Circuit Court for Baltimore City
Case No. 619056008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 472

September Term, 2019

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IN RE: K.G.

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Nazarian,
Beachley,
Shaw Geter,

JJ.

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Opinion by Shaw Geter, J.

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Filed: June 17, 2020

Appellant, K.G., was charged as a juvenile in the Circuit Court for Baltimore City with conduct that, if committed by an adult, would constitute motor vehicle theft, unauthorized use of a vehicle, breaking and entering a vehicle under the rogue and vagabond statute, and various theft related offenses. The State abandoned all but the rogue and vagabond charge at the adjudication hearing, and a magistrate found appellant involved in that count, beyond a reasonable doubt. This finding was upheld following an exceptions hearing to a judge of the circuit court, and appellant was placed on probation. Appellant timely appealed and asks the following question for our review:

> Is the evidence sufficient to sustain a finding of involvement in the charge of rogue and vagabond?

For the following reasons, we affirm.

## BACKGROUND

On February 21, 2019, David Dexter woke in his Fells Point home in Baltimore, and noticed that his 2015 Chevy Malibu was missing. Dexter called the police and reported the vehicle was stolen. The key fob that unlocked the doors of his Malibu was also missing.

The next day, February 22, 2019, at around 1:30 p.m., Officer Darla Wright found the stolen Malibu parked in the Northeast District of Baltimore on Raymar Avenue. Officer Wright checked the vehicle and confirmed that the vehicle's door and trunk were locked and secure. She also noticed a black jacket in the back seat, located on the driver's side of the vehicle.

After calling for a tow truck, Officer Wright waited nearby in her marked patrol vehicle. While she was waiting, two young men walked up the street, turned and walked

away, then turned again and walked back towards the Malibu. Officer Wright testified as follows:

> Q. And what happened after that?
>
> A. I advised them not to go near the car, that the car is stolen, and then the shorter male opened the rear driver's side door, took the jacket out and proceeded to walk down the street, so I continued to call for additional units. As they saw me walking towards them, they started to run and I gave chase.
>
> Q. And did you see how the male entered the vehicle?
>
> A. Yes. They just unlocked the door because the car door was locked.

When the young men were apprehended a short distance away, the one who opened the car door was observed wearing that same black jacket. Officer Wright identified K.G. as the individual who opened the car door.[1] The key fob for the Malibu was never found.

A video recording taken from Officer Wright's body camera footage was admitted at trial and played for the court. On that recording, Officer Wright can be overheard telling the young men, as they approached the stolen car: "Stay away. Don't touch the car. Don't touch the car. It's stolen. It's stolen. I watch you guys. I'm watching this car here." The body camera surveillance video shows that, shortly after the two young men approach the locked car, the rear door on the driver's side and the trunk both popped open. As Officer Wright orders them away, the young men walk away from the scene, with one of them carrying the black jacket previously located in the back seat of the stolen car.

[1] The second individual is identified in the juvenile petition as "A.S."

Pertinent to the arguments raised, at the hearing before the magistrate, appellant's counsel argued that appellant did not know the vehicle was stolen and that he was simply retrieving his own jacket.[2] During closing argument, appellant's counsel continued that the State conceded reasonable doubt by dropping some of the greater charges, and that: "[o]ne they say they don't know if it was his jacket or not and there's no testimony about it not being his jacket." Nevertheless, despite these arguments, the magistrate found that the State had proved, beyond a reasonable doubt, that appellant was involved with conduct that, if committed by an adult, would constitute breaking and entering a vehicle, under the rogue and vagabond statute.

In his written motion excepting from the magistrate's decision, appellant's counsel explained that "there is no evidence that Respondent intended to take any property belonging to anyone else," and "[t]he State never proved whose jacket was taken from the car. It is impossible to steal one's own property." Counsel maintained this argument before the circuit court judge at the exceptions hearing, namely that based on the video and the evidence in the record, including the fact that appellant was wearing the jacket when he was apprehended, "all we are left with, Your Honor, with these inferences, is that in fact it's my client's jacket." Counsel continued, "he cannot steal property that belongs to him" and "[h]e cannot have an intent to steal property that belongs to him."

In its arguments before the magistrate and the circuit court, as well as in its written memorandum in opposition to appellant's exception, the State averred that the stolen

[2] Appellant did not testify at the hearing.

Chevy Malibu belonged to David Dexter and that appellant's actions of disobeying Officer Wright's instructions not to touch anything in or around the stolen vehicle was circumstantial evidence that established his specific intent to steal the jacket from inside that vehicle. In the circuit court, the State explained:

> The State will contend that in order to get the mens rea, the specific intent from the Respondent, we are able to prove that through the surrounding circumstances, and those circumstances, as stated in my Memo, is that the Respondent was told of the stolen nature of the vehicle. He was told not to touch the car twice. He continued to enter the car. He removed the property from that car while being told not to touch the car. And after the removal of the property, the Respondent then fled the scene.
>
> The State was going to contend that based on those circumstances, that that would prove that he did have the subjective standard of the specific intent in order to show that he had the intend [sic] to steal something out of that vehicle.

The circuit court agreed with the State and upheld the magistrate's finding that appellant was involved in the charge of rogue and vagabond:

> All right. What this Court saw in the video, body worn camera video, was that a police officer had taken possession of the car and determined—well, had determined that the car was stolen—and therefore the car was really a crime scene in and of itself. The officer started to process the paperwork necessary under these circumstances. She adjusted her vehicle so that she could be situated beside the stolen car. She was across the street. It appeared that she was not exactly legally parked, but she was positioned beside the vehicle. She got out of the car to walk towards—out of her car to walk towards the stolen vehicle—when she observed two African-American males walking down the street.
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> When the officer started to walk towards the car the car was locked and secured. At some point the trunk popped open and the Court could not see how the door was opened. At the time the officer was walking over towards the vehicle and the two suspects were very close to the vehicle, the officer began to say "Don't touch, the vehicle is stolen", words to that effect. The one person—I'm not sure what he did—but the other person retrieved a jacket from the vehicle.

> The vehicle was in fact a crime scene and anything that was in the vehicle was part of that scene. Under all of the circumstances, this Court is going to affirm the Magistrate's Decision because whether or not the Respondent who took the jacket owned it or not, he had no authority to take anything from that vehicle, and therefore this Court is going to affirm the Magistrate's Decision. That is the ruling of this Court. Thank you.

We shall include additional details in the following discussion.

## DISCUSSION

Appellant argues the evidence was insufficient to sustain the finding that he was involved in the charge of being a rogue and vagabond because the State failed to prove that he had the specific intent to steal the vehicle or any property within. More specifically, appellant concedes he was inside the stolen vehicle, but there was no evidence that the jacket belonged to another person. The State responds by suggesting that because Officer Wright had called for a tow truck to retrieve the stolen vehicle, the vehicle and its contents were in her custody and possession when appellant unlocked the door, removed the jacket and fled the scene. In reply, appellant maintains that "no evidence demonstrated that the jacket belonged to anyone" but him, and there was insufficient evidence of specific intent.

Maryland has adopted "a separate system for juvenile offenders, civil in nature." *In re Victor B.*, 336 Md. 85, 91 (1994); *see also In re Areal B.*, 177 Md. App. 708, 714 (2007) ("Juvenile causes are civil, not criminal proceedings") (citation omitted). The Juvenile Causes Act (the "Act"), codified at Md. Code (1973, 2013 Repl. Vol., 2018 Supp.), §§ 3-8A-01 - 3-8A-34 of the Courts and Judicial Proceedings Article ("Cts. & Jud. Proc."), "grant[s] jurisdiction in juvenile courts over young offenders and establish[es] the process for treating them, to advance its purpose of rehabilitating the juveniles who have

transgressed to ensure that they become useful and productive members of society." *Lopez-Sanchez v. State*, 155 Md. App. 580, 598 (2004) (citation omitted), *aff'd*, 388 Md. 214 (2005), *cert. denied*, 546 U.S. 1102 (2006); *see also In re D.M.*, 228 Md. App. 451, 465 (2016) ("Juvenile proceedings aspire to 'the idealistic prospect of an intimate, informal protective proceeding,' and 'retain their special and informal nature'") (internal citations omitted). The Act is to be "liberally construed to effectuate [its] purposes." Cts. & Jud. Proc. § 3-8A-02 (b).

A "delinquent child" is a child "who has committed a delinquent act and requires guidance, treatment, or rehabilitation." Cts. & Jud. Proc. § 3-8A-01 (m). A "delinquent act" is "an act which would be a crime if committed by an adult." Cts. & Jud. Proc. § 3-8A-01 (l). The standard of review of evidentiary sufficiency that applies when analyzing a case from the juvenile court is the same standard that applies to criminal cases. *In re: James R.*, 220 Md. App. 132, 137 (2014). Specifically, "[w]e must 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." *Id.* (citation and internal quotation marks omitted).

In reviewing a challenge to the sufficiency of the evidence, "we defer to the fact finder's opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence." *Sewell v. State*, 239 Md. App. 571, 607 (2018) (citation and internal quotation marks omitted). We will not set aside the judgment of the trial court absent clear error. *James R.*, 220 Md. App. at 138. This applies to cases based upon both direct and/or circumstantial evidence because, as the Court of Appeals has explained, "[a]

valid conviction may be based solely on circumstantial evidence." *State v. Smith*, 374 Md. 527, 534 (2003) (citing *Wilson v. State*, 319 Md. 530, 537 (1990)).

Section 6-206(b) of the Criminal Law Article sets forth that: "A person may not be in or on the motor vehicle of another with the intent to commit theft of the motor vehicle or property that is in or on the motor vehicle." Md. Code (2002, 2012 Repl. Vol.), § 6-206 of the Criminal Law ("Crim. Law") Article. There appears to be little case law on this statute, although, in *Dabney v. State*, 159 Md. App. 225 (2004), we observed that a similar fourth degree burglary prohibition in Crim. Law § 6-205(c), concerning storehouse breaking with intent to commit theft, was a specific intent crime. *Dabney*, 159 Md. App. at 237. We also note here that the term "theft" is not separately defined by the burglary subtitle. *See* Crim. Law § 6-201. Appellant directs our attention to the general theft provisions, which provide as follows:

> (a) A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:
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> (1) intends to deprive the owner of the property;
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> (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.

Crim. Law § 7-104(a).

Simply put, accepting that this definition applies, the issue in this case comes down to whether appellant had the requisite "intent" to deprive the "owner" of the jacket. Maryland courts have explained that, "[b]ecause intent is subjective and, without the

cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." *Bible v. State*, 411 Md. 138, 157 (2009) (quotation marks and citation omitted); *accord Pinheiro v. State*, 244 Md. App. 703, 715–16 (2020). As stated by this Court, "[f]inding the requisite intent to steal is . . . never a precise process for intent is subjective, and it must therefore be inferred from the circumstances of the case if it is found at all." *Yopps v. State*, 234 Md. 216, 220–221, *cert. denied*, 379 U.S. 922 (1963); *see also Ashton v. State*, 185 Md. App. 607, 615 ("Intent to steal is subjective; it need not be directly and objectively demonstrated, but may be inferred from a totality of the circumstances") (citation omitted), *cert. denied*, 410 Md. 165 (2009).

"In determining a defendant's intent, the trier of fact can infer the requisite intent "from surrounding circumstances such as 'the accused's acts, conduct and words.'" *Jones v. State*, 213 Md. App. 208, 218 (2013) (quoting *Smallwood v. State*, 343 Md. 97, 104 (1996), in turn, quoting *State v. Raines*, 326 Md. 582, 591 (1992)), *aff'd*, 440 Md. 450 (2014); *see also Coates v. State*, 90 Md. App. 105, 117 (1992) ("The rule is that the inferred fact must follow more likely than not from the predicate fact for [the trier of fact] even to be permitted the option of inferring") (citation omitted). Further, "the determination of an accused's intention is, in the first instance, for the trial judge, when sitting without a jury, and this determination will not be disturbed on appeal unless clearly erroneous." *State v. Raines*, 326 Md. at 590.

As for the element of ownership, Section 7-101(h) of the Criminal Law Article defines an "owner" as follows:

> Except as otherwise expressly provided in this part, "owner" means a person, other than the offender:
>
> (1) who has an interest in or possession of property regardless of whether the person's interest or possession is unlawful; and
>
> (2) without whose consent the offender has no authority to exert control over the property.

Crim. Law § 7-101(h); *see also Cicoria v. State*, 332 Md. 21, 31 (1993) (explaining that the term "person" for the purposes of the theft statute has been "interpreted expansively, as including individuals . . . corporations . . . and financial institutions.") (internal citations omitted).

"In a theft case, proof of ownership is an essential element of the offense." *Angulo-Gil v. State*, 198 Md. App. 124, 151 (2011). In *Melia v. State*, 5 Md. App. 354 (1968), we explained that:

> [O]wnership may be laid in the real owner-general interest-or in the person in whose possession the goods were at the time of theft-special interest. And it is not necessary to state the nature of the interest; the property may be described as the goods of the owner or as the goods of the person having possession.

*Melia*, 5 Md. App. at 361 (internal citations omitted).

In this case, there was no direct evidence that the jacket belonged to either Dexter or appellant. The State did not offer any evidence about the ownership of the jacket. Other than argument from defense counsel, there was no direct evidence that appellant was under the honest belief that he had a good faith claim of right to the jacket. *See* Crim. Law § 7-110 (c) (recognizing a defense to theft where, *inter alia*, "the defendant acted under a good faith claim of right to the property involved" or "the defendant acted in the honest belief

that the defendant had the right to obtain or exert control over the property as the defendant did"); *State v. Coleman*, 423 Md. 666, 676 (2011) (recognizing that the defenses of honest belief and/or good faith claim of right may negate the *mens rea* necessary to prove theft) (citing *Sibert v. State*, 301 Md. 141, 149 (1984)).

In contrast, there was circumstantial evidence that the jacket may have belonged to either man. It was located inside Dexter's vehicle, thus it could be inferred that the jacket belonged to him. The fact that appellant was wearing the jacket when he was apprehended was circumstantial evidence that it belonged to appellant. Arguably, this circumstantial evidence included Officer Wright's speculative observation to other officers that appellant "reached in there and got his coat and (indiscernible) started running."

Generally, a verdict should not be overturned simply because there are competing inferences, one or more of which would support an acquittal.

> A trial court fact-finder, *i.e.*, judge or jury, possesses the ability to 'choose among differing inferences that might possibly be made from a factual situation' and this Court must give deference to all reasonable inferences the fact-finder draws, regardless of whether we would have chosen a different reasonable inference.

*State v. Suddith*, 379 Md. 425, 430 (2004); *see also Smith v. State*, 415 Md. 174, 183 (2010) (noting that appellate courts "do not second-guess the [fact-finder's] determination where there are competing rational inferences available"). As this Court has explained, "[a]n inference need only be reasonable and possible; it need not be necessary or inescapable. . . The possibility of raising conflicting inferences from the evidence does not preclude allowing the fact finder to determine where the truth lies." *Cerrato-Molina*, 223 Md. App. at 338 (quoting *Neal v. State*, 191 Md. App. 297, 318 (2010)).

Under our standard of review, which looks to the evidence in the light most favorable to the prevailing party, it is arguable that the fact finder in this case, the court, accepted that the jacket did not belong to appellant. However, the State does not attempt to argue that the evidence was sufficient to prove that Dexter owned the jacket and that appellant intended to deprive it from Dexter's lawful possession. Instead, the State asserts that the jacket was in the "lawful custody and possession" of Officer Wright, who found the stolen vehicle and called to have the vehicle impounded purportedly for evidentiary purposes.

The State directs our attention to *Duncan v. State*, 281 Md. 247, 256–57 (1977). There, the Court of Appeals cited Supreme Court authority on the "community caretaking function" when it stated the following:

> Activities concerning automobiles carried out by local police officers in the interests of public safety and as "community caretaking functions" frequently result in the automobile being taken in custody. "Vehicle accidents present one such occasion. To permit the uninterrupted flow of traffic and in some circumstances to preserve evidence, disabled or damaged vehicles will often be removed from the highways or streets at the behest of police engaged solely in caretaking and traffic-control activities. Police will also frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic. The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." [*South Dakota v. Opperman*, 428 U.S. 364, 368–69 (1976)]. It is the legal impoundment of an automobile which permits the inventory search of the vehicle. "When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles' contents." *Id*. at 369, 96 S.Ct. at 3096. These procedures developed in response to three distinct needs: (i) protection of the police from danger; (ii) protection of the police against claims and disputes over lost or stolen property; and (iii) protection of the owner's property while it remains in police custody. "In addition," the Court observed, "police frequently

> attempt to determine whether a vehicle has been stolen and thereafter abandoned." *Id*. at 369, 96 S.Ct. at 3097.

*Duncan*, 281 Md. at 256–57. *See generally*, https://www.baltimorepolice.org/902-towing-procedures ; https://www.baltimorepolice.org/1401-control-property-and-evidence.[3]

Here, there is no dispute that Officer Wright gave notice to appellant that the Chevy Malibu was in her custody and possession. Further, as the circuit court found, "[t]he vehicle was in fact a crime scene and anything that was in the vehicle was part of that scene." Given the statutory definition that an "owner" for purposes of a theft prosecution includes interested parties with lawful possession, *see* Crim. Law § 7-101(h), we are persuaded that the evidence was sufficient to establish that appellant was involved in the charge of being a rogue and vagabond.[4]

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**

[3] Appellant does not dispute that this issue was decided by the circuit court or contend that the State's argument is unpreserved. Clearly, the circuit court relied on this basis in affirming the magistrate, and the State made a general argument that appellant ignored the officer's lawful order not to disturb the evidence. *See generally, Starr v. State*, 405 Md. 293, 304 (2008) (recognizing that appellants are entitled to "present the appellate court with 'a more detailed version of the [argument] advanced'" below.

[4] Appellant notes that the State could have, but did not, charge appellant with either obstructing and hindering or disobeying a lawful order of the police or tampering with a vehicle. That the evidence may have supported other charges against appellant does not affect our analysis of the sufficiency of the charge at issue in this case. *See Stubbs v. State*, 406 Md. 34, 51 (2008) ("'[W]hen an act violates more than one criminal statute, the Government may [prosecute]under either so long as it does not discriminate against any class of defendants.'") (quoting *United States v. Batchelder*, 442 U.S. 114, 123–24 (1979)).