Circuit Court for Baltimore County
Case No. 03-K-09-001918

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2170

September Term, 2016

ANTHONY LLOYD

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 2017

Following a jury trial in the Circuit Court for Baltimore County, Anthony Lloyd, appellant, was convicted of robbery, theft, and second-degree assault based on his stealing $3,100 from a Wells Fargo bank.[1] On appeal, Lloyd raises two issues: (1) whether the court erred in denying his motion to suppress statements he made to the police following his arrest, and (2) whether the evidence was sufficient to sustain his robbery and assault convictions. For the reasons that follow, we affirm.

Following his arrest, Lloyd was transported to the police station, waived his *Miranda* rights, and made several incriminating statements to the police. Lloyd contends that those statements were involuntary and, therefore, should have been suppressed.

A circuit court's decision concerning the voluntariness of a statement is a "mixed question of law and fact" that this Court reviews *de novo*. *Buck v. State*, 181 Md. App. 585, 631 (2008) (citation omitted). However, we give due deference to the first-level findings of fact by the suppression court, and accept those factual findings unless they are clearly erroneous. *Lincoln v. State*, 164 Md. App. 170, 180 (2005). If a suppression court finds that a defendant was "so mentally impaired that he does not know or understand what he is saying," the confession will be found involuntary. *Hoey v. State*, 311 Md. 473, 482 (1988). However, "mental impairment from drugs or alcohol does not *per se* render a confession involuntary." *Hof v. State*, 337 Md. 581, 620 (1995). Whether the defendant was under the influence of a drug at the time he gave an incriminating statement is only

[1] The court merged appellant's theft and assault convictions into his robbery conviction for sentencing purposes.

one of the factors to be considered in the totality of the circumstances surrounding the voluntariness of the statement. *Id.* (citation omitted).

In claiming that his confession was involuntary, Lloyd relies on his testimony at the suppression hearing that he was unaware of what he was saying to the police because he was high on cocaine and had not slept in five days. However, Detective Steven Morano, who was present during the interrogation, testified that Lloyd did not appear to be under the influence of drugs; that Lloyd did not appear to be confused by any of the questions; and that all of Lloyd's answers were "appropriate and coherent." The suppression court ultimately found Detective Morano's testimony to be credible. Moreover, the court had an opportunity to view the videotape of Lloyd's interrogation and noted that it "didn't see any confusion at all" and that appellant appeared to "understand everything that was going on." Consequently, we are not persuaded that the suppression court erred in finding that Lloyd's mental impairment, if any, at the time of his interview was such that it rendered his statement involuntary.

Based on his alleged intoxication and lack of sleep, Lloyd also claims that he did not knowingly and voluntarily waive his *Miranda* rights. Determining the validity of a defendant's waiver of his *Miranda* rights requires a two-part inquiry:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

Moran v. Burbine, 475 U.S. 412, 421 (1986) (citation omitted)

Based on the totality of the circumstances, we are persuaded that Lloyd knowingly and voluntarily waived his *Miranda* rights. There was no evidence that Lloyd waived his rights as the result of promises or threats by the police. Moreover, he affirmatively stated that he understood his rights and signed a waiver of rights form immediately thereafter. Finally, the suppression court found that Lloyd responded to all the officers' questions in an "appropriate" manner and did not appear to be intoxicated, findings that we have already determined were not erroneous. Consequently, the trial court did not err in denying Lloyd's motion to suppress.

Lloyd also asserts that there was insufficient evidence to support his convictions for robbery and assault because the State failed to prove that the theft was accomplished by force or the threat of force. "The standard for our review of the sufficiency of the evidence is 'whether, after reviewing 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.'" *Neal v. State*, 191 Md. App. 297, 314 (2010) (citation omitted). "The test is 'not whether the evidence *should have or probably would have* persuaded the majority of the fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted). In applying the test, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence.'" *Neal, supra*, 191 Md. App. at 314 (citation omitted).

"The hallmark of robbery, which distinguishes it from theft, is the presence of force or threat of force, the latter of which also is referred to as intimidation." *Coles v. State*,

374 Md. 114, 123 (2003) (citation omitted). Here, actual force is not at issue; rather, Lloyd contends that there was insufficient evidence of intimidation, or placing the victim in fear. Constructive force, or intimidation, may be shown by any "conduct [that] was reasonably calculated to produce fear." *Id*. at 128. It is sufficient if it "excite[s] reasonable apprehension of danger, and reasonably . . . cause[s] the owner to surrender his property." *Fetrow v. State,* 156 Md. App. 675, 685 (2004) (internal quotation marks and citation omitted). "The determination of whether there has been an intimidation should be guided by an objective test focusing on the accused actions[.]" *Montgomery v. State*, 206 Md. App. 357, 387 (2012) (citation omitted).

Viewed in a light most favorable to the State, the evidence demonstrated that Lloyd approached a bank teller, refused to answer her questions, and gave her a note stating: "Put all the money in the bag!!! No dye!!! A.S.A.P." Lloyd claims that the note was not reasonably calculated to produce fear in the teller because it did not contain an explicit threat and there was no indication that he actually possessed a weapon. However, it makes no difference whether the note actually threatened bodily harm because, under the circumstances, there was an implicit threat to the act of demanding money from the teller and ordering her to do it immediately and to make sure it did not contain dye. *See Coles*, 374 Md. at 129-30 ("[A] rational fact finder could have concluded that the demand of, 'Put all the money in the bag,' and the command, 'no alarms,' were sufficient to create fear of bodily harm."). Moreover, Lloyd did not merely hand the teller a note and a bag. Instead he "flung" them at her in such a way that she believed she was being "attacked." The teller testified that Lloyd's actions made her feel "threatened" and "absolutely scared." And,

"[a]lthough [proof of] actual fear is not necessary . . . evidence of it is nonetheless probative of whether a reasonable person would have been afraid under the same circumstances." *Id.* at 130. Based on this evidence, the jury could reasonably find that Lloyd accomplished the theft through the threat of force. Consequently, there was sufficient evidence to support his robbery and assault convictions.

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