UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0801

September Term, 2015

ASHLEY PERL ZENTZ

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: March 15, 2016

On June 8–10, 2015, appellant, Ashley Perl Zentz, was tried and convicted by a jury in the Circuit Court for Harford County, (J. Waldron) on a charge of misdemeanor theft. Appellant was sentenced to eighteen months in jail, with all but ten days suspended, in favor of two years' supervised probation. From the conviction and sentencing, appellant filed the instant appeal in which she raises the following issue for our review:

Was the evidence legally sufficient to sustain the conviction?

FACTS AND LEGAL PROCEEDINGS

Gary Ivey, an "Asset Protection Associate" for Walmart, testified that, on November 23, 2014, he was working at the Aberdeen, Maryland Walmart Store when he noticed appellant removing items from the cosmetics department. Ivey testified that he observed appellant from ten to fifteen feet away. According to Ivey, appellant took the items and proceeded to the Toy Department, whereupon she placed several cosmetic items in her purse. Ivey then saw appellant approach the "self-checkout" registers and pay for some items, but not the items concealed inside her purse. According to Ivey, appellant then started to leave the store, but he stopped her by the doors to the exit before she physically left the premises. Ivey testified that he directed appellant to accompany him to the Asset Protection Office, at which time he asked her to take the merchandise from her purse and she complied. Ivey stated that he detailed the items on a "training receipt" and that the total value of the items taken was $109.30. He then called the Aberdeen Police Department, which responded shortly thereafter.

Officer Michael James Soler ("Officer Soler") of the Aberdeen Police Department testified that he responded to the Walmart**,** at the date and time in question**,** in response to the call for a theft, whereupon he encountered Ivey and appellant. Officer Soler testified that he took Ivey's report and that he identified what appeared to be a small cactus plant in the cart of items retrieved from appellant and that**,** upon receipt of appellant's consent to search her purse, he noticed some dirt inside.

Bridget Michelle Morgan testified that appellant is her daughter and that she accompanied appellant to the Aberdeen Walmart that day. Upon their arrival, they separated to pursue their shopping separately. Morgan testified that she did her own shopping and left the premises, returning later to summon appellant to the front of the store near the registers in order for her to meet appellant and purchase appellant's items for her birthday when a "man grabbed [appellant's] arm." Morgan further testified that it had been her intention to pay for everything appellant had in her arms, but "before [she] could get to her, a gentleman grabbed her arm . . . she was trying to give me all of the stuff that she wanted me to buy" when they took her to a room at the back of the store.

Appellant testified, in her defense, that she had gone to the Walmart that day with her mother, who was going to buy birthday presents for appellant. Appellant testified that, after she had gathered the items and proceeded to meet her mother at the front of the store, "somebody came up to me and grabbed my arm and started to take me away." Appellant further testified that she had intended to go to an employee-operated register to have her

mother pay for the items. Both appellant and Morgan testified that appellant had not yet passed the cash registers when she was stopped by Ivey.

After the presentation of the evidence, appellant moved for judgment of acquittal based on the the claim that there was an insufficiency of the evidence.

STANDARD OF REVIEW

The Court of Appeals recently stated in *State v. Manion*,[1] that

> [i]t is the responsibility of the appellate court, in assessing the sufficiency of the evidence to sustain a criminal conviction, to determine '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.'

Id. at 430 (citing *Taylor v. State*, 346 Md. 452, 457 (1997)) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, (1979)).

"'[W]e are mindful of the respective roles of the appellate court and the trier of fact; it is the trier of fact's task, not the court's, to measure the weight of the evidence and to judge the credibility of witnesses.'" *Manion*, 442 Md. 431 (quoting *Dawson v. State*, 329 Md. 275, 281 (1993)). "The appellate court gives deference to "a trial judge's or a jury's ability to choose among differing inferences that might possibly be made from a factual situation." *Id.* (quoting *State v. Smith*, 374 Md. 527, 534 (2003)). A trier of fact has the right to disregard one party's version of the events and, instead, draw an inference "based on other evidence offered at trial." *State v. Raines*, 326 Md. 582, 591 (1992). It would be error for this Court

[1] 442 Md. 419 (2015), *reconsideration denied* (Apr. 17, 2015).

to conduct "its own independent credibility analysis" and reject a jury's finding of facts. *Id.* "'[O]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *Manion*, 442 Md. at 431 (quoting *Taylor*, 346 Md. at 457).

DISCUSSION

Appellant's sole claim of error is that the evidence presented was insufficient to sustain her conviction. She asserts that she "had not left the actual confines of the store premises," and that she intended to pay for the items. Accordingly, appellant asks this Court to reverse the judgment of the Circuit Court.

The State responds that the evidence presented was sufficient to support the jury's verdict of guilty of theft because a finder of fact is not obligated to credit appellant's witnesses, nor is it obligated to disbelieve the testimony of the State's witness. According to the State, a rational jury could infer, from the evidence presented, that appellant intended to deprive Walmart of its property. Consequently, submits the State, the evidence was sufficient for the jury to render a verdict of guilty beyond a reasonable doubt. We agree.

Md. Code Ann., Crim. Law, §7–104 provides in pertinent part:

> (a) A person may not willfully or knowingly obtain or exert unauthorized control over property, 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.

* * *

> (g)(2) Except as provided in paragraphs (3) and (4) of this subsection, a person convicted of theft of property or services with a value of less than $1,000, is guilty of a misdemeanor . . . .

"Given the subjective nature of intent, the trier of fact may consider the facts and circumstances of the particular case when making an inference as to the defendant's intent." *Manion*, 442 Md. at 434 (citing *Titus v. State*, 423 Md. 548, 564 (2011)). "Because 'intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence.'" *Bible v. State,* 411 Md. 138, 157 (2009) (quoting *Smith*, 374 Md. at 536).

This Court's decision in *Lee v. State*, 59 Md. App. 28 (1984) is particularly instructive in our review of the facts in the instant case. In *Lee*, we stated that

> Lee knowingly removed the bottle of liquor from the shelf and secreted it under his clothing. This act in itself meets the requirement of concealment. The fact that this concealment was brief or that Lee was detected before the goods were removed from the owner's premises is immaterial. The intent to deprive the owner of his property can be inferred from his furtive handling of the property. Lee not only placed the bottle in the waistband of his pants, but did so in a particularly suspicious manner by concealing the bottle such that it was hidden from the shop owner's view. It cannot be so as a matter of law that these circumstances failed to establish the elements of theft. *Once a customer goes beyond the mere removal of goods from a shelf and crosses the threshold into the realm of behavior inconsistent with the owner's expectations, the circumstances may be such that a larcenous intent can be inferred.*

Id. at 43. (Emphasis supplied). Probative of appellant's intent in the case *sub judice* is this Court iteration that "[t]he requisite mental state of having an intent to deprive is most frequently proved by the defendant's handling of the property." *Id*.

In the case *sub judice*, appellant asserts that her conviction should be reversed because of the insufficiency of the evidence. Because she had not yet exited the store, appellant contends, she is not guilty of theft. The elements of theft, as stated, *supra*, can be satisfied in the instant case without appellant having exited the store. When an individual *intends* to deprive the owner of his property, that constitutes theft. MD. CODE ANN., CRIM. LAW, §7–104(a).

According to appellant, the evidence is insufficient to support the assertion that she had the requisite intent to constitute theft. Appellant offers conflicting testimony that she and Morgan intended for Morgan to purchase the items for appellant's birthday. In Maryland, intent to deprive can be inferred by action, *i.e.* appellant's handling of the property. *Lee*, *supra*. In the instant case, appellant moved the items from one location to a different department in the Walmart Store, an establishment which is typically the size of a warehouse, and deposited the items discretely into her purse. She then paid for some smaller items and walked toward the exit of the store with over one hundred dollars worth of merchandise concealed in her purse. As was the case in *Lee*, *supra*, appellant's actions **"**crossed the threshold into the realm of behavior inconsistent with the owner's expectations." Accordingly, the intent to deprive Walmart of the items can be inferred from appellant's behavior.

Although appellant and Morgan testified that Morgan had intended to purchase all the items for appellant's birthday, the trier of fact is free to choose among different inferences

presented, weigh the evidence presented and determine the credibility of witnesses. *Marion*, *supra*. Based on the evidence presented, the jury determined that Ivey's testimony was credible and reasonable and supported an inference that appellant intended to deprive Walmart of its property. Accordingly, we hold that the evidence was sufficient to establish the essential elements of misdemeanor theft beyond a reasonable doubt**.**

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