UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0735

September Term, 2015

MICHAEL PAUL HOLDEN

v.

STATE OF MARYLAND

Berger,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: September 22, 2016

This case originated in the Circuit Court for Caroline County, where Michael Paul Holden, the appellant, was charged with one count of second-degree burglary, two counts of fourth-degree burglary, and one count of theft between $1,000 and $10,000. Following a bench trial, the appellant was convicted of all four counts and sentenced to eight years of imprisonment, with all but three years suspended, to be followed by three years of probation for second-degree burglary. His remaining three convictions were merged for sentencing purposes. The appellant noted a timely appeal and presents a single question for our review:

1. Was the evidence insufficient to convict Mr. Holden of burglary?

For the following reasons, we answer the appellant's question in the negative and, therefore, affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On November 7, 2015, Mr. Larry Lafon called the Caroline County Sheriff's Department after he noticed that tools were missing from his garage, that the weather stripping on the door to his garage had notches in it, and that the metal in the garage door was bent. Detective Jacob Rideout responded to the call. At trial, Detective Rideout testified that, based on the markings on the garage door, there appeared to have been a forcible entry into the garage.

Shortly after Mr. Lafon noticed his tools were missing, Mr. Melvin Bowers contacted Mr. Charles LaBerge and asked if Mr. LaBerge had purchased any tools from the appellant. Mr. LaBerge testified that the appellant had come to his house and sold him

a number of tools. Mr. LaBerge further testified that he gave the appellant $250 in return for the tools, which the appellant told him were not stolen. Mr. LaBerge said that the appellant was driving a white, Chevrolet pickup truck at the time. After Mr. Lafon spoke to Mr. Bowers, Mr. Lafon went to Mr. LaBerge's house and picked up his missing tools.

Mr. Lafon testified that he previously had done remodeling and construction work with the appellant, that he had never had any trouble with the appellant in the past, and that he got the appellant a moving job in the fall of 2014. At one point, Mr. Lafon offered the appellant an electric stove that he was holding in his garage. Mr. Lafon testified that the appellant began calling him about the stove very frequently, and that on November 1, 2014, when the appellant called and asked where he was, he told him he was working. Mr. Lafon also testified that the appellant had been inside of his garage and, thus, had seen where he kept his tools. Mr. Lafon said that he had seen the appellant drive his red pick-up truck up and down his dead-end street multiple times, but was unsure why.

On November 13, 2014, Detective Rideout contacted and interviewed the appellant. Detective Rideout testified that the appellant told him that he had received tools from someone and sold them to Mr. LaBerge for $150. Detective Rideout recalled the appellant telling him that he had received more tools from the same person on a second occasion. Though the appellant gave Detective Rideout the name of the person from whom he received the tools, Detective Rideout was unable to locate that person or determine who he was. The appellant indicated that he only received $20 in gas money for selling the tools.

The appellant testified that his friend, Mr. Eddie Shockley, called and asked him to sell tools. According to the appellant, Mr. Shockley said that the tools were not stolen. The appellant acquired tools from Mr. Shockley and sold them to Mr. LaBerge. After the appellant gave Mr. Shockley the money that he received from the sale to Mr. LaBerge, Mr. Shockley asked him to sell more tools, and he agreed. The appellant knew that Mr. Shockley lived in Harrington, Delaware, but did not have Mr. Shockley's phone number because Mr. Shockley's phone was broken. Therefore, the appellant went to Mr. Shockley's aunt's house, hoping to find him there. Instead, however, he learned from Mr. Shockley's aunt that he was living somewhere else in Delaware because she had kicked him out of her house.

On November 14, 2014, the appellant called Detective Rideout and informed him that he wanted to give the tools back to Mr. Lafon. When Detective Rideout arrived at the appellant's residence, he saw the appellant in possession of Mr. Lafon's missing tools and proceeded to place him under arrest.

In a bench trial that took place on May 29, 2015, the Honorable Karen Murphy found that there was sufficient evidence to find the appellant guilty of one count of second-degree burglary, two counts of fourth-degree burglary, and one count of theft between $1,000 and $10,000. After sentencing, the appellant filed this timely appeal.

DISCUSSION

A. Parties' Contentions

The appellant contends that the circuit court erred in convicting him because there was not sufficient evidence to prove that he had stolen Mr. Lafon's tools. Specifically, the appellant argues that there was no direct evidence to prove that he was the person who burglarized Mr. Lafon's garage. Furthermore, he asserts that the fact that he was in possession of the tools is not enough to prove beyond a reasonable doubt that he had committed the burglary. The appellant does concede that "the unexplained possession of recently stolen goods permits triers of fact to infer that the possessor was the thief." Appellant's Br. at 8 (citing *Brewer v. Mele*, 267 Md. 437, 449 (1972)). However, he relies on *Molter v. State* to argue that since no direct evidence was produced to establish his guilt, and since he had provided an explanation for how he had come to possess the tools, his mere possession of the recently stolen goods was insufficient to prove him guilty beyond a reasonable doubt. *See* 201 Md. App. 155, 168 (2011) (where the evidence showed not only that the defendant was in possession of the recently stolen property, but also that he was walking toward the victim's house during the period of time in which the burglary occurred and was one of only two people who knew that the victim would be out of town).

The State argues that the appellant's possession of the stolen tools provided the circuit court with sufficient evidence to find him guilty beyond a reasonable doubt. The State asserts that "exclusive possession of recently stolen goods, absent a satisfactory explanation, permits the drawing of an inference of fact strong enough to sustain a

conviction that the possessor was the thief." Appellee's Br. at 4 (quoting *Brewer*, 267 Md. at 449). The State also points out that, though there has been no outer limit set for determining whether an item was "recently stolen," "that decision remains 'in the province of fact finding rather than in that of legal sufficiency review.'" Appellee's Br. at 4 (quoting *Molter*, 201 Md. at 165). Thus, the State contends that since the appellant "was found in possession of items stolen from [Mr.] Lafon's garage less than a week after [Mr.] Lafon reported the theft," and since the circuit court was not satisfied with the appellant's explanation of where he obtained the tools, the court was correct in finding that there was sufficient evidence to convict the appellant of burglary and theft.

B. Standard of Review

The standard of review for sufficiency of the evidence claims has been recently described by this court as the following:

> In deciding a claim relating to the sufficiency of the evidence, the appropriate inquiry is "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In making this review, "*all of the evidence* is to be considered in the light most favorable to the prosecution." *Jackson*, 443 U.S. at 319 (footnote omitted) (emphasis in original). This rule applies to both direct and circumstantial evidence.
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> "We give 'due regard to the [fact finder's] findings of fact, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Harrison v. State*, 382 Md. 477, 487-[8]8 (2004) (citations omitted). Moreover, an appellate court does "not measure the weight of the

> evidence; rather we concern ourselves only with whether the verdict was supported with sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilty or the offenses charged beyond a reasonable doubt." *McDonald v. State*, 347 Md. 452, 474 (1977).
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> As the Court of Appeals reiterated in *Bible* [*v. State*, 411 Md. 138 (2009)], the appellate court "must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference." [*Id.*] at 156 (quoting *State v. Suddith*, 379 Md. 425, 430 (2004)).

Breakfield v. State, 195 Md. App. 377, 392 (2010) (some citations omitted) (emphasis and some alterations in original).

C. Analysis

In his brief, the appellant argues that there "was simply not enough [evidence] to prove beyond a reasonable doubt that [he] committed the burglary." Appellant's Br. at 8. However, viewing the evidence in the light most favorable to the prosecution and giving proper deference to the circuit court, we hold that there was sufficient evidence to support Judge Murphy's findings. Accordingly, we uphold the appellant's conviction.

The appellant asserts that his mere possession of Mr. Lafon's tools, without additional direct evidence proving that he burglarized the garage, was not sufficient to support a conviction. We do not agree. As the State noted in its brief, this court has previously held that "proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." Appellee's Br. at 3 (quoting *State v. Suddith*, 379 Md at 429). Therefore, the fact that the appellant's conviction

relied solely on circumstantial evidence is immaterial. Our only analysis in this matter is "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." *Jackson*, 443 U.S. at 319.

The appellant notes that he was in possession of Mr. Lafon's stolen tools and was seen driving his truck up and down Mr. Lafon's street in early November. *See* Appellant's Br. at 8. Given these facts, along with the fact that the appellant knew where Mr. Lafon kept his tools, we feel that it was reasonable for Judge Murphy to infer that the appellant had stolen Mr. Lafon's tools. Additionally, it was reasonable for Judge Murphy to infer that the appellant, in possession of Mr. Lafon's stolen tools, was the individual responsible for the forcible entry into Mr. Lafon's garage. The appellant did attempt to provide an alternative explanation for his possession of the tools, claiming that he received the tools for Mr. Shockley. However, based on Detective Rideout's failed attempts to identify Mr. Shockley, as well as the appellant's inability to locate or provide additional information about Mr. Shockley, it was reasonable for Judge Murphy not to accept the appellant's alternative as true. Accordingly, we conclude that a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319.

The appellant concedes that "the unexplained possession of recently stolen goods permits the trier of fact to infer that the possessor was the thief." Appellant's Br. at 8 (citing *Brewer*, 267 Md. at 449). He also notes that this court has held that the "unexplained possession of recently stolen goods . . . permits the trier of fact to infer that the possessor

was the burglar so long as the theft 'was inextricably part and parcel of a burglary.'" Appellant's Br. at 8-9 (quoting *Molter*, 201 Md. App. at 168). However, he relies on *Molter* to argue that additional evidence directly linking him to the burglary is necessary to uphold his conviction. *See* 201 Md. App. 155 (2011). In *Molter*, the defendant was one of two people who knew that the victim would be out of town at the time and was also seen walking toward the victim's house before the burglary took place. *Id.* at 161. The appellant contends that the conviction in *Molter* relied on more than just the presumption of guilt arising from possession of recently stolen goods. Thus, since there was no additional direct evidence linking him to the burglary, the appellant argues that there was insufficient evidence to convict him.

We do not agree with the appellant's interpretation of *Molter*. This Court has previously noted that "*Molter* does not stand for the proposition that a minimum amount of evidence is necessary in addition to the possession of recently stolen property in order to support an inference that the possessor was the thief or the burglar." *Hall v. State*, 225 Md. App. 72, 82 (2015). Instead, "[*Molter*] stands for the proposition that the unexplained possession of recently stolen property permits [the trier of fact] to infer guilt *by itself*." *Id*. (emphasis in original). Furthermore, we agree with the State that the appellant's possession of the stolen items less than a week after Mr. Lafon reported the theft allows us to conclude that the items were "recently stolen." *See Molter*, 201 Md. App. at 165 (where this Court held that possession of stolen goods seven to nine days after the theft occurred "unquestionably" qualifies as "recently stolen"); *see also Debinski v. State*, 194 Md. 355,

359-360 (1950) (where the Court of Appeals held that "an article in one's possession nine days after it was stolen is a recent possession"); *see also Butz v. State*, 221 Md. 68, 77 (1959) (where the Court of Appeals had "no hesitation in holding" that the appellant's possession of goods nine and fourteen days after the thefts occurred was recent). Accordingly, Judge Murphy was permitted to infer that the appellant was the burglar based on the fact that he was in possession of Mr. Lafon's tools.

For the aforementioned reasons, we hold that there was sufficient evidence to sustain the appellant's convictions. As such, we affirm the judgment of the circuit court.

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