

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0422

SEPTEMBER TERM, 2016

JAIME LYN DAILEY

v.

STATE OF MARYLAND

Krauser, C. J.,
Berger,
Salmon, James P.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Salmon, J.

Filed: March 27, 2017

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On September 30, 2015, Jaime Lyn Dailey (“Ms. Dailey”) was charged with theft of property valued between \$10,000 and \$100,000. The matter was tried before a judge in the Circuit Court for Wicomico County on March 28, 2016. After the State rested, the case was allowed to go forward on the amended charge of theft of property having a value of \$1,000 to \$10,000. At the end of the entire case, Ms. Dailey was convicted of the amended charge and sentenced to four years imprisonment. That sentence, however, was to run concurrent with a three-year sentence that had recently been imposed due to her convictions of other crimes.¹

On appeal, Ms. Dailey contends that the evidence presented at trial was insufficient to convict her because the State failed to show that she exercised unauthorized control over the property alleged to have been stolen.

For the reasons set forth below, we shall affirm Ms. Dailey’s conviction.

I. BACKGROUND

A. Undisputed Facts

Perry Willey, in September of 2015, owned a 20-foot enclosed trailer, which was furnished. The trailer was worth between \$3,000 and \$4,000. He kept the trailer in the front yard of an acquaintance named Christine Barber (“Ms. Barber”).

¹ Ms. Dailey had what is called, for sentencing guideline purposes, a “major record.” The Maryland sentencing guidelines recommend for a person with such a record who is convicted of theft of property worth between \$1,000 and \$10,000, an executed sentence of between four and eight years.

Mr. Willey was, in September 2015, a resident of Florida although he spent part of each year in Salisbury, Maryland. From 2011, approximately, when he first moved to Florida, Mr. Willey allowed his daughter, Ms. Dailey, to use his trailer and she frequently did so.

On September 9, 2015, Mr. Willey went to Ms. Barber’s house to pick up the trailer but found that the trailer was missing. He immediately contacted the Wicomico County Sheriff’s Department and reported that the trailer had been stolen. Mr. Willey met with Deputy Sheriff Christian Pecoraro on September 9, 2015 and told him that Ms. Dailey had a “heroin issue” and that Ms. Dailey had taken his trailer and “sold it to get money.”

B. Testimony of Deputy Sheriff Christian Pecoraro

Deputy Pecoraro testified that when he first met Mr. Willey on September 9, 2015, Mr. Willey told him that he had already spoken with Ms. Dailey and Ms. Barber at Ms. Barber’s residence and that he thought Ms. Dailey had stolen the trailer. When Deputy Pecoraro questioned Mr. Willey, the latter told him that he had never given anyone permission to sell the trailer.

After receiving this information, the deputy went to Ms. Barber’s house on September 9, 2015 and saw that the trailer was missing. He then began checking with Ms. Barber’s neighbors, one of whom was Karen Ehinger. When Deputy Pecoraro told Ms. Ehinger that a trailer had been stolen from the house across the street, Ms. Ehinger replied “oh, yes, that happened Saturday [September 5, 2015] afternoon.” She also told the deputy that she saw a transaction taking place between Ms. Dailey, a “possible boyfriend” of Ms. Dailey’s, and two unknown white males. She added that she had made a videotape of part

of the transaction that she witnessed. After talking to Ms. Ehinger, Deputy Pecoraro contacted Ms. Dailey that same day.

Deputy Pecoraro asked Ms. Dailey if she knew anything about the missing trailer. Ms. Dailey said that she did not know what he was talking about and added that she was not at Ms. Barber’s house on Saturday, September 5, 2015. Deputy Pecoraro then told Ms. Dailey that he did not believe her because he had in his possession a videotape recording showing: 1) the trailer being driven away from Ms. Barber’s house and; 2) the interaction between Ms. Dailey and others shortly before the trailer was taken from Ms. Barber’s property on September 5, 2015.

Once Ms. Dailey learned about what the video showed, she changed her story. First, she said that she had advertised on Craigslist for people to come out to Ms. Barber’s residence to clean out the trailer and do some work on it. Later she changed that story, slightly, by saying that she met two people in front of a Home Depot and paid them \$50 to come out to Ms. Barber’s house to clean out the trailer. According to her revised version of events, the two men drove to Ms. Barber’s home and moved the trailer, which was in “some brush.” Ms. Dailey also told Deputy Pecoraro that the two men were white males and arrived in a silver truck.

C. Testimony of Karen Ehinger

Karen Ehinger, who lived directly across the street from Ms. Barber, testified that she was sitting on her front porch just before “nightfall” on September 5, 2015, when she saw Ms. Dailey (whom she knew well) drive up to Ms. Barber’s home. Ms. Dailey was accompanied by a man and the two approached the trailer. Ms. Ehinger next saw Ms.

Dailey “hurriedly unloading” items from the back of the trailer, while her male companion stood rubbing a spot on the trailer’s left side. Ms. Dailey then came over to the trailer, “bent down, and ran her hand over the area that the gentleman had been working on.” After an exchange of words, the gentleman “went back to [his] rubbing motion while [Ms. Dailey] proceeded to empty the trailer.” At about this time, Ms. Ehinger saw a “newer model,” silver or white “pickup truck” arrive at Ms. Barber’s residence. The driver of the truck backed it up to the trailer hitch and two men emerged from the truck. Words were exchanged between Ms. Dailey and the two men, but Ms. Ehinger could not hear what was being said. To Ms. Ehinger, the situation looked suspicious, which caused her to commence videotaping what was happening. While she was videotaping, it appeared to Ms. Ehinger, that “there was some type of exchange between Ms. Dailey” and the two men who arrived in the pickup truck. The two men then pulled away with the trailer hitched to the back of the silver pickup truck. The videotape was admitted into evidence and reviewed by the trial judge.

Ms. Ehinger said on direct-examination that of the four persons in the videotape the only one she could identify was Ms. Dailey. She further testified that before the two men left with the trailer, she saw Ms. Barber arrive driving a champagne colored Jeep Cherokee. She did not, however, actually see Ms. Barber get out of her vehicle.

D. Testimony of Perry Willey

At that time of trial, Mr. Willey, the father of Ms. Dailey, was temporarily living at 6428 Freedom Way, Salisbury, Maryland. He testified that on the date that he found that his trailer was missing, September 9, 2015, he had been staying at the aforementioned

Salisbury address for about two weeks. When he went to Ms. Barber’s house to pick up his trailer, he found that it was not there. Prior to that date, he had last seen the trailer about two weeks previously.

Mr. Willey admitted that when he reported the theft that he told a sheriff’s deputy that he thought his daughter, Ms. Dailey, “had done something with [the trailer].” He testified, however, that he no longer thought that Ms. Dailey had taken the trailer because a “friend” told him that he (the friend) had received a text message stating that the trailer was for sale. Although he did not say so directly, he made it clear in his testimony that the text message his friend received was not from Ms. Dailey.

On direct-examination, Mr. Willey was asked “so, she (Ms. Dailey) did not have permission to steal or, I’m sorry, to sell that trailer?” To that question, Mr. Willey answered “No, not to sell it, I don’t think she did.”

After Mr. Willey learned of the text message, he told the sheriff’s office that he no longer thought his daughter was responsible for the theft of the trailer. He also testified that presently he and Ms. Dailey had an “[e]xcellent” relationship and that he didn’t want to see his daughter convicted because he didn’t think she was guilty.

The State’s Attorney concluded his direct-examination of Mr. Willey with the following exchange:

Q. If [Ms. Dailey] had in fact removed the trailer from [Ms. Barber’s] residence and sold it, would that have been without your permission?

A. If, if I had known it she could have sold it, but I would have signed the title, that’s what I’m saying, she knew where the title was and if she was going to sign it and sell it, she could have gotten the title and sold it.

Q. So you would have given her permission if she had asked?

A. If she'd asked, yes.

Q. But at the time when you discovered it missing no one had permission to sell it, is that fair?

A. Nobody had permission, no, because I didn't even know who had it.

On cross-examination, Mr. Willey testified that he had owned the trailer between four and six years before September 2015, and during that period, Ms. Dailey had permission to use the trailer whenever he was in Florida.

In regard to the issue of whether Ms. Dailey had permission to sell the trailer, the following question and answer are relevant:

Q. And you indicated that she knew that she could sell it at any time; is that correct?

A. She could have, yes.

E. Testimony of Jaime Lyn Dailey

The only defense witness called was Ms. Dailey. She testified that her father had given the trailer to her for her use after he moved to Florida. She used the trailer for her job, which involved property management and property maintenance. Prior to September 2015, she had used the trailer for three years.

On September 5, 2015, Ms. Dailey was in the process of moving out of Ms. Barber's home. On that date, she planned to clean out the trailer so that she could use it to move her belongings to her new abode. Ms. Dailey placed an ad on Craigslist looking for laborers who could help her clean out the trailer. Two men responded to the ad and showed up for work on September 5, 2015. After they arrived, the two men helped her unload the

furniture that was in the trailer. The men, with Ms. Dailey’s permission, then took the trailer to get air in its tires. The two men, after putting air in the trailer’s tires, returned the trailer to Ms. Barber’s residence approximately 20 minutes later. After cleaning out the trailer, Ms. Barber spent the remainder of the weekend at a friend’s house. The trailer was still at Ms. Barber’s house at the time she left for the weekend. When Mrs. Dailey first noticed that the trailer was missing, she assumed that her father had taken it.

Ms. Dailey further testified that her father had given the trailer to her “to do whatever” with it. She recalled that three or four years previously, just before her father left for Florida, she told him that she “was sick of the trailer being in the yard.” He replied, “[W]ell, sell the damn thing if you want to.”

F. Rebuttal Testimony of Deputy Sheriff Pecoraro and Ms. Ehinger

As a rebuttal witness, the prosecutor and Deputy Pecoraro had the following exchange:

Q. You’ve already testified to some of this, but given Ms. Dailey’s testimony, I just want to clarify a couple of points with you. Initially, what was Ms. Dailey’s response to the news of the trailer having been stolen?

A. That she knew nothing about it.

Q. Did you tell her when it was suspected to have been stolen?

A. That’s correct.

Q. You did tell her?

A. That’s correct.

Q. And did she tell you, did she have an additional response for you at this point?

A. I had the same response from her as I did from Ms. Barber, that they weren't in town that day, they weren't in the area.

Deputy Pecoraro further testified that he did research in regard to whether Ms. Dailey had actually placed a Craigslist ad. He testified, without objection, that “there is no ad that ever existed through” Craigslist, and he knew this because he contacted agents of Craigslist.

Ms. Ehinger testified on rebuttal that more than 20 to 30 minutes elapsed from the time the trailer was driven away and the time she left her porch on the evening of September 5, 2015. Ms. Ehinger also testified that after she went into her house on the evening of September 5, 2015, she periodically went outside to attend to her dogs. Nevertheless, while letting her dogs in or out, she never again saw the trailer.

G. Trial Judge's Decision

In her decision, the trial judge said, in relevant part, the following:

And, frankly, I believe that Mr. Willey thought his trailer had been stolen when he reported it. He agreed today that he thought it was stolen when he reported it stolen, and that subsequently he has come to a different conclusion.

But at the time, that is clear evidence that it wasn't his mindset that his daughter had the opportunity to do anything she wanted with the trailer, that it was essentially his trailer, he was the title holder, he hadn't authorized anyone to use or deal with it in the manner similar to forgoing any interest he had, which is why he reported it stolen.

I find it very interesting that the Defendant's testimony is that it was gone and it never came back and she didn't make any complaint. It was her trailer, she used it for work. She was there on Saturday, the day of the videotape, 9/5, I'm very convinced that the video is fair and accurate, it is what it purports to be, and that the witness who testified as to what she saw testified credibly.

I don't believe she [Ms. Ehinger] had a motive in this situation to treat the Defendant unfairly in any way. So that was Saturday. On Sunday, 9/6, the Defendant doesn't know if she was there, 9/7, Monday, she said my recollection of her testimony is she was going to be moving that week, that she needed the trailer but the trailer's, gone. And it's gone the 8th, and it's gone clearly the 9th, because when her father comes to collect the trailer, it's missing.

Now, something's horribly amiss in this situation for everyone now to be here saying, the trailer was always, had come [sic] back, and I don't know where it is, I'm not reporting it stolen, I just think my dad has it, my dad comes and he doesn't have it and he thinks I stole it.

From a credibility perspective, I believe that the fair inference is that it disappeared on the 5th and it never came back, which is what the neighbor says. Her home is directly across the street. If it had come back and been there for any period of time, one would have expected her to see it. And we don't have anybody else that supports the [assertion by the Defendant that] "it was returned 20 minutes later."

The Defendant's statements to the police and today are somewhat impossible to reconcile, and so I'm giving it no credibility as to her version of the events. Had things transpired exactly as she said they did, one would have expected her to be, you know, a little more forthcoming with the information supporting her version of the events as she's telling it here today.

But she has no burden to present any evidence. It is entirely the State's burden of proof in this case. Entirely. And so I'm not shifting the burden to the Defendant, she could have remained silent or she's entitled to present any or all the information that she wants to the Court.

THE DEFENDANT: I was not asked for any of that information, I'm sorry, I. . .

THE COURT: Well, so I'm satisfied beyond a reasonable doubt that on September 5th, that the trailer disappeared and that the Defendant took into her own hands the disposition of the trailer.

We've never, we don't have any evidence that it was ever recovered, and to that extent then, whether she received money for it or not, she used or dealt with the property such that the owner, her father, was deprived of the property and so she doesn't have to receive money for it.

The fact that it's out there and people may be posting it on Craig's List [sic] now doesn't in any way negate the Defendant's criminal agency because that's what you do with stolen items, is someone tries to sell them. The question is, how did the items get into the possession of the people who are now trying to sell it. It doesn't have to be her personally who tries to sell it, she just has to be the one who made the property available for her own purposes to a third party who now has possession and it's deprived the owner of the property.

The value of the property was over \$1,000

* * *

So, for those reasons, I find her guilty of the amended charge of theft one thousand to under ten thousand.

(Emphasis added.)

II. DISCUSSION

When evaluating the sufficiency of the evidence in a nonjury trial, we “review the case on both the law and the evidence,” but will not “set aside the judgment . . . on the evidence unless clearly erroneous,” giving due regard to the trial court's opportunity to judge the credibility of the witnesses. Maryland Rule 8-131(c); *West v. State*, 312 Md. 197, 207, 539 A.2d 231 (1988). We are mindful that in criminal appeals, “the constitutional standard of review is ‘whether after considering 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 207, 539 A.2d 231, quoting *Dixon v. State*, 302 Md. 447, 450, 488 A.2d 962 (1985). *See also Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Garrison v. State*, 272 Md. 123, 128, 321 A.2d 767 (1974) (when reviewing sufficiency of evidence in court or jury trial, appellate court does not inquire into or measure weight of the evidence). The test used in determining the sufficiency of the evidence for either court or jury trial is whether the evidence shows directly or supports a rational inference of the facts to be proved, from which the trier of fact could fairly be convinced, beyond a reasonable doubt, of the defendant's guilt of the offense charged.

Wilson v. State, 319 Md. 530, 535-36 (1990) (some citations omitted).

Ms. Dailey was convicted of violating Md. Code (2012 Repl. Vol.) Criminal Law Article, § 7-104(a), which provides, in pertinent part:

- (a) *Unauthorized control over property.* – 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.

According to Ms. Dailey, the State’s evidence was insufficient to convict her under the theft statute because the State failed to prove that she knowingly exercised unauthorized control over the trailer. In support of that argument, she relies on § 7-102(b) of the Criminal Law Article which reads:

- (b)(1) A person acts “knowingly”:
- (i) with respect to conduct or a circumstance as described by a statute that defines a crime, when the person is aware of the conduct or that the circumstance exists;
 - (ii) With respect to the result of conduct as described by a statute that defines a crime, when the person is practically certain that the result will be caused by the person’s conduct; and
 - (iii) with respect to a person’s knowledge of the existence of a particular fact, if that knowledge is an element of a crime, when the person is practically certain of the existence of that fact.

(Emphasis added.)

Ms. Dailey argues that the “evidence is insufficient to establish that [she] was practically certain that she had no authority to control the destiny of the trailer.” By the term “control the destiny of the trailer” Ms. Dailey evidently means to deprive the owner of the use of the trailer permanently by either selling it, giving it away, or transferring it to a third party for sale.

Ms. Dailey’s argument is premised, partially, on her testimony that her father told her at one point, referring to the trailer, that she could “sell the damn thing.” But the trial judge did not find Ms. Dailey’s version of events credible and we are bound by that finding. See Md. Rule 8-131(c).

Ms. Dailey also argues:

While it is clear that Mr. Willey reported the trailer stolen when he could not locate it, this is not inconsistent with the fact that Ms. Dailey’s control over the trailer was indeed authorized and she could do with it what she wished. Indeed, Mr. Willey himself said she had permission to sell the trailer “at any time.” This testimony is completely at odds with the trial court’s finding that “it wasn’t his [Mr. Willey’s] mindset that his daughter had the opportunity to do anything she wanted with the trailer, that it was essentially his trailer. . . .” To this extent the lower court’s factual finding is clearly erroneous.

The cornerstone of the above argument is that “Mr. Willey himself said [Ms. Dailey] had permission to sell the trailer at any time.” Mr. Willey never so testified. On direct examination, Mr. Willey testified that “[n]obody had permission” to sell the trailer. More specifically, when Mr. Willey was asked whether appellant had permission to sell the trailer he said: “No, not to sell it, I don’t think she did.” Additionally, in regards to the issue of permission to sell the trailer, Deputy Pecoraro testified, without contradiction, that when he talked to Mr. Willey on the date that the trailer was reported by Mr. Willey to have been stolen, Mr. Willey told him that no one had permission to sell the trailer.

Ms. Dailey’s claim that her father affirmed in his testimony that she had permission to sell the trailer is based upon the part of Mr. Willey’s testimony (see pages 5-6, *supra*) where he said that if Ms. Dailey asked for permission to sell the trailer he would have given

it. Quite obviously, this is not the same as saying that prior to the sale he gave Ms. Dailey permission to sell the trailer.

In further support of her argument that her father gave her permission to sell the trailer, appellant points to her father’s testimony as to what Ms. Dailey “could have done.” In that regard, Mr. Willey said, in essence, that because appellant knew where the title to the trailer was kept, she could have signed the title and sold it (see page 5, *supra*) and that his daughter “knew” that she could sell the trailer at any time (page 6, *supra*). Saying what the defendant could have done (sell the trailer) is not the same as saying that the defendant had permission to do that act, especially in light of Mr. Willey’s earlier testimony that no one had been given permission to sell the trailer.

The trial judge’s finding that appellant did not have permission to sell or otherwise permanently deprive the owner of the trailer is further supported by the uncontradicted testimony concerning what Mr. Willey told Deputy Pecoraro as soon as Mr. Willey discovered that his trailer was missing, i.e., that he thought Ms. Dailey had a “heroin issue” and had stolen the trailer and “sold it.” A rational fact-finder could infer from this last-mentioned statement that prior to the date that the trailer disappeared, Ms. Dailey did

not have Mr. Willey’s permission to sell or otherwise permanently deprive Mr. Willey of the use of the trailer.

**JUDGMENT AFFIRMED; COSTS TO BE
PAID BY APPELLANT.**