Circuit Court for Prince Georges County
Case No. CJ160228

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2380

September Term, 2016

SYLVESTER BLAKENEY, III

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: August 22, 2017

Sylvester Blakeney, III, appellant, was convicted by a jury sitting in the Circuit Court for Prince George's County of failing to return a rental vehicle.[1] *See* Md. Code Ann., Criminal Law Art. (Crim. Law), §7-205. Appellant asks two questions on appeal:

I. Did the trial court err in allowing the State's witness to offer lay opinion testimony that appellant had signed a truck lease agreement?

II. Did the trial court err in denying appellant's motion for judgment of acquittal?

For the reasons that follow, we shall affirm.

FACTS

The State's theory of prosecution was that appellant, the owner of BTR Office Installation, LLC ("BTR"), entered into a truck lease agreement with Metro Truck & Tractor Leasing, Inc. ("Metro") and then failed to make payments and return a rental truck, which was later repossessed. Donald Morton, Metro's General Manager, was the State's sole witness. The defense's theory was that appellant had made all monthly payments under the agreement, and that Metro eventually repossessed the truck after Metro wrongfully misappropriated appellant's timely rental payments to pay for repairs to the truck. Appellant was the sole witness for the defense.

Morton, the general manager of Metro since 1989, identified a "Truck Lease Service Agreement" dated October 1, 2014, as the lease agreement between BTR and Metro, which he testified was a standard lease agreement. The four-page agreement, which was admitted

[1] The court sentenced appellant to a one year term of imprisonment, all suspended but 14 days, to be followed by three years of supervised probation. Appellant was also ordered to pay $3,000 in restitution.

into evidence, set forth the terms and conditions of the lease between Metro and "BTR Office Installation LLC," which was typed in above "Name under which Lessee does business." Under the provisions of the agreement, Metro had the right to terminate the agreement if BTR defaulted for failure to pay any lease charge when due. Metro was required to give BTR five days written notice of a default, during which BTR could cure the default by payment. Upon termination, BTR was required to return the vehicle to Metro.

Morton testified that as the general manager he was responsible for all administrative functions at Metro, and that after a lease agreement was signed it was brought to him for entry into Metro's computer system. Morton testified that appellant signed the agreement on behalf of BTR. Under appellant's signature was the typed word "Title" next to which was the handwritten word "owner". Attached to the agreement was a copy of appellant's driver's license, which also included appellant's signature. Morton explained that customers were asked for their driver's license when they came to pick up a vehicle, a copy of which was then attached to the lease agreement.

A total of three trucks were leased to appellant under the agreement, and Morton witnessed appellant picking up vehicles from Metro. Appellant took possession of truck Number 2206, which was the subject at trial, on February 18, 2015. Morton testified that from the inception of the agreement appellant failed to make payments as required under the terms of the lease agreement.

Metro contacted appellant about his defaults by numerous letters, telephone calls and e-mails. Morton testified that three of the letters alerting appellant to the defaults were sent by certified mail, and that a letter sent on March 3, 2015, was reported by the postal service as delivered. Morton also met with appellant, Metro's president, and Metro's accounts receivable person to discuss the defaults. At some point, Metro sent a service technician for the rental vehicles to the address where the letters were sent, and appellant was observed at the home. On June 25, 2015, two of the three trucks were repossessed, and the lease was terminated for nonpayment.

Three weeks later, on July 14, 2015, Metro sent a certified letter on Metro letterhead to appellant as the "Owner/Resident Agent" of BTR. In that letter, Morton advised appellant he was in default under the lease agreement, and Metro was unable to locate the third leased truck, No. 2206. Appellant was advised that if he did not know the truck's whereabouts, he was to report it stolen, and if he did not report it stolen, he was to return the truck within 24 hours of receipt of the letter. On August 19, 2015, Morton e-mailed appellant at sylvester@btroi.com apparently with the same advisements. Two days later appellant replied to the e-mail, stating that he had not had the three trucks in his possession since June 25, 2015 when Metro repossessed them, and stating that he had gone to the police to report all three trucks stolen but had been told by the police that he could not do so because he was not the owner of the trucks.

Morton testified that the third truck was finally recovered on September 21, 2015, when it was found by happenstance by a Metro employee behind the Wal-Mart in Brandywine, within three miles of appellant's home. A large decal containing BTR's

name, phone number, and logo was affixed to the driver's side door of the truck. The Metro logo and identification number 2206 that had been affixed to each side of the truck had been removed.

Appellant testified in his defense. He testified that the agreement entered into evidence by the State was a "service" agreement not a "lease" agreement; that he had never seen the service agreement until Metro e-mailed it to him in September 2016, about four months prior to trial; and that the signature on the service agreement was not his. Appellant admitted, however, that he had signed an agreement with Metro to lease three trucks. He testified he always paid his monthly rental bill but claimed that Metro used that money to pay for repairs on the trucks, which kept "breaking down," and that Metro repossessed the trucks because he refused to pay the charges to repair them. Appellant testified that he had several meetings with Metro to address the problem. He testified that he never abandoned nor left the truck behind the Wal-Mart. He also testified that he was told by the police that he could not report it stolen because he was not the owner. Appellant admitted that his company's name and logo were on the truck, but denied removing Metro's decals. He also denied receiving any of the certified mail letters from Metro. Appellant admitted that he had a prior theft conviction.

DISCUSSION

I.

Appellant argues on appeal that the trial court erred in allowing Morton to testify that appellant signed the lease agreement as the representative for BTR. Specifically, appellant argues that Morton's testimony was inadmissible lay opinion testimony because

Morton had no personal knowledge that appellant had signed the agreement for he was not present when the agreement was signed. The State responds that the trial court did not err in admitting the testimony, and if there was error, any error was harmless.

Initially, it appears that appellant has failed to preserve his argument for our review. Md. Rule 4-323(a) provides: "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." If the State's question is improperly formed or calls for an inadmissible answer, counsel must object immediately. *Bruce v. State*, 328 Md. 594, 628-29 (1992), *cert. denied*, 508 U.S. 963 (1993). *See also Cantine v. State*, 160 Md. App. 391, 409-10 (2004), *cert. denied*, 386 Md. 181 (2005).

Here, the State showed Morton the lease agreement and then asked him: "Do you know who was the representative of the BTR that signed this agreement?" and Morton responded: "It was Mr. Blakeney." Defense counsel then objected, and the trial court overruled the objection, seemingly because the objection came too late. By objecting "too late," appellant has failed to preserve his argument for our review. Even if preserved, however, his argument is without merit.

Md. Rule 5-701, titled "**Opinion Testimony by Law Witnesses**," provides:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

The rule's rationale is two-fold: the evidence must be probative and "must be rationally based and premised on the personal knowledge of the witness." *Paige v. State*, 226 Md. App. 93, 125 (2015) (quotation marks and citations omitted). The "personal knowledge" prerequisite requires that "even if a witness has perceived a matter with his senses, he must also have the experience necessary to comprehend his perceptions." *Id*. (quotation marks, brackets, and citations omitted). The "rational connection" prerequisite requires that there is a "rational connection between the perception and the opinion." *Id*. (quotation marks, brackets, and citations omitted). It is axiomatic that the admissibility of lay witness testimony lies within the discretion of the trial court. *Id.* at 124 (citations omitted).

Unlike appellant, we decline to view the question posed to Morton as one calling for lay opinion testimony as to who signed the agreement. Rather, the question proffered by the State, although not artfully framed, was more akin to asking Morton to read the signature that appears on the contract on behalf of BTR. From the trial transcript it is clear that the question posed by the State and the answer elicited were meant for Morton to relate the signature written on the lease agreement and not to authenticate the signature. We note that the parties left the question of authentication to the jury, arguing in closing that the jury could compare the signature on the lease and the signature on Blakeney's driver's license that was attached to the lease to determine if they were the same. It is axiomatic that a trial court's ruling on the admissibility of evidence will not be overturned on appeal absent a clear abuse of discretion. *Thomas v. State*, 429 Md. 85, 95-98 (2012) (citations

omitted). Under the circumstances, we are not persuaded that the trial court abused its discretion in admitting Morton's testimony.[2]

II.

Appellant argues that the trial court erred in denying his motion for judgment of acquittal. Specifically, he argues that the State failed to prove that he "had actual knowledge of his duty" to return the truck because he believed that Metro had repossessed the truck, and misappropriated his lease payments to fix maintenance issues. The State responds that appellant has failed to preserve his argument for our review because he did not raise it below, and in any event, appellant's argument is without merit.

[2] Even if Morton's testimony could be construed as lay opinion testimony, we are persuaded that Morton could infer that appellant signed the lease agreement based on Morton's personal knowledge as the general manager of Metro, his extensive contact with appellant, and appellant's pattern of behavior. As stated above, Morton testified that as the general manager for almost thirty years he viewed all lease agreements. Additionally, Morton testified that a copy of appellant's driver's license was attached to the lease agreement because appellant was the person who picked up the trucks for BTR. When a dispute arose as to payment under the contract, Morton contacted appellant through mail, telephone calls, and e-mails. Tellingly, Morton sent and received a reply from appellant at the e-mail address "sylvester@btroi.com." Morton also met with appellant, and Metro's president and Metro's account receivable person, to discuss appellant's failure to pay as required under the lease agreement. No other person from Metro was present, nor had Morton dealt with anyone else on behalf of BTR other than appellant. Moreover, Morton sent a service technician to appellant's home to repair the trucks he leased. Clearly, there was an abundance of firsthand personal knowledge to support Morton's testimony that appellant had signed the lease agreement as the representative for BTR. Moreover, there is a rational connection between Morton's opinion and his experience as Metro's general manager and the roughly eight months he interacted with appellant regarding the lease. Therefore, Morton's testimony, if viewed as lay opinion testimony, was not based on mere speculation, but was grounded in his experience as a general manager at Metro and with his interactions with appellant.

Md. Rule 4-324(a), provides in pertinent part, that "[a] defendant may move for judgment of acquittal . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted." The particularity requirement is mandatory. *Bates v. State*, 127 Md. App. 678, 691 (citation omitted), *cert. denied*, 356 Md. 635 (1999). Additionally, "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a).

The State argues that when defense counsel moved for a judgment of acquittal, he focused on the deficiencies in the lease agreement but made no argument relating to appellant's lack of knowledge as to his duty to return the truck. Although it is a close call, we think that the argument raised by defense counsel in his motion for judgment of acquittal -- that the lease agreement was missing information, specifically, what vehicles were rented or when and where the vehicles were to be picked up and returned -- encompassed appellant's argument on appeal -- that he did not know he was to return the truck under the agreement. Accordingly, we are persuaded that appellant has preserved his argument for our review; however, his argument is meritless.

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.'" *Taylor v. State*, 346 Md. 452, 457 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "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." *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted). "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." *State v. Suddith*, 379 Md. 425, 447 (2004) (quotation marks and citation omitted). 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." *Allen v. State*, 158 Md. App. 194, 249 (2004) (quotation marks and citation omitted), *aff'd*, 387 Md. 389 (2005).

Md. Code Ann., Crim. Law §7-205(a) provides that "[a] person who leases or rents a motor vehicle under an agreement to return the motor vehicle at the end of the leasing or rental period may not abandon the motor vehicle or refuse or willfully neglect to return it." A person may not be prosecuted, however, unless the person fails to return the vehicle within five days after receiving a written demand for the return of the vehicle sent by certified mail. Crim. Law § 7-205(b). The crime is a "general intent" crime requiring only "that the acts of abandonment, refusal, and willful neglect be done knowingly and voluntarily, with actual knowledge of the circumstances." *Williams v. State*, 173 Md. App. 161, 171 (2007). The State proceeded under the theory that appellant willfully neglected to return the vehicle.

Appellant argues that the State failed to show that he knowingly disregarded any duty to return the truck, focusing on his self-serving testimony that he believed that Metro

had repossessed the truck, and misappropriated his timely rental payments to fix maintenance issues. However, the jury was free to discredit all or some of appellant's self-serving testimony. *See State v. Stanley*, 351 Md. 733, 750 (1998)(It is long settled that "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder.")(citing *Binnie v. State*, 321 Md. 572, 580 (1991)). *See also Jones v. State*, 343 Md. 448, 460 (1996)(A fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony.)(citing *Muir v. State*, 64 Md. App. 648, 654 (1985), *aff'd*, 308 Md. 208 (1986)).

Here, a rational juror could conclude that appellant knowingly disregarded his duty to return the truck. The lease agreement, which was admitted into evidence, set forth appellant's obligation to return the truck, if he defaulted, and appellant was sent two default notices for failure to pay, March 3, 2015 and July 14, 2015, both of which were confirmed received. Additionally, Morton e-mailed appellant on August 19, 2015 to the same extent, and appellant responded two days later confirming that he had received Morton's e-mail. Accordingly, we shall affirm. *Cf. Williams*, 173 Md. App. at 171–72 (holding that the evidence was sufficient to show that Williams refused or willfully neglected to return the rented vehicle).

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.