UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1959

September Term, 2014

SAIKU BAH

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Raker, Irma S.,
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: March 8, 2016

After a three day jury trial in the Circuit Court for Montgomery County, Saiku Bah was convicted of one count of first degree burglary and two counts of theft of more than $1,000. Appellant was sentenced to a term of 15 years incarceration for first degree burglary and two concurrent terms of 5 years incarceration for the theft convictions. Appellant presents two issues on appeal:

1. Did the circuit court err in sentencing appellant to two concurrent terms of incarceration for the theft convictions, rather than merging the sentences?

2. Was the evidence presented sufficient to sustain appellant's convictions for burglary and theft?

We conclude: (1) that the court erred in failing to merge appellant's sentences for the theft convictions, and (2) that the evidence presented was sufficient to sustain appellant's convictions. Accordingly, we remand this case to the circuit court solely for the purpose of remedying the sentencing.

Background

At approximately 5:45 p.m. on May 17, 2013, Yonas Ambaw returned to the apartment he shared with Mengesha Geremew on Thayer Avenue in Silver Spring, Maryland, to find the front door to the apartment closed, but unlocked. (Geremew was not in the apartment at the time.) Upon entering the apartment, Ambaw discovered that all three of his laptop computers were missing, as well as a laptop belonging to Geremew.[1]

[1]After arriving home, Geremew reported that he was also missing two cameras and a piece of jewelry.

Around the same time, Officer Eric Walter of the Montgomery County Police Department was driving along Thayer Avenue when he saw appellant, who was carrying a computer bag and a backpack, cross the street. Officer Walter stopped appellant, who declined to talk to the officer, informing him that he needed to get home. Appellant ultimately resisted the officer's efforts to talk to him and dropped the bags that he was carrying and fled, running out of his shoes. Officer Walter pursued appellant until he ran through a gap in a nearby fence, at which point he returned to recover the bags and the shoes. Upon opening the bags, Officer Walter found four laptops, and an Ipod, along with a number of other items.

Almost an hour later, Officer Walter responded to Ambaw's 9-1-1 call and learned that four laptops had been taken from his apartment. Officer Walter then had Ambaw accompany him to his cruiser where he showed Ambaw the items that he had recovered from his pursuit of appellant. Ambaw identified the laptops as belonging to him and Geremew.

Appellant was subsequently charged with first degree burglary and two counts of theft of property worth more than $1,000.[2] At his trial, appellant testified in his own defense, denying that he had entered the apartment and taken the items. Appellant testified that he bought, and resold, laptop computers that he purchased from sellers on the internet, and that on May 17, 2013, he had received a telephone call from a man named John, who

[2]The indictment included additional counts arising out of an unrelated incident. Those charges were severed prior to trial.

informed him that he had five laptops and a cell phone to sell. Appellant testified that he arranged to meet John at the Silver Spring Metro Station, and that after meeting him there decided not to purchase the items. Appellant explained that he was about to leave when the police arrived, and that he fled because he had been smoking marijuana with his friends and still had marijuana on his person.

Analysis

I. Merging the Theft Convictions

Appellant's first contention on appeal is that the trial court erred in convicting him of two counts of theft (Counts 2 and 3). Appellant asserts that "he could only be convicted of one [count of] theft as the evidence presented by the prosecution was clear that all the items taken from Ambaw and Geremew were taken as part of one scheme or continuing course of conduct." Appellant seeks to have one of his theft convictions and the corresponding sentence vacated. The State concedes error. Maryland has long recognized the single larceny doctrine, pursuant to which a person, who steals multiple items from one or more persons at one time, or at different times as part of a continuing course of conduct, ordinarily may only be charged with one crime. *State v. Warren*, 77 Md. 121, 122-24

(1893); *State v. White*, 348 Md. 179, 192, 195-96 (1997); Md. Code Ann. § 7-103(f) of the Criminal Law Article (CL).[3] Based on the evidence, appellant should have been convicted of one count of theft, but not two. Accordingly, we shall vacate one of the theft sentences. *See Carroll v. State*, 202 Md. App. 487, 518 (2011) ("[W]here merger is deemed to be appropriate, this Court merely vacates the sentence that should be merged[.]").

II. Sufficiency of the Evidence

Appellant's second contention on appeal is that the evidence presented at trial was insufficient to support his convictions for theft and burglary. With regard to his conviction for theft, appellant asserts that the State could only establish theft if it could prove that he was in Ambaw's and Geremew's apartment and took the laptops or that he was in possession of the items after they had already been stolen. Appellant contends that the State failed to prove either theory beyond a reasonable doubt. According to appellant, the State failed to present any evidence that he was in the apartment, and, further, that he provided a "valid explanation for his possession" of the laptops. As to the burglary conviction, appellant contends that the State did not present any direct evidence that he committed the burglary.

[3] **§ 7-103. Determination of value.**
(f) *Course of conduct — Aggregation.* — When theft is committed in violation of this part under one scheme or continuing course of conduct, whether from the same or several sources:
(1) the conduct may be considered as one crime; and
(2) the value of the property or services may be aggregated in determining whether the theft is a felony or a misdemeanor.

The State counters that the evidence presented was sufficient for the jury to convict appellant of theft and burglary.[4]

In reviewing a challenge to the sufficiency of the evidence to support a criminal conviction, we view the evidence "in the light most favorable to the prosecution," and inquire as to "whether . . . *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) (emphasis in original). "We do not measure the weight of the evidence; rather, our 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." *Taylor v. State*, 346 Md. 452, 457 (1997).

It is well-settled that possession of recently stolen goods is sufficient to create an inference that: (1) "absent a satisfactory explanation . . . the possessor was the thief," or (2) "under the appropriate circumstances . . . the possessor was the receiver of stolen goods." *Meyers v. State*, 165 Md. App. 502, 528-29 (2005) (internal quotation marks and citations omitted). The evidence presented to the jury in the case before us was sufficient to support its verdict that appellant was guilty of theft and burglary.

[4]The State argues that appellant failed to preserve his contentions as to the sufficiency of the evidence to support his theft and burglary convictions. At trial, the appellant certainly raised an argument regarding the sufficiency of the evidence as to the burglary charge that tracks, more or less, his appellate contentions. Appellant's arguments as to both convictions are closely related and we will address them both.

The evidence presented at trial was that Ambaw returned to his apartment on Thayer Avenue in Silver Spring to find his laptops, as well as the laptop of his roommate, missing, and that, at about the same time, Officer Walter was driving along Thayer Avenue when he encountered appellant who was carrying a computer bag and a backpack. When Officer Walter attempted to talk to appellant, he refused and dropped both bags and fled, running out of his shoes. After abandoning his pursuit of appellant, Officer Walter recovered both bags as well as appellant's shoes. The bags contained several laptop computers, which Ambaw ultimately identified as belonging to him and Geremew. Appellant's fingerprint was found on one of the laptops, and his DNA was found inside of the left shoe. Upon the record before us, this evidence was more than sufficient to support a reasonable inference that appellant entered the apartment and stole the laptops.

Obviously, the jury did not believe appellant's explanation as to why the laptops were in his possession. Appellant suggests that we should reverse his conviction because his testimony was uncontradicted, but, as we explained in *Meyers*, "'[w]eighing the credibility of the witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder.'" 165 Md. App. at 528 (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)).

THE SENTENCE OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AS TO COUNT 3 (THEFT) IS VACATED. THE JUDGMENT IS OTHERWISE AFFIRMED.

COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY MONTGOMERY COUNTY.