Circuit Court for Prince George's County
Case No.: CT190551A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1300

September Term, 2020

RICKY ABELL

v.

STATE OF MARYLAND

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: October 29, 2021

*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 trial in the Circuit Court for Prince George's County, a jury found Ricky Abell, appellant, guilty of unlawful taking of a motor vehicle (Count 8), and theft of property with a value of $1,500 to less than $25,000 (Count 9). The jury acquitted appellant of: armed carjacking (Count 1); carjacking (Count 2); armed robbery (Count 3); robbery (Count 4); kidnapping (Count 5); first degree assault (Count 6); second degree assault (Count 7); and conspiracy to commit armed carjacking (Count 10). The court sentenced appellant to five years' imprisonment for felony theft and merged the motor vehicle theft count for sentencing. The court also ordered that appellant pay $750 in restitution for which he is jointly and severally liable with his co-defendant Darnelle Ford.[1]

Appellant noted an appeal from his convictions and contends that the trial court erred in ordering him to pay restitution. For the reasons that follow, we shall affirm.

BACKGROUND

Keith Mitchell testified to the following series of events. On the afternoon of March 15, 2019, he drove his girlfriend's blue 2019 Buick Encore to a shopping center in Laurel. As he stood outside the vehicle smoking a cigarette, two men, one of them tall with dreadlocks, came up to him and pepper-sprayed him, punched him in the face, and instructed him to empty his pockets, which he did. He gave the men his keys, his wallet, and his cell phone. The men then forced him into the backseat of the Buick and all three of them drove off in it. They made several unsuccessful stops at automatic teller machines

[1] Appellant and Ford were tried jointly. Ford noted an appeal to this Court which, as of this writing, remains pending. *Ford v. State*, No. 844, Sept. Term 2020.

(ATM) using Mitchell's bank card and PIN. Ultimately, they arrived in Baltimore and the men forced Mitchell to get out of the Buick and walk down an alley. One of the men stayed in the car, while the other one followed Mitchell and hit him in the head with a piece of wood causing a large wound to the back of Mitchell's head. He also kicked him in the ribs a few times.[2] The man then removed Mitchell's shoes, went through his pockets, and took his sunglasses. The men then left in the Buick. Mitchell walked out of the alley and a woman, who noticed he was bleeding, called 911. An ambulance transported Mitchell to shock trauma where he received 19 staples to the back of his head and was treated for a collapsed lung. He could not identify either of his attackers.

A police investigation revealed that Mitchell's bank card had been unsuccessfully used shortly after the 911 call had been placed. Of particular significance, it had been used at a liquor store in Elkridge to make a purchase of approximately $35. Several unsuccessful attempts to use Mitchell's bank card at an ATM in the liquor store were also made. The police obtained video surveillance footage that depicted a Buick Encore pull into the parking lot adjacent to the store. A person, later identified as appellant's co-defendant, Ford, is seen entering the store and attempting to use the ATM before a second man, later identified as appellant, is seen doing the same thing. The police created two "information needed" bulletins, circulated within the police department, each one featuring a still photograph taken from the surveillance video of the men seen in the liquor store. From those bulletins, police were able to identify appellant and his co-defendant. The

[2] Because this assault took place in Baltimore, at trial, the court instructed the jury to not consider it with respect to the charges in this case.

Buick was found the next day in Laurel and no forensic evidence connected appellant or his co-defendant to it.

DISCUSSION

Section 7-104(g)(1)(i)(2) of the Criminal Law Article of the Maryland Code provides the penalty for a person who is found guilty of theft of property with a value of at least $1,500 but less than $25,000. Included in the penalty for that crime is the requirement that the person convicted of the offense restore the property taken to the owner or pay the owner the value of it. As noted earlier, the court ordered appellant to pay $750 restitution. The court arrived at that figure after hearing from the State and Mitchell about the value of the property taken from him including his phone, sunglasses, belt, wallet, and a key fob for the Buick.

Appellant contends that, because Mitchell testified, and the State argued, that all of his personal property was taken from him at the time of the robbery in the parking lot in Laurel, and because the jury acquitted him of all of the offenses related to that armed robbery, etc., that the trial court erred in imposing restitution. He principally relies on *Walczak v. State*, 302 Md. 422 (1985) to support his position.

In *Walczak*, the State charged the defendant with offenses related to two separate robberies of two different victims. Walczak entered into an agreement with the State under the terms of which he entered a plea of not guilty to an agreed statement of facts as to one count of armed robbery, and the State entered a *nolle prosequi* on the remaining counts. At sentencing, the court ordered restitution for both victims, notwithstanding that Walzcak had only been found guilty of the armed robbery of one of the victims. The Court of

Appeals determined that the existence of a criminal conviction is a necessary predicate for the ordering of restitution and therefore vacated the order of restitution that was imposed for the armed robbery for which the State entered a *nolle prosequi*.

In our opinion, *Walczak* is distinguishable from the present case. Count nine in the indictment against appellant, charging theft, reads as follows:

> THE GRAND JURORS OF THE STATE OF MARYLAND FOR THE
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> BODY OF PRINCE GEORGE'S COUNTY ON THEIR OATH DO PRESENT THAT RICKY LEE ABELL ON OR ABOUT THE 15th DAY OF MARCH, 2019, IN PRINCE GEORGE'S COUNTY, MARYLAND, **DID STEAL A BLUE 2019 BUICK ENCORE AND PERSONAL PROPERTY OF KEITH ALLEN MITCHELL** HAVING A VALUE OF AT LEAST $1,500 BUT LESS THAN $25,000, IN VIOLATION OF CR 7:105 OF THE ANNOTATED CODE OF MARYLAND, AGAINST THE PEACE, GOVERNMENT AND DIGNITY OF THE STATE. (THEFT: $1,500 TO UNDER $25,000)

(Emphasis added).

As noted earlier, the jury found appellant guilty of count nine. Appellant acknowledges that count nine charged appellant with stealing Mitchell's personal property but dismisses the significance of the conviction on that count because "that's not what the prosecutor argued." Appellant is of the view that, because the State argued that Mitchell's personal property was taken in the parking lot at the outset of Mitchell's odyssey with appellant and Ford, and because the jury acquitted him of all of the offenses that took place in that parking lot, that the jury, of necessity, did not find him guilty of the theft of appellant's personal property.

We are not persuaded. In this context it matters not what the State argued to the jury. What matters is that the State charged appellant with stealing Mitchell's personal

property and the jury found him guilty on that count. This is not the situation in *Walzcak* where the State entered a *nolle prosequi* on *every* offense related to the second victim. Moreover, we have no idea why the jury acquitted appellant of the offenses that it did. For the purposes of restitution under the theft statute, what matters is whether appellant was convicted of theft. He was. We will not accept appellant's invitation to analyze the jury's verdict beyond that point. In Maryland, "jury verdicts which are illogical or factually inconsistent are permitted in criminal trials[.]" *McNeal v. State*, 426 Md. 455, 459 (2012).

Consequently, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.