UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2635

September Term, 2014

JERMELL ANTONIO BAILEY

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: November 12, 2015

Appellant, Jermell Bailey, was tried and convicted in the Circuit Court for Caroline County (Wise, J.) of "theft: $1000 to $10,000," on a District Court Statement of Charges. He was sentenced to twelve months' imprisonment, the sentence to be suspended, in favor of three years supervised probation. Appellant appeals from both the conviction and sentence and raises the following question, which we quote, on this appeal:

Was the evidence legally insufficient to sustain the theft conviction?

FACTS AND LEGAL PROCEEDINGS

Brenda Gibson began renting washer and dryer units from the Denton Rent-A-Center in 2012. Gibson testified that she made a final payment for both units on June 1, 2013.[1] According to Gibson, she received a $10,000 Social Security check, which she deposited into her PNC account. After calling the Rent-A-Center to make an over the phone payment using her debit card for the balance of both units, Gibson states she was told that she needed to pay in person at the store. Believing the balance owed was $1,600, Gibson withdrew that amount in cash from her bank and remitted the payment in person at the store "to pay the washer and dryer completely off." The payment was made in cash directly to appellant, but he failed to give her a receipt. Explaining that the computer was down, he gave her a piece of paper that was "written in Spanish." Gibson explained that she had subsequently lost the purported receipt.

[1] Although a rental agreement, the terms provided for Gibson to acquire ownership pursuant to its terms.

Gibson further testified that, in addition to the $1,600 for the washer and dryer, she also gave appellant $800 in cash as a down payment on a Sony stereo. Moreover, when the washer and dryer units broke down a week later, Gibson testified that appellant arranged to give her "loaners" until the original units could be serviced.

The store manager at Rent-A-Center in Denton, Christopher McPhail, testified that he succeeded appellant as the store manager on October 26, 2013, which was one week after appellant's employment ended. According to McPhail, it was the store manager's responsibility to review "files every day," to audit the cash drawer, to oversee employees "through receipt transaction trails and perform a transaction audit trail that shows [] all the receipts that were done that day and all the money that was taken in that day."

McPhail testified that Gibson called the store to inquire about getting the original washer and dryer units back. He further testified that he explained to Gibson that the loaners either had to be returned "in our system or it will still pay off the original item." According to McPhail, Gibson asserted that she had paid the balance due on the washer and dryer, but that there was no record of the payoff on her account. According to McPhail, nothing in his computer system or records reflected that Gibson made the payoff as she claimed. There was, however, a record that Gibson made a deposit of $800 on a stereo.

McPhail further testified that an entry in a "transaction audit trail" indicated that the washer and dryer were returned on August 31, 2013 with a notation, "can't afford," and that

the entry was accompanied by appellant's name.[2] McPhail also identified an "inventory perpetual" for the washer and dryer. Moreover, McPhail testified that Gibson owed $1,858 on the washer notwithstanding what Gibson had told him regarding the alleged payment of $1,600 made to appellant. McPhail testified that Gibson stated that appellant had told her that the balance due on the items had been paid off. Consequently, McPhail permitted Gibson to keep "the loaners."

Regarding the original washer and dryer, McPhail testified that the units were never found, but he believed the originals had been delivered back to Gibson. He stated, however, that the company could not be sure because the serial numbers were so scratched as to be illegible. McPhail did acknowledge that the printout of the agreement reflected that a transaction had occurred between August 3, 2013 and August 31 2013, a month beyond the time Gibson asserted that she had paid the balance owed on the items.

Testifying on behalf of appellant, Daphne Miller, store manager for Rent-A-Center, Denton, stated that she was familiar with Gibson as a regular customer who had rented and paid off numerous items. According to Miller's testimony, when a customer makes a payoff he or she receives a receipt as well as a certificate of ownership. Miller identified a printout of a rental agreement indicating that it was executed on August 3, 2013 and deactivated on

[2] States Exhibit 2 was a"screen print"of the "inactive returned rental agreement indicating that, throughout the contract" Gibson had paid off a total of $18.28 upon returning the items on August 31, 2013, for the reason "can't afford, and listing appellant as the "salesperson."

August 31, 2013. She explained that it was not possible to tell when the $18.28 credit—the only recorded payment on the account—was made paid. Miller did testify that an early payoff amount for the rented washer and dryer units would have been $3,700.

We shall provide further development of the facts, i*nfra*.

CIRCUIT COURT'S RULING

After chiding the record-keeping system of Rent-A-Center and characterizing the company's documents admitted into evidence as "almost worthless," the Circuit Court found, *inter alia*, that great inconsistencies with document management, data-entry, and employee computer log-in PIN numbers rendered the evidence unreliable. Specifically:

> The dates and amounts . . . simply don't match anything that the people have said . . . these documents don't help me a whole lot to determine anything beyond a reasonable doubt. I've already indicated that, and, Mr. Bailey did too, that he gave his PIN number to other people. They had access to his name. Different people could have made different entries on here with or without an underlying basis for it . . . I mean it's possible that what she says is true. The guys on the truck sold the original washer and dryer on their way back. Who knows, documents in the store, the inventory record simply do not tell us. . . . So the records are pretty worthless . . . . If we had the original documents, maybe something. Okay, so the reason I'm saying all of that is because I'm not going to decide the case based on those records and all the testimony that's been given about it and we're going back to the way we used to do things, which is credibility.

The Circuit Court decided to disregard the majority of documentary evidence and base its decision on the credibility, or lack thereof, of the witnesses. Based on the foregoing, the Circuit Court's findings were that:

(a) Scott Johnson's testimony was credible because there is no evidence that he knew Brenda Gibson or that they had concocted some kind of story about the Spanish receipt and the $1,600 or that he would destroy Rent-A-Center records reflecting the payment, *vel non*, of $1,600.

(b) Brenda Gibson's testimony was consistent and her details as to the circumstances regarding cashing her Social Security check and subsequent payment to Rent-A-Center. In light of the fact that Gibson benefitted by virtue of the write-off of the $1,600 for the washer and dryer that didn't work, she had no motive to give false testimony.

STANDARD OF REVIEW

The standard for appellate review of evidentiary sufficiency was recently reiterated by the Maryland Court of Appeals in *Derr v. State*. 434 Md. 88, 129 (2013):

> 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) (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." *See Yates v. State*, 429 Md. 112, 125 (2012), *Titus v. State*, 423 Md. 548, 557 (2011). In applying this standard we have stated:
>
> > 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 no 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.

> *Titus*, 423 Md. At 557–58 (quotations and citations omitted) (emphasis added).

DISCUSSION

Appellant was found guilty of one count of theft, on the premise that he knowingly obtained unauthorized control over the $1,600 payment remitted by Gibson to appellant that was to be credited to her account in order to pay off her account with Rent-A-Center. Appellant contends, on appeal, that the evidence was insufficient to establish that he obtained the $1,600 from Gibson or to prove that Rent-A-Center was missing or deprived of $1,600. We disagree.

Md. Code Ann., Crim. Law, § 7-104(a)(1), prohibiting the unauthorized control over property, provides in pertinent part:

> A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:
>
> (i) intends to deprive the owner of the property;
>
> (ii) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
>
> (iii) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

Also relevant to the manner of transfer, Md. Ann. Code Crim. Law § 7-101(g) defines "obtain" as "to bring about a transfer of interest or possession of the property . . ."

Our review of the evidence in the light most favorable to the prosecution, persuades us that a rational trier of fact could have found that appellant obtained unauthorized control

of the $1,600 payment, depriving Rent-A-Center of its property. Brenda Gibson testified that appellant took possession of the $1,600 cash payment from Gibson after she had deposited her Social security check into her PNC bank account. She further testified that she was familiar with the appellant and had conducted prior transactions with him. Gibson also testified that the $1,600 payment to Rent-A-Center was remitted for the purpose of paying off an account for renting washing machine and dryer units from Rent-A-Center. Finally, the Rent-A-Center store manager testified that, although Gibson had asserted that she had paid the balance owed on the washer and dryer, no record of the payment was reflected on her account. Gibson testified that, when she called Rent-A-Center to exchange her loaned washer and dryer for the original units for which she believed she had paid, she was informed that there was no record of the $1,600 payment. Thus, the record and Gibson's testimony indicate that the appellant never credited the $1,600 payment to Rent-A-Center's account.

Although appellant contends that the evidence failed to illustrate that he "appropriated" or "transferred possession" of the $1,600 he received from Gibson, the definitions for "obtaining" are no longer legally cognizable. Appellant cites *Cicoria v. State*, 332 Md. 21, 32–33 (1993), which further cites a portion of Article 27, § 340 of the Md. Code, which has since been repealed. The element of "obtaining" under the current § 7-104(a)(1) theft statute is satisfied by showing "possession of the property" which was illustrated through Gibson's testimony. While appellant contends that the judgment of the

trier of fact was based solely on the "unsupported, unsubstantiated, uncorroborated, and undocumented" testimony of Gibson, the testimony of a single eyewitness—if believed by the trier of fact—is sufficient to convict. *See Branch v. State*, 305 Md. 177, 183–84 (1986); *Mobley v. State*, 270 Md. 76, 88 (1973); *Caviness v. State*, 244 Md. 575, 579 (1966); *Turner v. State*, 242 Md. 408, 416 (1966). There is no requirement that Gibson's testimony be supported, substantiated, corroborated or documented. It is enough that the trier of fact, having been present during live testimony and conducting a first-hand assessment of the witness' credibility, rationally found the witness credible.

In the case, *sub judice*, the trial judge found Gibson's testimony credible, stating, "In short, I can't find any reason to disbelieve her testimony and therefore I believe it beyond a reasonable doubt . . ." Furthermore, the circuit court's finding that Gibson's testimony was credible is rationally based upon, *inter alia*, the consistency of the witness' statements, her lack of motive to provide false testimony and the unlikelihood of fabrication regarding specific details such as the Spanish-language receipt, the circumstances regarding cashing her Social Security check and her payment to Rent-A-Center.

For all of the foregoing reasons, we are persuaded that a rational trier of fact—in this case, the trial judge—could find, beyond a reasonable doubt, that appellant obtained

unauthorized control of the $1,600 payment remitted by Gibson to Rent-A-Center and deprived the business of its property.

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