubber handle from the grass catcher screen as well as its turn signal lenses and part of its hood cowling. Furthermore, White’s hood cowling and turn signal lenses fit the tractor that appellant claimed as his own, and the gas cap, which White stated he inadvertently dropped into the tractor’s fuel tank, was retrieved from the fuel tank of that vehicle and it fit White’s gas can “perfectly.”

Moreover, appellant lived within “walking distance” of White’s home and had access to a Kubota tractor key, which expert testimony established would have worked on White’s tractor. Finally, appellant provided the police with a sale agreement for a Kubota tractor that did not match the dimensions of the tractor found in his possession, and, after appellant met with Detective Pak and was informed of his investigation into the ownership of the tractor that he possessed, the tractor was painted over and any visible serial numbers were filed away. Thus, the evidence established that appellant not only had ample opportunity to steal the tractor, and did so, but, as the circuit court noted during sentencing, he “went to great lengths” to conceal what he had done.

Nonetheless, appellant contends that the tractor stolen from White could not be the same one found in his possession because the tractors had different serial numbers. Specifically, he cites the testimony of an expert,⁹ presented by the defense at trial, who stated that the “HST transmission number,” which was the only visible serial number on the tractor found in appellant’s possession, did not match the “HST transmission number” on the tractor that White purchased. In arriving at this conclusion, the expert relied on a Kubota assembly line document, which showed that the “tractor serial number” listed on White’s sale agreement¹⁰ matched an “HST transmission number” that was different from the one that appeared on the tractor found in appellant’s possession.

⁹ The defense called Greg Hnarakis, who was admitted as an expert in the area of “Kubota tractor physical attributes and repair, as well as serial number placement and importance of serial numbers on Kubota tractors.”

¹⁰ The sale agreement was actually in Deborah Lewis’ name, but for ease of reference we refer to it as White’s sale agreement.

Not only does appellant ignore all of the inculpatory evidence presented by the State, he does not respond to the State's evidence that the serial numbers were unreliable for identification purposes. Indeed, at trial, the State responded to the defense expert's testimony by introducing a Kubota "purchase record" showing that the "HST transmission number" on the tractor in appellant's possession was linked to a tractor purchased by someone named "Gary Stevenson" in Colorado, evidence that suggested that these serial numbers were not necessarily accurate, nor reliable indications of ownership.

In any event, whether, in fact, these serial numbers constituted reliable identification evidence was a question of fact for the jury to decide, which it did. Therefore, because the evidence was clearly sufficient to support a "rational" jury's conclusion that appellant stole the tractor, we decline to disturb his conviction for theft.

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