

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 336

September Term, 2016

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VANESSA TYIESHA HENRY

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: June 2, 2017

\*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.

Convicted by a jury, in the Circuit Court for Worcester County, of theft of property with a value of at least \$1000 but less than \$10,000, appellant, Vanessa Tyiesha Henry raises one question on appeal:

Did the trial court err when it prevented defense counsel from questioning a prosecuting witness about her belief that a third party was guilty of the crime for which Ms. Henry was on trial?

We conclude that the issue was not preserved for our review, and affirm.

As the sole issue on appeal involves an evidentiary ruling, we include only a brief recitation of the facts that are relevant to our review of the disputed ruling. Henry, who was employed as an assistant manager at the Family Dollar store in Ocean City, was charged with stealing \$2,693.69 in cash from the store. Dorothy Turner, the district manager for the store chain, testified that she called the Ocean City store the morning of July 4, 2015, to ensure that the store had opened on time, but there was no answer. She then called Henry on her private phone to ask why the store was not open. Henry responded that she went to the store that morning and, according to store procedures, had taken the cash from the previous day's register sales out of the store safe, and deposited it at the bank, but then left because she did not have a babysitter for her child. Later that day, Henry sent a text message to Turner stating that she did not want to work at Family Dollar anymore because her brother was dying of cancer and she wanted to stay home with him. Two days later, Turner discovered that the bank had not received the deposit that Henry claimed she had made. According to store records, the missing deposit totaled \$2,693.69.

On cross-examination, defense counsel attempted to ask Turner whether she had made a statement in which she expressed a belief that another store employee, Eric Price,

had committed the theft, eliciting an objection from the prosecutor, which the court sustained:

[DEFENSE COUNSEL]: Do you recall having a conversation with Ms. Parsons in October of 2015, specifically about the missing deposit bag?

TURNER: No, I don't remember.

[DEFENSE COUNSEL]: Did you tell Ms. Parsons in October 2015 that you thought maybe Eric, too, and that you mention that to both - -

[PROSECUTOR]: Objection.

THE COURT: The objection is sustained.

Defense counsel asked to approach the bench, and the following colloquy took place:

[DEFENSE COUNSEL]: Your, Honor, I'm making a fair attempt in allowing Ms. Turner to indicate whether she did or did not tell Ms. Parsons, say herself that she believed it was another individual or thought that, too....

THE COURT: Well, what makes her - - assuming it was true, what makes her suspicion of somebody else admissible?

[DEFENSE COUNSEL]: Opportunity.

THE COURT: Is that - - you can question her about opportunity. You can question her about any number of things that would give rise to suspicion, but I don't think her suspicion of somebody else which is nothing more than opinion, if you will, is admissible.

The court again sustained the objection and instructed the jury to disregard the question.

On appeal, Henry now claims that evidence that Turner may have made an out-of-court statement expressing her belief that someone other than Henry had committed the crime was admissible: (1) as lay opinion evidence pursuant to Md. Rule 5-701; and (2) because it “constituted reverse other crimes evidence under [Md.] Rule 5-403.” Defense counsel's failure to argue these theories of admissibility at trial, however, renders these

claims unpreserved for appellate review. *See Robinson v. State*, 66 Md. App. 246, 253-54 (1986) (holding that issue on appeal was not preserved where the party’s proffer did not include the theory of admissibility urged on appeal), *cert. denied*, 306 Md. 289 (1986). *See also King v. State*, 434 Md. 472, 479 (2013) (noting that Maryland’s appellate courts ordinarily will not consider “any issue ‘unless it plainly appears by the record to have been raised in or decided by the trial court’” (quoting Md. Rule 8-131 (a))).

In any event, Henry’s claims are without merit. Based on the record, Turner was not present when the money was stolen, and there was no evidence that she otherwise had personal knowledge of the identity of the thief. Therefore, whom she might have suspected of stealing the money was not admissible under Md. Rule 5-602 (“a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter[.]”) nor was it admissible as “lay

opinion,” because it was not “rationally based on the perception of the witness[.]”<sup>1</sup> *See* Md. Rule 5-701.

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

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<sup>1</sup> We reject Henry’s assertion that Turner’s alleged belief that Price may have stolen the money was rationally based on her perception merely because, as district manager in charge of the Ocean City Store, she had generally “observ[ed] [Price’s] work.”