

Circuit Court for Talbot County
Case No. C-20-CR-19-000024

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1796

September Term, 2019

JOHN ANDREW FERDOCK, III

v.

STATE OF MARYLAND

Leahy,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: October 15, 2020

*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.

John Andrew Ferdock, III, appellant, was convicted at a bench trial in the Circuit Court for Talbot County of theft between \$1,500 and \$25,000. The court imposed a sentence of 18 months of imprisonment, all but 90 days suspended, and ordered him to pay \$3,884.10 in restitution and to serve three years of probation upon his release from prison. Appellant raises two questions on appeal, which we have slightly rephrased for clarity:

- I. Was the evidence sufficient to sustain his conviction?
- II. Did the court err in ordering him to pay \$3,884.10 in restitution because allegedly, all the stolen money was offset by wages retained by his employer?

For the following reasons, we shall affirm the judgment.

FACTS

Tom and Alexa Seip owned and lived on a 32-acre farm at 7961 Bloomfield Road in Easton, Maryland. The Seips operated the farm as a corporation under the name, Pine Bloom, LLC.¹ In 2008, they hired appellant as a caretaker of the farm, and he was responsible for taking care of their horses, mowing the lawn, and maintaining the farm equipment. In return, appellant received, among other things, an annual salary, paid housing, and compensated vacation days.

Alexa opened a credit card account in appellant's and Pine Bloom's name, which was given to appellant. Although appellant was an authorized user, the company was the owner of the account and paid the monthly charges. Both Tom and Alexa testified that the card was not for appellant's personal use but was to permit appellant to buy various

¹ Around 2011, they changed the name to Pine Bloom II, LLC.

supplies for the farm. Alexa and their bookkeeper reviewed the card’s billing statements monthly.

Over time, the Seips became unhappy with appellant’s performance, and on June 8, 2018, they sent appellant a written letter of termination. The Seips agreed to pay appellant’s salary through September 30, 2018, and the security deposit and rent for his new home for six months and, in return, appellant was to mow the grass once a week and take out the trash/recycling twice a week. As to the credit card, the letter specifically stated: “FARM CREDIT CARD: You may use the farm credit card until 6/22 at noon, or whenever you vacate the barn apartment. Any improper charges on the card will be debited from the continuation of your pay.”

Appellant moved out and turned over the credit card on June 22, as requested. When the Seips reviewed the card’s next billing statement, they found several charges to a local home improvement box store they did not recognize. They ordered receipts from the store for “[a]s far back as they could go[,]” and received itemized transactions for purchases between December 12, 2017 and June 11, 2018. Upon review of the itemized transactions, Tom noticed that almost every time the credit card was used at the store to purchase something that could have been used at the farm, a Visa gift card was also purchased. The gift cards ranged in value from \$35 to \$165 and totaled \$3,884.10, including activation fees. The Seips testified that they never authorized appellant to purchase gift cards and there was no purpose for the farm in buying them. Alexa testified that she never saw the gift card purchases in the credit card statements because the monthly statements did not itemize purchases.

The State elicited that in the months before appellant was terminated, Alexa noticed several “McDonald’s charges.” Alexa confronted appellant about those charges. She told him to “pay me back[,]” which he did, in cash. In addition to the McDonald’s charges, Alexa testified that there was once a charge at Walmart that she asked him about. He told her that his wife had inadvertently used the wrong credit card, and again, paid her back in cash. The Seips testified that during the course of appellant’s employment, appellant never asked for permission before making purchases on the credit card and they sometimes asked him to purchase personal items on the card for them.

When the Seips discovered the gift card purchases, they were “appalled and angry” and stopped paying appellant’s severance salary and rent. They also contacted the police. On August 2, 2018, a sergeant with the Talbot County Sheriff’s Office went to appellant’s home. When the sergeant asked him about the gift cards, appellant responded that the Seips owed him for vacation time that he had never taken. When the sergeant asked appellant if he bought the gift cards because he was not paid for his vacation time or to buy drugs, appellant did not respond but admitted that the Seips had paid him in full.

DISCUSSION

I.

Appellant argues that we must reverse his theft conviction because the State failed to prove he had an intent to steal. He argues that the evidence showed that the parties had an understanding over the years that he could use the company credit card to purchase things for his personal use if he reimbursed the Seips, and under the terms of the termination letter, any personal purchases he made with the credit card would be withheld

from his severance salary and rent. Appellant cites *State v. Coleman*, 423 Md. 666 (2011) to support his argument. We reject appellant’s argument and agree with the State that appellant “confuses his theory of the case with the facts as found by the circuit court[,]” which were not clearly erroneous.

The standard for appellate review of evidentiary sufficiency in a court trial, as in a jury trial, is “whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt’ when the evidence is presented in the light most favorable to the State.” *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). On appellate review, we do not distinguish between direct or circumstantial evidence. *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted). Moreover, weighing “the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact.” *In re Heather B.*, 369 Md. 257, 270 (2002) (quotation marks and citations omitted). *See also* Rule 8-131(c) (in a court trial “the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, [giving] due regard to the opportunity of the trial court to judge the credibility of the witnesses.”).

Appellant was charged and convicted of theft between \$1,500 and \$15,000. *See* Md. Code Ann., Criminal Law (“Crim. Law”) §7-104 (setting out Maryland’s general theft provisions). The relevant section provides:

Unauthorized control over property – By deception. – A person may not obtain control over property by willfully or knowingly using deception, if the person:

- (1) intends to deprive the owner of the property;
- (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(b). “The requirement of intentional deprivation makes theft a specific intent crime.” *Coleman*, 423 Md. at 673 (citations omitted). The statute defines “deprive” as to withhold property of another:

- (1) permanently;
- (2) for a period that results in the appropriation of a part of the property’s value;
- (3) with the purpose to restore it only on payment of a reward or other compensation; or
- (4) to dispose of the property or use or deal with the property in a manner that makes it unlikely that the owner will recover it.

Crim. Law § 7-101(c).

The court rejected appellant’s claim that he had permission to use the company credit card for personal purchases so long as he reimbursed the Seips for those purchases. Instead, the court found that appellant had limited authority to purchase items on the credit card only in his role as caretaker on the farm. Moreover, the court found that appellant could not rely on the termination letter as evidence that he was entitled to charge personal items on the card because the overwhelming majority of gift cards were purchased before he was terminated. Evidence that appellant purchased the gift cards over many months, did not tell the Seips about it, and did not provide any explanation as to why the gift cards

were necessary for the farm, led the court to rationally conclude that appellant purchased the cards for his personal use and intended to deprive the Seips of that money. The court’s findings were not clearly erroneous.

Coleman is easily distinguishable from our case. In *Coleman*, a contractor was charged and convicted of, among other things, eight counts of theft by deception after entering into contracts to convey eight lots in a subdivision and build homes on those lots. 423 Md. at 669-70. *Coleman* received advances totaling \$667,993, of which he spent \$500,000 purchasing the unimproved lots. *Id.* at 671. He placed the remaining money in escrow to be drawn down to cover his construction costs. *Id.* *Coleman*, however, ran out of money before construction could begin. *Id.*

Coleman appealed his convictions, arguing, among other things, there was insufficient evidence of an intent to steal. The State argued that *Coleman*’s intent to deprive was evidenced by the fact that he entered into the contracts, took the initial advances, and the lack of diligence with which he pursued the development process. *Id.* at 674-75. The Court disagreed and reversed *Coleman*’s convictions. The Court observed that “[w]hen a defendant has a right to receive money or property, he cannot be guilty of stealing it.” *Id.* at 675. The Court disagreed with the State and found that *Coleman*’s actions between the time of contract and his arrest manifested his intent to keep his promises, noting that he had hired architects to render drawings and process permits. *Id.* at 677-78.

In *Coleman*, there was no dispute that *Coleman* had the right to receive the purchasers’ money pursuant to the terms of the contract. Here, appellant’s claim that he was entitled to make personal purchases on the company’s credit card was the heart of the

case, and the trial court, as sole fact finder, ultimately rejected his claim. Rather, the court found credible the Seips’ testimony that appellant was permitted to use the card only for purchases related to his job as caretaker of the farm. Under the circumstances and for the reasons set forth above, we are persuaded that there was sufficient evidence of intent to sustain appellant’s conviction for theft.

II.

Appellant argues that the court erred when it ordered him to pay \$3,884.10 in restitution. He argues that because the Seips stopped paying his severance pay after discovering the alleged theft, the Seips were “made whole” and he owed them “nothing.” The State disagrees with appellant’s argument, as do we.

Maryland’s theft statute specifically provides for restitution. *See* Crim. Law § 7-104(g)(1)(i)(2) (a person convicted of theft “shall . . . pay the owner the value of the property” stolen.). We review a trial court’s restitution order for an abuse of discretion. *Silver v. State*, 420 Md. 415, 427 (2011) (citations omitted), *cert. denied*, 565 U.S. 1128 (2012).

We are persuaded that the circuit court did not err in ordering appellant to pay restitution in the amount of \$3,884.10. Contrary to appellant’s argument, on this record, it is unclear whether the Seips owe appellant any money. Even if they did, the rights and obligations of the parties’ as to appellant’s severance pay is an action separate and distinct from the action of stealing \$3,884.10 from the Seips on the company credit card. Appellant is free to file a civil suit regarding his right to severance pay, if any, but he may not avoid

paying restitution based on the possibility of an as yet unlitigated civil claim. Accordingly, we shall affirm the order of restitution.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1796s19cn.pdf>