Circuit Court for Howard County
Case No. 13-K-16-057230

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1258

September Term, 2017

LAURA BOUMA

v.

STATE OF MARYLAND

Wright,
Kehoe,
Raker, Irma S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 1, 2019

Laura Bouma, appellant, was convicted by a jury in the Circuit Court for Howard County of felony theft. The court imposed a sentence of 30 days' incarceration, all suspended, one year of unsupervised probation, and ordered appellant to pay restitution in the amount of $7,025.00. Appellant filed a timely appeal, in which appellant presents one question for our review:

> Was the trial court without the authority or power to convict and sentence Mrs. Bouma for felony theft, when she was not charged with felony theft and felony theft was not a lesser-included offense of any crime with which she was charged?

We conclude that appellant was properly convicted of and sentenced for felony theft, and so affirm the judgment of the circuit court.

BACKGROUND

Appellant was married to Jason Bouma from 1998 to 2012. They had one child, Jason Carl Bouma, Jr., who was born in 2003.[1] During that time, Mr. Bouma was employed as a general manager of a heavy equipment dealership. In addition to his salary, Mr. Bouma occasionally received commission checks from equipment manufacturers when the dealership sold particular pieces of equipment. He also received commission checks from financial institutions, including Bank of the West, when he used their services to arrange equipment financing for customers.

[1] To avoid confusion, we shall refer to appellant's ex-husband as Mr. Bouma, and their son as Jason Jr.

Mr. Bouma was entitled to receive separate commission checks as the general manager of the company as well as the salesman. When Mr. Bouma played both roles he listed himself as the general manager and Jason, Jr. as the salesman. Mr. Bouma was in these instances receiving two checks.

These commission checks were sent to the family home until 2010, when Mr. Bouma moved out and changed his address. From March 2013 to October 2015, however, Bank of the West continued to send commission checks to the family home, and Mr. Bouma did not receive them.

On various dates between March 2013 and October 2015, 40 separate cashier's checks, issued by Bank of the West and made out to "Jason Bouma" or "Jason C. Bouma,"[2] were endorsed by appellant and deposited into one of three accounts: (1) appellant's personal checking account; (2) a custodial account in Jason Jr.'s name, which listed appellant as the custodian of the account; and (3) an account owned by Mary Anne Stambaugh, appellant's mother.[3] Mr. Bouma did not give appellant permission to sign his name on the checks or deposit them.

The amount of each check ranged in value from $75.00 to $200.00, and the total value of the 40 checks was $7,025.00. At the time of the alleged thefts, theft of property

[2] The issue of who was entitled to cash the checks made out to Jason, Jr. is not raised in this appeal.

[3] Ms. Stambaugh testified that all funds from the commission checks that were deposited into her account were later transferred into a savings account that she held in trust for Jason Jr.

with a value of $1,000 or more was a felony offense, while theft of property valued at under $1,000 was a misdemeanor. Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL") § 7-104(g).[4]

The State charged appellant with one count of felony theft, in violation of CL § 7-104, as follows:[5]

THEFT – SCHEME: $1000 TO UNDER $10,000

> **THE STATE'S ATTORNEY** informs and charges that the aforesaid Defendant, Laura Bouma, on or about and between the dates of March 1, 2013 and October 31, 2015, did pursuant to one scheme and continuing course of conduct, steal U.S. Currency, the personal property of Jason Bouma, Sr., having a value of at least $1,000 but less than $10,000, in violation of CL 7-104 of the Annotated Code of Maryland, contrary to the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

The felony theft charge was apparently based on a provision in CL § 7-103, which governs the determination of value and provides, in pertinent part:

> (f) *Course of conduct – Aggregation.* - When theft is committed in violation of this part under one scheme or continuing course of conduct, whether from the same or several sources:
>
> (1) The conduct may be considered as one crime; and
>
> (2) the value of the property or services may be aggregated in determining whether the theft is a felony or a misdemeanor.

[4] Effective October 1, 2017, the felony threshold was increased to $1,500. 2016 Md. Laws, Chapter 515 § 2.

[5] Appellant was also charged with several counts of counterfeiting and issuing false documents. The circuit court granted appellant's motion for judgment on those counts.

As noted above, appellant was convicted of felony theft.

STANDARD OF REVIEW

Maryland Rule 4-345(a) provides that a court "may correct an illegal sentence at any time." A claim that a sentence should not have been imposed because the offense upon which the defendant was convicted was not charged by the State is cognizable under Md. Rule 4-345(a). *See Johnson v. State*, 427 Md. 356, 380 (2012). Whether a sentence is an illegal sentence under the rule "is a question of law that is subject to de novo review." *State v. Crawley*, 455 Md. 52, 66 (2017) (emphasis added).

DISCUSSION

Appellant contends, for the first time on appeal, that the circuit court lacked authority to convict and sentence her for felony theft because she was not charged with that crime. She claims that the State charged her with a different theft offense: felony theft by scheme or continuing course of conduct.[6] The State maintains that CL § 7-103(f) does not establish a separate theft offense, but is only a method of determining the value of property taken. The State asserts that appellant was charged with and convicted of the crime of felony theft, therefore, her sentence for that crime is not illegal. We agree with the State.

In 1978, the General Assembly enacted the "consolidated theft Statute," which consolidated a number of common law theft offenses "into a single . . . statutory offense

[6] Appellant acknowledges that her claim of error is unpreserved because she did not raise this issue in the circuit court, but asserts that the issue is properly before us, nonetheless, as a claim of illegal sentence pursuant to Md. Rule 4-345(a).

known as theft." *Counts v. State*, 444 Md. 53, 58 (2015) (quoting *Jones v. State*, 303 Md. 323, 326-37 (1985)).[7] The theft statute is currently codified in CL §§ 7-101 - 7-110.

The offense of "theft" is defined as "the conduct described in [CL] §§ 7-104 through 7-107 of this subtitle." CL § 7-101(m)(1). CL § 7-104 contains the general theft provisions and sets forth five ways in which theft may be committed: (a) obtaining or exerting unauthorized control over property of the owner; (b) obtaining control over property of the owner by deception; (c) possessing stolen personal property knowing that it has been stolen, or knowing that it probably has been stolen; (d) obtaining control over the property of another knowing that it is lost or mislaid property, and; (e) obtaining the services of another by deception, or knowing that the services are provided without the consent of the person providing them. A charging document does not have to specify the manner in which a theft was committed. *See Whitehead v. State*, 54 Md. App. 428, 442 (1983); *see also* CL § 7-108.[8]

[7] The statutory offense of theft "includes the separate crimes formally known as: (1) larceny; (2) larceny by trick; (3) larceny after trust; (4) embezzlement; (5) false pretenses; (6) shoplifting; and (7) receiving stolen property." CL § 7-102(a).

[8] Pursuant to CL § 7-108, a charging document is sufficient if it substantially states:

> "(name of defendant) on (date) in (county) stole (property or services stolen) of (name of victim), having a value of (less than $1,500, at least $1,500 but less than $25,000, at least $25,000 but less than $100,000, or $100,000 or more) in violation of [CL] § 7-104 . . . , against the peace, government, and dignity of the State."

The seriousness of the offense, and the penalty upon conviction, is determined by the value of the goods or services stolen. *See* CL § 7-104(g). Because value "is so inextricably tied to the critical matters of the . . . permissible or mandated punishment[,] the State must allege and prove to the trier of fact that the value of the stolen property falls at or above the threshold value established by the General Assembly for the penalty associated with that form of theft." *Counts*, 444 Md. at 63 (alteration in original) (internal citation and quotations omitted).

"Value" is defined and determined in accordance with CL § 7-103. CL § 703(f) provides that, when theft is committed pursuant to "one scheme or continuing course of conduct" the value of the goods stolen may be aggregated for the explicit purpose of determining whether the theft is a felony or a misdemeanor. We have explained the rationale for allowing aggregation as follows:

> [T]he purpose of [CL § 7-103(f)] of the theft statute is to permit the State to aggregate the value of all property stolen pursuant to one scheme or continuing course of conduct to determine whether the theft is a misdemeanor or a felony. For example, if a thief steals [money] from 10 people pursuant to one scheme or continuing course of conduct, he cannot escape felony liability because no single theft exceeds [the felony threshold]. Likewise, an embezzler who pursuant to one scheme or continuing course of conduct [embezzles] a small sum of money over a period of time is judged in light of his total defalcation and not by the amount he takes at a single moment.

State v. Hunt, 49 Md. App. 355, 360 (1981).[9]

[9] In *Hunt*, 49 Md. App. at 360, we interpreted the purpose of aggregation as permitted by Md. Ann. Code, art. 27, § 340(1)(5). Since that statute is the predecessor of CL § 7-103(f), our rationale in *Hunt* applies here.

Therefore, whether property is taken pursuant to one scheme or course of conduct is not relevant to whether the defendant is guilty of the underlying theft offense, but solely to whether the value of multiple stolen items can be aggregated for purposes of determining whether the offense is a felony or a misdemeanor. To be sure, in light of the general rule that only one offense may be charged in a single count of the charging document, the State must allege that a series of thefts were committed pursuant to one scheme or continuing course of conduct; otherwise, the charge is impermissibly duplicitous. *See Hunt*, 49 Md. App at 361. This requirement, however, does not establish a statutory crime that is distinct from the single statutory crime of theft.

We conclude that appellant was properly charged with and convicted of felony theft pursuant to CL § 7-104. Accordingly, the sentence imposed by the circuit court for that conviction is not illegal.

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