UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 335

September Term, 2016

AVERY JUSTIN REIL

v.

STATE OF MARYLAND

Meredith,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: March 27, 2017

Following a trial in the Circuit Court for Harford County, a jury convicted appellant, Avery Justin Reil, of second-degree burglary, fourth-degree burglary, malicious destruction of property, theft, and resisting arrest.[1] The trial court sentenced appellant to a total of fifteen years' imprisonment, suspending all but ten years. We have consolidated and rephrased appellant's questions on appeal as follows:

1. Was the evidence sufficient to convict appellant of theft and second-degree burglary?

2. Must appellant's commitment record and the court's docket entries be corrected to reflect the court's sentence for resisting arrest?

As to the sufficiency of evidence issues, we perceive no error and affirm the trial court's judgments. We agree, however, with both parties that appellant's commitment record and the docket entries do not accurately reflect the trial court's imposition of sentence on the charge of resisting arrest. Accordingly, we shall remand to that court with instructions to correct the commitment record and docket entries.

FACTS AND LEGAL PROCEEDINGS

At approximately 10:20 a.m. on March 24, 2015, Aberdeen Police Department officers responded to a 911 call for a potential burglary at the house located at 530 South

[1] In receiving the verdict, the transcript reflects that the clerk asked the jury how it found appellant "as to the charge of first degree burglary," instead of the charged fourth-degree burglary. The correct charge was referenced when the clerk hearkened the verdict immediately thereafter, and the verdict sheet lists the correct charge. As neither side raises an issue with what appears to be either the clerk's inadvertent misstatement or the court reporter's error in transcription, we will not address it further.

Parke Street, Aberdeen, Harford County. The officers arrived and set up a perimeter around the house.

Officer Michael Palmer observed a white female, later identified as appellant's girlfriend Jessica Meller, standing in front of the house talking on a cell phone. While Officer Palmer spoke with Meller, Officer Kyle Hoffman and Corporal Swain went to the back of the house. Officer Hoffman observed a broken glass pane in the back door and saw appellant inside the house. When appellant saw the officers and heard the order to put his hands up, he "took off" toward the front of the house and "literally busted through the front door running" by Officer Palmer as he questioned Meller. Lieutenant Budnick, who was positioned at the front of the house, drew his service weapon and ordered appellant to stop. Appellant, however, ran in the opposite direction and jumped a fence into a neighboring yard. Officer Palmer secured Meller in handcuffs and pursued appellant.

In an attempt to avoid the officers positioned outside the house, appellant doubled back toward Officer Palmer, who ordered him to stop. When appellant did not obey his order, Officer Palmer employed his Taser. The Taser was ineffective, however, as it was unable to connect through appellant's bulky clothing. As appellant attempted to run past him, Officer Palmer grabbed appellant by the back of his jacket and took him to the ground, causing a pill bottle to fall from appellant's clothing. Because appellant continued to kick, struggle, and flail with his arms, Officer Palmer used his Taser on appellant's exposed skin. Officers Palmer and Hoffman subdued appellant and handcuffed him.

Appellant and Meller were arrested and transported to the Aberdeen Police Department.[2] Officer Palmer recovered the pill bottle appellant had dropped, along with two others from a search of his person incident to arrest. The prescription pill bottles – two containing expired pills and one empty – were issued to Sara Norris of 530 South Parke Street. Officer Palmer then entered the house, which he found to be unoccupied. He found that the glass in an interior door of the house was broken. Officer Palmer also noted that several items within the house had been knocked over.

At trial, Sarah Rapone testified that she and her cousin inherited title to the house at 530 South Parke Street when her aunt, Sara Norris, died on February 28, 2015. Rapone stated that Ms. Norris had not lived in the house for almost three years. The house had been unoccupied since then but was well-maintained, with no outward signs that it was unoccupied. On the morning of March 24, 2015, Rapone met a real estate agent at the house to discuss listing it for sale. When she left the house at approximately 10:00 a.m., the back door was intact and all the exterior doors were locked. Later that day, after receiving word from a neighbor about the break-in at the house, Rapone returned to find the back door broken and an empty pill bottle in the foyer. She also noticed that an antique spinning wheel, which was upright in an upstairs room when she left that morning, had been tipped over.

[2] Meller was tried separately as a co-defendant for her part in the burglary.

Rapone explained that the pill bottles recovered from appellant contained her aunt's "cardiac related medications," which were obviously no longer of use to her. In fact, the medication had expired in 2012 and was likely destined for the trash or other disposal.

At the close of the State's case-in-chief, appellant moved for judgment of acquittal on the charge of second-degree burglary, arguing that the State had failed to prove that he broke into the house with the intent to commit a theft, a required element of the crime. Regarding the theft charge, he averred that the items taken – the expired pills – had no value, and therefore did not fall within the statutory definition of "property." The court denied the motion. Appellant did not present any evidence, and the court denied his renewed motion for judgment of acquittal at the close of all the evidence.

DISCUSSION

I.

Appellant first argues that the evidence adduced by the State was insufficient to sustain his conviction for theft because the State failed to prove that the items taken had any value; he further alleges that the evidence was insufficient to support his conviction for second-degree burglary because the State failed to prove that he entered the South Parke Street house with the intent to commit theft. In the absence of proof of these required elements of the crimes, he concludes, his convictions cannot stand.

We have explained the applicable standard for reviewing challenges to evidentiary sufficiency:

> In reviewing the sufficiency of the evidence, an appellate court determines "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, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979); *see also Derr v. State*, 434 Md. 88, 129, 73 A.3d 254 (2013); *Painter v. State*, 157 Md. App. 1, 11, 848 A.2d 692 (2004) ("[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder'") (citations omitted) (emphasis in original).
>
> The appellate court thus must defer to the factfinder's "opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]" *Pinkney v. State*, 151 Md. App. 311, 329, 827 A.2d 124 (2003); *see also State v. Mayers*, 417 Md. 449, 466, 10 A.3d 782 (2010) ("[w]e defer to any possible reasonable inference the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence") (citations omitted). Circumstantial evidence, moreover, is entirely sufficient to support a conviction, provided that the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused. *See, e.g., State v. Manion*, 442 Md. 419, 431–32, 112 A.3d 506 (2015); *Painter*, 157 Md. App. at 11, 848 A.2d 692.

Benton v. State, 224 Md. App. 612, 629-30 (2015).

A. Theft

Appellant was charged with theft of property with a value less than $100, based on his possession of three pill bottles which belonged to the estate of Sara Norris. He contends that the pill bottles had no value because they contained expired heart medication, for which there is no market, and were considered trash by their owner. Because the items taken had no value, he concludes, they did not meet the statutory definition of "property" and cannot support a conviction of theft. We disagree.

To convict a defendant of theft under Md. Code (2002, 2012 Repl. Vol.), § 7-104 of the Criminal Law Article ("CL"), "[t]he State bears the burden of proving that the property

stolen has value and, if seeking an enhanced penalty, the value of the property stolen." *Hobby v. State*, 436 Md. 526, 551 (2014). "Property" is defined by CL § 7-101(i) as "anything of value," including tangible items, such as money, food, and documents, and intangible items, such as information, electricity, or trade secrets. "Value" is defined as "the market value of the property or service at the time and place of the crime" or, "if the market value cannot satisfactorily be ascertained, the cost of the replacement of the property or service within a reasonable time after the crime." CL § 7-103(a). It is not necessary that the property's value be quantified to prove theft, but it must have some value. *Jupiter v. State*, 328 Md. 635, 640 (1992). The market value of stolen property may be proven "by direct or circumstantial evidence and any reasonable inferences drawn therefrom." *Champagne v. State*, 199 Md. App. 671, 676 (2011).

Our decision in *Williams v. State*, 110 Md. App. 1 (1996) is instructive. There, the victim of a robbery testified that, during a struggle with the defendant, his paper currency was torn in half. *Id*. at 8. In determining whether the mutilated currency constituted property with value sufficient to sustain a conviction for robbery, we stated:

> Because the currency was torn in half, it cannot be said that appellant robbed [the victim] of $60 to $70. On the other hand, it is undisputed that appellant robbed [the victim] of his mutilated currency, which, because of its mutilated condition, may have lost the value that it was originally endowed with but retained, nonetheless, some value. The property had value, for with it, appellant could have, although he would not have been the rightful owner, attempted to receive substitute currency from the Director of the U.S. Bureau of Engraving and Printing. We must conclude then, that after viewing the evidence adduced at trial in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime of robbery beyond a reasonable doubt.

Id. at 41-42 (citations omitted). This reasoning is in accord with the Court of Appeals' conclusion in *Jupiter* that "[t]he value requirement is rarely an issue and it is difficult to hypothesize an illustration of when it might be an issue." 328 Md. at 640.

In the instant case, the jury could have found that the expired medication retained *some* value, as did the mutilated currency in *Williams*. Further, the jury could have inferred that the items had some value based on the fact that appellant chose to take the medication instead of the other valuable items in the house. Accordingly, the evidence was sufficient to support appellant's conviction of theft.

B. Second-degree burglary

Appellant next challenges the sufficiency of the evidence related to his conviction for second-degree burglary. According to appellant, because he entered the South Parke Street house and took items with no value, no reasonable juror could have concluded that he entered the house with the intent to steal, as required by CL § 6-203. Consistent with our discussion of theft, we disagree.

In the context of this case, CL § 6-203 provides that "[a] person may not break and enter the storehouse of another with the intent to commit theft, a crime of violence, or arson in the second degree." In analyzing the intent to commit theft, the Court of Appeals has recognized that there are "practical difficulties in proving directly an accused's intention when he or she breaks into a dwelling [or storehouse]," and the Court has held that "the intention at the time of the break may be inferred from the circumstances." *Winder v. State*,

362 Md. 275, 329 (2001). Therefore, the jury may examine the surrounding circumstances of the break-in, including the defendant's acts, to reach a conclusion about his intent. *Id*.

Here, appellant broke a glass pane in the back door of the house to gain entry. As the Court of Appeals noted in *Winder*, "[a] 'surreptitious or forceful breaking' strongly indicates criminal intent." *Id.* The evidence also indicates that appellant moved throughout the house, as if searching for something, before being spotted by the police. He then ran from them despite their order to stop. When caught, he had items belonging to the deceased homeowner on his person. The facts surrounding the break-in provide strong circumstantial evidence of appellant's intent to steal upon entering the house.

Additionally, because we have concluded that the evidence was sufficient to support his conviction for theft of property, the consummated commission of the theft would also provide evidence that appellant had the intent to commit theft when he entered the house. *See Hobby,* 436 Md. at 556 ("It would be nonsensical to conclude that the evidence was sufficient to support the theft conviction, but not sufficient to support a burglary conviction, where an element of [burglary] is the intent to commit a theft."); *Winder*, 362 Md. at 329 ("[T]he most conclusive evidence in determining whether an accused intended to commit a [crime] is the commission of the [crime] itself."). Accordingly, we conclude that the evidence was sufficient for a rational trier of fact to conclude that appellant had the requisite intent to commit theft inside the South Parke Street house.

II.

Lastly, appellant argues that the trial court's docket entries and his commitment

record reflect an incorrect sentence of three years' imprisonment on the charge of resisting arrest. Specifically, appellant points out that the court sentenced him to a term of ninety days for resisting arrest. The State agrees that the ninety-day sentence as stated by the court on the record at the sentencing proceeding is the correct one and that a limited remand to correct the docket entries and commitment record is therefore appropriate.

According to the transcript, the court imposed the following sentences:

> So in this case, I think you have earned a sentence above the guidelines in this case, and I am in terms of the second-degree burglary imposing a sentence of 15 years, suspend all but 10 years to serve in the Division of Correction. The fourth degree burglary will merge into that. And then I'm giving you 60 days on malicious destruction of property, concurrent; 90 days on the theft charge, concurrent and resisting arrest, concurrent.

A fair reading of the sentencing proceeding substantiates that appellant received a sentence of ninety days on the charge of resisting arrest, concurrent with the sentence for second-degree burglary; there is no reference in the court's sentence to a three-year prison term. However, the court's docket entries reflect a sentence of "3 yrs c/c on ct (9) Resist arrest CR9.408(b)"; similarly, appellant's commitment record reflects a three year concurrent sentence on the charge of resisting arrest.

As we explained in *Lawson v. State*, "'[w]hen there is a conflict between the transcript and the commitment record, unless it is shown that the transcript is in error, the transcript prevails.'" 187 Md. App. 101, 108, (2009) (quoting *Douglas v. State*, 130 Md. App. 666, 673 (2000)). "A similar rule applies to docket entries." *Id.* Accordingly, because appellant's commitment record and the court's docket entries conflict with the

transcript of the sentencing proceeding, and, as neither party contends the transcript is in error, the transcript controls. We shall remand to the circuit court for the limited purpose of amending appellant's commitment record and docket entries to reflect the sentence issued by the court as set forth in the transcript.

CASE REMANDED TO THE CIRCUIT COURT FOR HARFORD COUNTY FOR CORRECTION OF APPELLANT'S COMMITMENT RECORD AND THE PERTINENT DOCKET ENTRIES IN ACCORDANCE WITH THIS OPINION; JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY ARE OTHERWISE AFFIRMED; COSTS TO BE PAID 1/3 BY HARFORD COUNTY AND 2/3 BY APPELLANT.