

Circuit Court for Queen Anne's County
Case No. C-17-CR-17-000350

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1229

September Term, 2017

THOMAS EDWARD JOHNSON, JR.

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 8, 2018

*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.

Following a bench trial, in the Circuit Court for Queen Anne’s County, Thomas Edward Johnson, Jr., appellant, was convicted of theft of property in an amount less than \$1,000 and conspiracy to commit theft of property in an amount less than \$1,000. Johnson’s sole claim on appeal is that there was insufficient evidence to sustain his convictions. For the reasons that follow, we affirm.

At trial, the State presented evidence that Kelly Jewell worked at the Merrell store at the Queenstown Outlet Mall. Jewell became suspicious that Stephanie Treadwell, another employee, might be stealing merchandise from the store so she decided to conduct surveillance of the store at closing time. While sitting in the parking lot, Jewell observed Johnson get out of his car and go into the store. Once inside, Treadwell locked the door. Over the next fifteen to twenty minutes, Johnson and Treadwell walked around the store together, removed merchandise from the shelves, and put the merchandise into six “large” bags. Johnson and Treadwell were speaking to each other the entire time. They then exited the store, each carrying several of the bags. After putting the bags into Johnson’s car, Treadwell got into the passenger seat and she and Johnson drove away. A subsequent inventory check revealed that various items were missing from the store, including multiple jackets, hats, and pairs of shoes.

Treadwell testified, pursuant to a plea agreement, that she knew Johnson through a mutual friend. She admitted letting Johnson into the store and allowing him to take the merchandise. However, she testified that she had “told him that he could take whatever he wanted [in terms of merchandise] and I would take care of it.” She also stated that she did not know exactly what Johnson had taken from the store. Phil Vaughn, the store’s regional

loss prevention manager, testified that he took a statement from Treadwell two days after the theft, and that she never stated that she had told Johnson she would pay for any items he took from the store. Vaughn also indicated that Treadwell did not have permission to take any items from the store or give them to other people.

Johnson contends that the evidence was insufficient to sustain his convictions because the State failed to prove that he had agreed to commit the crime of theft or that he had the specific intent to steal from Merrell when he took the merchandise.¹ In analyzing the sufficiency of the evidence admitted at a bench trial to sustain a defendant’s convictions, we “review the case on both the law and the evidence,” but will not “set aside the judgement . . . on the evidence unless clearly erroneous.” Maryland Rule 8-131(c). “We review sufficiency of the evidence to 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.” *White v. State*, 217 Md. App. 709, 713 (2014) (internal quotation marks and citation omitted).

Relying on Treadwell’s testimony that she had told him that she would “take care of [the merchandise],” Johnson claims that “at most [he] agreed with Treadwell that he could select merchandise and that Treadwell would then reimburse the store.” This

¹ Johnson was convicted of two offenses. The first, theft of property valued at less than \$1,000, required proof that Johnson willfully or knowingly obtained or exerted unauthorized control over property with the intent to deprive the owner of the property. *See* Md. Code Anno, Crim. Law § 7-104. The second, conspiracy to commit theft of property, required proof that Johnson entered into an agreement to commit the crime of theft, with the specific intent that the crime of theft be committed. *See Mitchell v. State*, 363 Md. 130, 146 (2001).

argument, however, views the evidence in a light most favorable to Johnson. Although Treadwell’s testimony was arguably exonerating on the issue of intent, the trial court, as the finder-of-fact, was free to believe all, some, or none of her testimony. And “it is the [trier of fact’s] task, not [this Court’s] to measure the weight of the evidence and to judge the credibility of the witnesses.” *See State v. Manion*, 442 Md. 419, 431 (2015) (citation omitted).

Viewed in a light most favorable to the State, the evidence demonstrated that: (1) Johnson was not an employee of the store; (2) Johnson entered the store at closing time; (3) Treadwell locked the door behind Johnson after he went inside; (4) immediately after locking the door, Treadwell and Johnson walked around the store for fifteen to twenty minutes, removed various items from the shelves, and placed them into six “large” bags; (5) Treadwell and Johnson were speaking with each the entire time that they were placing the items into the bags; (6) Treadwell and Johnson took the bags out of the store and put them in Johnson’s car; (7) Treadwell left in the vehicle with Johnson; and (8) Treadwell did not have the authority to give Merrell’s merchandise to Johnson. That evidence, if believed, was sufficient to prove that Johnson possessed the requisite intent to commit a theft of Merrell’s property and conspired with Treadwell to do so. *See Graham v. State*, 117 Md. App. 280, 284, 699 A.2d 1204 (1997) (noting that a defendant’s intent may be

inferred from the circumstances surrounding his acts). Consequently, the State presented sufficient evidence to sustain his convictions.

**JUDGMENTS OF THE CIRCUIT COURT
FOR QUEEN ANNE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**