

Circuit Court for Talbot County
Case No. C-20-CR-17-000242

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1866

September Term, 2019

JAMES L. WOLF

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 8, 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.

Convicted by the Circuit Court for Talbot County of theft by deception, James L. Wolf, appellant, contends that the evidence is insufficient to sustain the conviction. For the reasons that follow, we shall affirm the judgment of the circuit court.

At trial, the State called Edward Burchell, who testified that he first met Mr. Wolf “at two or three social events back in 2013.” Mr. Wolf “was living with” Damaris Bourland, “who was a friend of a friend of” Mr. Burchell. At a subsequent social event, Mr. Wolf “started describing to [Mr. Burchell] a . . . deal which in essence was the purchase of containers of teakwood, ship them across the United States, have them fabricated[,] and then sell them either as flooring or raw lumber.” After speaking “back and forth” with Mr. Wolf at “social events between May and July of 2013,” Mr. Burchell asked Mr. Wolf to “send [Mr. Burchell] a proposal.”

On August 1, 2013, Mr. Wolf sent to Mr. Burchell a written “business proposal to purchase teak lumber from [Mr. Wolf’s] supplier in East Africa, then transport it to the United States where it would be kiln dried, machined into flooring[,] and sold as lumber or flooring.” Mr. Wolf stated, in pertinent part:

My associate Joel Mabuye has been operating a forest concession in the Northeast corner of the Democratic Republic of the Congo . . . since the late 90’s. . . . Lacking efficient processing, Joel has been selling logs and cants (simple “squared up” lumber) to Indian and Chinese customers. He approached me about finding markets in the U.S. and Europe to reduce his dependency on Indian buyers.

* * *

Joel has two 20 foot containers of Teak cants in inventory right now. I have asked that he saw them into 4/4 rough sawn boards, wax the ends to prevent checking[,] and reload the containers. . . . Joel has also arranged for

transportation to the Port of Mombasa and our freight forwarder can arrange for delivery to the United States.

The plan is to bring this rough sawn material to Portland, Maine, and then truck it to Lashway Lumber in Sheffield, Massachusetts. . . . Lashway will kiln dry the lumber, process the boards into high quality flooring and finished lumber[,] and assist in the shipping to our customers.

We have attracted the interest of several Teak end users including Hinkley Yachts and A.E. Sampson flooring[,] both in Maine. . . .

We are seeking a loan or equity participation for \$100,000 with repayment in 12 months at agreed upon terms or if one wishes to participate in the project long term, 50% of the net profits.

Mr. Wolf estimated the cost of purchasing, shipping, and processing the wood at \$33,220.80 per container. When Mr. Burchell asked Mr. Wolf “why he needed \$100,000[,] he said the balance would be his living expenses.” Mr. Burchell replied: “[T]hat’s not the way the deal is going to work.” Mr. Burchell “counter proposed to buy two containers of wood at \$40,000 each.” Because Mr. Burchell “was really torn about whether [he] wanted to do the deal or not, [he] asked Mr. Wolf to ask [Ms. Bourland] if she would be willing to give [Mr. Burchell] a second mortgage on her house.” Ms. Bourland “agreed to do it,” and because Mr. Wolf had “already said he had two containers of wood already at the port,” Mr. Burchell “thought [his] loan was secure.”

On August 8, 2013, the parties signed a memorandum of understanding, which stated in pertinent part:

The initial Loan from Burchell will be in the amount of \$80,000, and shall be used for the cost of purchasing and processing two containers of true teak wood . . . and certain related Transportation expenses. The cost of the raw material is approximately \$70,000; the balance of the funds (\$10,000) may be used by Wolf for incidental expenses including travel, insurance, and other miscellaneous costs directly related to the Transaction

* * *

The term of the Note evidencing each Loan will be for a period of six months, starting on the date that the proceeds are wired into a dedicated bank account established by Wolf, which will only be used for this Transaction after the date hereof. The interest rate and the calculation of monthly and cumulative interest shall be as shown on the attached schedule.

After six months the Loan will convert to a demand loan callable at any time.

* * *

The Loans will be a personal obligation of Wolf and will be secured by:

- (i) A security interest in the purchased containers of Teak Wood.
- (ii) A second mortgage upon the home located at 26176 Tunis Mills Rd., Easton, MD 21601, owned by Damaris H. Bourland.

* * *

Based on the conversation between Burchell and Wolf, it is understood that the fair market value of the home located in Tunis Mills equals approximately \$425,000 and is encumbered with an existing mortgage with an outstanding balance of \$260,000.

(Paragraph outline omitted.) Mr. Wolf also signed a promissory note and security agreement reflecting the terms of the memorandum of understanding. The following day, Mr. Burchell transferred \$80,000 by wire to a Talbot Bank account in Mr. Wolf's name.

The court subsequently admitted into evidence copies of monthly statements for the Talbot Bank account for the period from August 2013 through July 2014. Prior to the August 9, 2013 wire transfer, the account held a balance of \$43.50. Between August 9 and 30, 2013, Mr. Wolf withdrew from the account \$9,800 in cash, wrote a check to Ms. Bourland in the amount of \$750, and wrote a check to "Group Benefit Services" in the

amount of \$3,180.36. On September 23, 2013, Mr. Wolf informed Mr. Burchell via e-mail: “I am back from Africa and the Teak business is underway.” That same month, Mr. Wolf wrote checks to Ms. Bourland for a total amount of \$9,341, and withdrew \$15,900 by “outgoing international wire.” In October 2013, Mr. Wolf deposited \$5,000 into the account, but withdrew \$15,222 in cash and wrote checks to Ms. Bourland for a total amount of \$12,000.

On November 6, 2013, Mr. Wolf informed Mr. Burchell via e-mail that the “first container of Teak [was] in route from Kenya to the United States,” and the “second container [was] being stuffed in the forest and [would] make its way to Kampala and then Mombasa in the next 10 days.” That same month, Mr. Wolf wrote checks to Ms. Bourland for a total amount of \$5,000. On December 10, 2013, Mr. Wolf informed Mr. Burchell via e-mail that “[c]ontainer two should arrive at the Port in Kenya by the end of December.” That same month, Mr. Wolf wrote checks to Ms. Bourland for a total amount of \$5,000, and a check to “Midshore Vet” for \$366.50. On January 2, 2014, Mr. Wolf withdrew \$500 in cash. On January 9, 2014, Mr. Wolf informed Mr. Burchell via e-mail that “Shipment #1 . . . was held by Joel and not forwarded at the end of November as [Mr. Wolf] had been told,” but “he completed the second container of Teak and has moved them to Kampala together.” Mr. Wolf subsequently wrote checks to Ms. Bourland for a total amount of \$5,100. On January 16, 2014, the account held a balance of \$2,833.64.

On February 5, 2014, Mr. Wolf informed Mr. Burchell via e-mail that the “lumber [was] still not in Kampala.” Mr. Wolf asked Mr. Burchell to “stay in this deal for another

6 months.” On February 7, 2014, Mr. Wolf informed Mr. Burchell via e-mail that “the teak could be Kampala in two days.”

On February 10, 2014, Mr. Wolf informed Mr. Burchell via e-mail that he had “absolute confidence that the Teak [was] making its way.” In response, Mr. Burchell asked for “the balance left of the original \$80,000 and how the money spent was used or is to be used.” Mr. Wolf replied that the balance was \$43,878, that \$26,122 had been spent on “Teak Payments as completed,” and that \$10,000 had been spent on “[t]ravel to Africa and all misc. expenses.” Mr. Burchell subsequently “threatened to call the loan” unless Mr. Wolf paid to Mr. Burchell \$7,500. Mr. Wolf subsequently paid that amount to Mr. Burchell. On May 6, 2014, Mr. Burchell sent to Mr. Wolf an e-mail in which Mr. Burchell stated: “Please confirm that the \$80,000 note plus accrued interest will be paid off no later than May 31st.” Mr. Wolf replied that the “wood [was] still on the ocean,” that he could not “cover the loan until the wood is sold,” and that he “hope[d] that” Mr. Burchell would give Mr. Wolf “additional time.”

On May 30, 2014, Mr. Wolf informed Mr. Burchell via e-mail that the “cargo” was “2-3 weeks out,” and Mr. Wolf had “spoken with and [had] solid interest from three big established players.” In response, Mr. Burchell requested “a detailed accounting of the use of the \$80,000.” On June 6, 2014, Mr. Wolf informed Mr. Burchell via e-mail that \$5,000 had been spent on “[t]ravel to Africa,” \$52,000 had been spent on “two boxes in transit,” \$20,000 had been spent “to build log inventory when there was pressure on the supply,” and \$4,000 had been “sent to Joel in order to help with some transportation costs in the

forest” and “medications for his family.” Mr. Wolf asked Mr. Burchell “to give [Mr. Wolf] to August to let this play itself out.”

On June 30, 2014, Mr. Wolf informed Mr. Burchell via e-mail that “[t]he wood is in process at the mill and sawing should be completed shortly.” On August 4, 2014, Mr. Burchell requested from Mr. Wolf “a sales update.” Mr. Wolf replied that he had “strong interest from 5 separate Chinese clients” and had spoken with numerous other parties. On August 30, 2014, Mr. Wolf informed Mr. Burchell via e-mail that Mr. Wolf had “offers to buy all of the Teak inventory.” On September 7, 2014, Mr. Wolf asked Mr. Burchell via e-mail for “enough time to sell this wood to the Chinese.”

In the fall of 2014, Mr. Burchell told Mr. Wolf that he had “to get out and try to sell this wood.” Mr. Wolf replied that he did not “have any money.” In October 2014, Mr. Burchell sent to Mr. Wolf \$1,500 so that he could “spend [a] week up in New England and contact several yacht places and see if [he could] get them interested in selling the teak.” On October 10, 2014, Mr. Wolf informed Mr. Burchell via e-mail that Mr. Wolf was “in Newport,” had visited “SW Harbor,” “[H]inckley,” and “[M]orris,” and was going to “visit the Shipyard and restoration school” and then “head to [N]ew York.” Mr. Burchell subsequently suggested to Mr. Wolf that he “maybe get[] other people involved in selling the wood.” On December 1, 2014, Mr. Wolf sent to Mr. Burchell an e-mail in which Mr. Wolf stated: “I don’t think your[] or your brokers[’] efforts to sell the wood will be any more effective than mine. I think the best solution is to keep letting me sell and not take it upon yourself to do so. It will get sold and you will be paid.”

In April 2015, Mr. Burchell “had [his] lawyer send Mr. Wolf a letter demanding payment of the loan along with the accrued interest,” which totaled approximately \$121,000. Mr. Burchell subsequently “reduced the note to a judgment,” and in January 2016, had Mr. Wolf deposed. After the deposition, Mr. Burchell arranged for a friend to “inspect the teakwood” at “Lashways.” Mr. Burchell’s friend “called Mr. Lashway,” and “as a result of that phone call,” Mr. Burchell called Mr. Wolf and “told [him] that [there] was no teakwood.” Mr. Wolf replied: “[I]t’s time I came clean, there’s no teakwood.” When Ms. Bourland’s “home was [subsequently] foreclosed,” Mr. Burchell discovered that “the house . . . was worth a lot less than” \$425,000. After the home was sold, Mr. Burchell received \$10,000.

The State next called Ms. Bourland, who testified that “after Mr. Wolf received [Mr. Burchell’s] money,” Mr. Wolf wrote a check for \$5,000 to Ms. Bourland each month for “all of his living expenses and the cost of living in [her] home.” When Ms. Bourland “asked [Mr. Wolf] specifically if the money was coming from Mr. Burchell and if Mr. Burchell was aware the money was being used for this purpose,” Mr. Wolf “assured [Ms. Bourland] that he and Mr. Burchell had had an in-depth conversation about it,” and “Mr. Burchell was in total understanding and agreement that he had to use a portion of that money for living expenses and . . . condoned it.”

Following the close of the State’s case, Mr. Wolf testified that after the “money [was] placed in the Talbot Bank account,” Ms. Bourland used “her American Express card” to purchase “airfare to Africa” for Mr. Wolf. In September 2013, Mr. Wolf went to Uganda, where he and Mr. Mabuye “had a discussion about the teak.” Mr. Wolf also gave

to Mr. Mabuye \$5,000 that Mr. Wolf had withdrawn from the Talbot Bank account. When Mr. Wolf returned, he wired to Mr. Mabuye an “advance” of \$15,900. Mr. Wolf also sent to Mr. Mabuye, “on several occasions,” money “via a money gram.” Mr. Wolf confirmed that the “cash withdrawals in the fall of 2013 and . . . spring of 2014” were “the sources of the money that [he] wired to” Mr. Mabuye.

When Mr. Wolf was asked whether there came “a time when [his] assessment of this deal changed [or] when [he] believed that maybe it was in jeopardy,” he stated:

It’s a little hard to pinpoint but by the time the wood was loaded on the truck and taken down to the ship I believe that we were in good shape. At that point there was some discussion about Joel having some problems. Some financial problems. I assumed that the wood had been loaded on the ship like he told me. Damaris continued to track it. Then Joel disappears. I didn’t hear from him for months. And now in Africa that means there’s got to be some trouble somewhere. So it wasn’t until that ship that I was told was carrying the wood was on its way that it came to my attention that it’s probably not true. Joel has lied about this. I tracked him down through the use of another man that I know there and about five, six months later he admitted to me that the wood had been sold. My wood he sold to another guy.

When Mr. Wolf was asked why his e-mails to Mr. Burchell “seem to tell a different story,” Mr. Wolf stated: “I did that to protect the house. The house was in danger and I wanted to cover the best I could. I still thought I had time to make good on the contract.” When asked to address the “evidence that some of the monies . . . were paid to” Ms. Bourland, Mr. Wolf stated that she “lost her job . . . and . . . what amounted to the money to make her mortgage payment and . . . to have her insurance paid for,” and “it became more and more and more pressure to keep the bills paid.”

During cross-examination, Mr. Wolf testified that the check to “Group Benefit Services” was for a “group health policy” for himself and Ms. Bourland. Mr. Wolf admitted that the checks that he wrote in September 2013 to Ms. Bourland for \$2,500 each “had nothing to do with the trip” to Africa, that the October 2013 checks to Ms. Bourland were “to help make [the] household expenses,” and that the November and December 2013 to Ms. Bourland and Midshore Vet did not have “anything to do with obtaining teak from Uganda.” Mr. Wolf also admitted that the accounting in his June 6, 2014 e-mail of “how the money was spent” was not true. Mr. Wolf further admitted that in “about” June 2014, he “couldn’t get a hold of [Mr. Mabuye] and . . . figure out what the problem was.” When Mr. Wolf located Mr. Mabuye, he stated: “I had no choice[,] I had financial problems and I had to sell your wood.” Finally, Mr. Wolf admitted that he “lied” when he told Mr. Burchell that the wood was at Lashways, and when he stated under oath during deposition that “the wood was at Lashways.”

Mr. Wolf contends that the evidence is insufficient to sustain the conviction for two reasons. First, Mr. Wolf contends that his “deceit only began around June[] 2014, ten months after the agreement, when he learned that [Mr.] Mabuye had taken his money and sold the wood to someone else.” We disagree. In the memorandum of understanding, Mr. Wolf agreed to use “approximately \$70,000” of the \$80,000 loan for the “cost of the raw material,” that Mr. Wolf’s bank account would “only be used for this [t]ransaction,” and that Ms. Bourland owned approximately \$165,000 in equity in her residence. At trial, the State produced evidence, and Mr. Wolf admitted, that he withdrew from the account at least \$30,546.86 to pay Ms. Bourland’s “household expenses” and for insurance for Ms.

Bourland and himself. The State also produced evidence that, when Ms. Bourland's residence was sold, she was found to own only \$10,000 in equity. Finally, the State produced evidence that when Ms. Bourland explicitly asked Mr. Wolf if the money being used to pay for her and Mr. Wolf's personal expenses "was coming from Mr. Burchell and if Mr. Burchell was aware [that] the money was being used for this purpose," Mr. Wolf falsely told Ms. Bourland that "Mr. Burchell was in total understanding and agreement." We conclude that this evidence could convince a rational trier of fact beyond a reasonable doubt that at the time of the signing of the memorandum of understanding, Mr. Wolf intended to deceive, and indeed deceived, Mr. Burchell.

Mr. Wolf next contends that "the evidence is insufficient to prove . . . that he had the specific intent to deprive Mr. Burchell of his property when the two agreed to the terms of the loan." We disagree. The Court of Appeals has stated that "intent to deprive[] may be inferred from acts occurring subsequent to the commission of the alleged crime[.]" *State v. Manion*, 442 Md. 419, 434 (2015) (internal citations and quotations omitted). Here, the State produced evidence that from the signing of the memorandum of understanding through June 6, 2014, Mr. Wolf not only used a considerable portion of the loan to pay personal expenses of Ms. Bourland and himself, but also repeatedly misrepresented the location of the wood, repeatedly asked Mr. Burchell for "additional time" past the expiration of the term of the note, and gave Mr. Burchell a false accounting, and a second contradictory accounting, of "how the money spent was used." The State also produced evidence, and elicited testimony from Mr. Wolf, that after he discovered in "about" June 2014 that Mr. Mabuye had sold the wood, Mr. Wolf continued to misrepresent to Mr.

Burchell the location of the wood, falsely claimed that certain parties were interested in purchasing, or had made offers to purchase, the non-existent wood, again asked Mr. Burchell for additional time to “sell this wood,” accepted additional money from Mr. Burchell to travel in an attempt to sell the non-existent wood, and discouraged Mr. Burchell from attempting to “get[] other people involved in selling the wood.” Finally, Mr. Wolf admitted during cross-examination that his testimony at the January 2016 deposition that “the wood was at Lashways” was false. We conclude that this evidence could convince a rational trier of fact beyond a reasonable doubt that that Mr. Wolf intended to deprive Mr. Burchell of his property, and hence, the evidence is sufficient to sustain the conviction.

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