UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2771

September Term, 2014

CORTEZ EUGENE BRITTINGHAM

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Reed, J.

Filed: February 5, 2016

Following a bench trial in the Circuit Court for Worcester County, Cortez Brittingham, appellant, was convicted of the following crimes: (1) assault in the second degree, Md. Code (2002, 2012 Repl. Vol.), § 3-203 of the Criminal Law Article ("CL"); (2) theft under $1,000, CL § 7-104; and (3) malicious destruction of property, CL § 6-301. The court sentenced Brittingham to a 5-year period of incarceration for the assault, suspending three years, and to concurrent sentences of 90 days and 60 days for the theft and malicious destruction convictions, respectively.[1] Brittingham appealed, presenting us with the following questions:

1. Whether the evidence was sufficient to support Brittingham's conviction for theft under $1,000?

2. Whether the evidence was sufficient to support Brittingham's conviction for malicious destruction of property?

Because the evidence was sufficient to support the convictions, we affirm.

FACTUAL BACKGROUND

Beginning in May 2014, Irane Duffy, then in her mid-seventies, rented a room in her home to her relative, Brittingham, then 22 years of age, for $50 per week. In June 2014, Duffy informed Brittingham that he could no longer reside at the house. At approximately 1:30 a.m. on June 30, 2014, Brittingham returned to the home, knocking on the doors and windows in an attempt to gain entry. When Duffy refused, Brittingham

[1] The court also imposed a $500 fine and restitution in an amount to be determined as conditions of probation.

forced his way into his former bedroom by kicking out the window's air condition unit, damaging the window.

Duffy informed Brittingham from the moment he gained entry that he was not welcome and instructed him to leave, but Brittingham refused to do so. Hours later, Duffy approached Brittingham while he was lying on a bed in the room he formerly rented. Duffy continued to command Brittingham to leave the house, but Brittingham was listening to a CD and did not acknowledge her. Therefore, in an attempt to get his attention, Duffy tapped the side of Brittingham's foot with her cane. At this, Brittingham lunged at Duffy, grabbed her shoulders, and began shaking her. He then held Duffy in the air, pressing her against the bedroom wall, before releasing and letting her fall to the floor, injuring her tailbone and hip. While Duffy was on the ground, she heard Brittingham go into her bedroom, where he allegedly removed three firearms stored there—two rifles and a shotgun.

Unable to stand—and receiving no help from Brittingham—Duffy called for help with her Life Alert device. Five minutes after Duffy made the call, at approximately 11:00 a.m., Troopers Dick and Gallagher arrived.[2] They briefly handcuffed Brittingham and assisted Duffy before removing Brittingham from the home and releasing him.

Approximately one hour later, Brittingham returned with his father and Trooper Brian Teves to retrieve his belongings from the home. Brittingham informed Trooper Teves that he had removed two guns—a rifle and a shotgun—from the home during the

[2] The record does not provide the first names of Troopers Dick and Gallagher.

altercation because "he was afraid they would be used against him." Brittingham directed Trooper Teves to the back of Duffy's shed, where Brittingham recovered one rifle and one shotgun. Duffy asserted that she had not recovered the third rifle, priced at approximately $400, and Brittingham countered that he had only temporarily removed two firearms and never took the third.

The court found Brittingham guilty on the three counts mentioned above, stating:

> Well, the Court credits the testimony of Ms. Duffy as to the events of the evening. She was assaulted. [Brittingham's] acts were in no way self-defense. . . .
>
> He removed three guns, returned two, kept one for himself.
>
> * * *
>
> He's guilty of . . . theft of property having a value of less than $1,000. And he's guilty of . . . malicious destruction.
>
> The fact that he had a possessory interest in the room he was renting that would give him the right to enter notwithstanding Ms. Duffy's lack of consent or withdrawal of consent doesn't mean that he has the right to damage her property to effect that entry. He's guilty of malicious destruction of the window.

STANDARD OF REVIEW

We summarized the standard for appellate review of evidentiary sufficiency in *Brown v. State*, 182 Md. App. 138 (2008):

> In reviewing a claim of legal insufficiency, we must determine 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. We give due regard to the jury's finding of facts and its responsibility to weigh and resolve conflicting evidence, draw reasonable inferences from the evidence, and determine witness credibility. Moreover, appellate review of the

> sufficiency of evidence should not involve undertaking a review of the record that would amount to a retrial of the case.

Id. at 156 (emphasis in original) (internal quotation marks and citations omitted).

DISCUSSION

Brittingham challenges the sufficiency of the evidence for his convictions for theft and malicious destruction of property. We shall address each in turn.

Theft

CL § 7-104 provides:

> (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.[3]

Brittingham contends that his removal of the guns from Duffy's home does not satisfy any of the elements of the crime of theft. He argues that no rational trier of fact

[3] CL § 7-101(c) defines "deprive" as

> withhold[ing] property of another:
> (1) permanently;
> (2) for a period that results in the appropriation of a part of the property's value;
> (3) with the purpose to restore it only on payment of a reward or other compensation; or
> (4) to dispose of the property or use or deal with the property in a manner that makes it unlikely that the owner will recover it.

could find him guilty beyond a reasonable doubt for three reasons: (1) Brittingham's father telephoned Duffy and informed her that the guns were located behind the shed; (2) according to the testimony of Trooper Teves, Brittingham informed Trooper Teves that he had removed the guns from the home out of fear that they would be used against him; and (3) police found the guns in the location identified by Brittingham.

Viewing the evidence in the light most favorable to the State and giving due regard to the trial court's findings of fact, as we must, we conclude that the evidence was sufficient to find Brittingham guilty of theft. The trial court expressly credited Duffy's account of the events of that night and subsequent morning. Based upon her testimony at trial, Brittingham removed three guns from the home. Although he returned two of the firearms, Duffy testified—and the trial court found—that he did not return the third gun. Thus, a rational trier of fact could have found, beyond a reasonable doubt, that Brittingham "willfully or knowingly obtain[ed] or exert[ed] unauthorized control over [the rifle] . . . intend[ing] to deprive [Duffy] of the property." CL § 7-104(a)(1).

Malicious Destruction of Property

CL § 6-301(a) provides that "[a] person may not willfully and maliciously destroy, injure, or deface the real or personal property of another." "Malicious destruction of property . . . is a specific intent crime, which 'requires both a deliberate intention to injure the property of another and malice.'" *Marquardt v. State*, 164 Md. App. 95, 152 (2005) (quoting *Shell v. State*, 307 Md. 46, 68 (1986)).

Brittingham contends that the State presented no evidence at trial that he "intended to cause harm to the property of Ms. Duffy." "At worst," he reasons, "the evidence showed

that [he] kicked the air conditioner in as a means of entry into the house," which, he argues, is insufficient to satisfy the specific intent element of the crime. Brittingham relies upon *Duncan v. State*, 5 Md. App. 440 (1968) and *In re Taka C.*, 331 Md. 80 (1993) for support, which we shall address in turn.

In *Duncan*, we reversed a conviction for a precursor to CL § 7-104. In that case, Duncan stole "$8 in currency and the keys to [the victim's] car." *Duncan*, 5 Md. App. at 443. In making his escape, Duncan, "accompanied by the co-defendant . . . backed the [victim's] car out of its parking space 'at a high rate of speed, stopped short, went forward, struck a light car that was parked next to it' and drove away." *Id.* We found the specific intent requirement lacking because "[w]e d[id] not think that the evidence before the lower court was sufficient to show that the appellant had a specific intent to damage the car; rather it appear[ed] that he took the car as a means of escape." *Id.* at 446. The act of backing up the car did not "raise the inference that he intended to damage it as the reasonable consequence of his act." *Id.* at 447. Simply put, "[e]ven though his actions may have been negligent, this is not enough." *Id.* We find *Duncan* of little value in our analysis of this case. The facts of *Duncan* are distinct from those here because Brittingham intended to kick in the air conditioning unit. That he did so merely to gain entry does not make this case analogous to *Duncan*.

In re Taka C. addressed damage to real property caused by several boys sledding on car hoods "down a hill which ended at the wall of a building" where "[t]he building and hill were situated in such a way that it would have been difficult to ride down the hill without hitting the building at the bottom." *In re Taka C.*, 331 Md. at 81. The Court of

Appeals reversed the conviction for malicious destruction of property for the same reason we reversed in *Duncan*. Although Taka intended to ride on the car hood down the hill, he did not intend to cause damage to the building. *Id.* at 85. The evidence in that case "demonstrated that Taka and a friend piled snow against the building to avoid causing damage[,] . . . [which] negate[d] any finding . . . [of] inten[t.]" *Id.* In this case, Brittingham intended to do damage to the air conditioning unit and window. The trial testimony does not suggest that he merely intended to kick but not to strike and damage the window. Rather, the testimony credited by the trial court was that Brittingham kicked the air conditioning unit and window with the intent of damaging it.

We find *Brown v. State*, 50 Md. App. 651 (1982) to be more instructive. In *Brown*, a man broke a gas station window as a means of entry during an attempted burglary. *Id.* at 653. We found the evidence sufficient to support the conviction. *Id.* at 654–55. Like *Brown*, this case presents us with an individual who intended to damage real property in an effort to gain entry to a building. Here, where the trier of fact expressly found that Brittingham "damage[d] [Duffy's] property to effect that entry," we conclude that the evidence was sufficient to find him guilty of malicious destruction of property.

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