Circuit Court for Baltimore City
Case No. 116102013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2171

September Term, 2016

JOSEPH RANDALL

v.

STATE OF MARYLAND

Reed,
Beachley,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 20, 2017

Following a three-day jury trial in September 2016 before the Circuit Court for Baltimore City, appellant Joseph Randall[1] was convicted of theft of property valued $10,000 to $100,000 and sentenced to twelve years' imprisonment. Appellant timely appealed and presents three questions for our review:

1. Is the evidence sufficient to support [a]ppellant's conviction for theft of goods valued between $10,000 and $100,000, where the item stolen was a rental car and the State presented no evidence of the value of the car aside from its make and model and the lessee's unfounded approximation as to value?

2. Did the trial court err when it admitted the lessee's testimony regarding the approximate value of the vehicle, where the lessee was not qualified to give such testimony as either an expert or lay witness?

3. Did the trial court err in failing to provide a clarifying response to Jury Question No. 2 seeking clarification regarding whether "in Baltimore City" meant that the crime occurred in the city or the victims were from the city?

We affirm the judgment of the circuit court.

BACKGROUND

On February 25, 2016, at approximately 11:35 P.M., Nakisha Smith ("Smith") and her daughter Nakia were driving in the 4700 block of Park Heights Avenue in Baltimore City. Smith had rented the vehicle, a newer model black Nissan Versa, from EZ Go Car Rental. Smith was stopped at a red light, with all of the vehicle's windows rolled down when, according to Smith, three young men suddenly entered the back seat of the vehicle, one of whom was appellant. Appellant instructed Smith to "Drive, bitch." Smith obliged,

[1] At sentencing, appellant told the court that his name is Randall Joseph (or "Randell," according to the spelling in his appellate brief).

and followed appellant's orders, driving herself, Nakia, and the three men to two white vans located in an apartment complex. When Smith pulled the vehicle between the vans, someone apparently hit her in the back of her head with a silver handgun. The three men told Smith and Nakia to get out of the car, and, pointing the handgun at them, took Smith's food stamp card, cell phone, her and her daughter's coats, and the family's food. According to Smith, appellant entered the driver's seat of the vehicle and the three men drove off.

Less than two hours later, at approximately 1:15 A.M., Officer Brandon Langley of the Baltimore County Police Department checked the license plate of a black Nissan Versa driving in front of him in Baltimore County. The license plate on the Nissan was not registered to that vehicle. Officer Langley requested more units from dispatch, and began pursuit of the Nissan. After approximately a mile and a half chase, the vehicle stopped and three occupants fled the vehicle. According to Officer Langley, appellant exited the front passenger's seat of the car, and crossed Joppa Road. Officer Langley requested a K-9 unit, which quickly responded and followed appellant's trail. Officers apprehended appellant shortly thereafter.

By way of indictment, the State charged appellant with thirteen counts: 1) armed carjacking, 2) conspiracy to commit armed carjacking, 3) carjacking, 4) conspiracy to commit carjacking, 5) first-degree assault of Smith, 6) second-degree assault of Smith, 7) theft of property valued $10,000 to $100,000, 8) use of a firearm in the commission of a crime of violence, 9) first-degree assault of Nakia, 10) second-degree assault of Nakia, 11) use of a firearm in the commission of a crime of violence, 12) wearing, carrying or

transporting a handgun, and 13) theft of property valued less than $1,000. The jury convicted appellant of theft of property valued $10,000 to $100,000, but acquitted him of all other charges. We shall provide additional facts as necessary.

DISCUSSION

I. Sufficiency of the Evidence

Appellant first argues that the evidence was insufficient to support his conviction for theft of property valued $10,000 to $100,000. During Smith's direct examination, the State asked whether the Nissan Versa was a newer model. Smith replied that she was "not really good with cars, like the year" or the make and model, but that she believed the car was "up to date." When the State asked Smith, "So is it fair to say that that car was worth more than $10,000?" Smith answered, "Yes, sir." Appellant objected to neither the question nor the answer.

At the close of the State's case, appellant moved for judgment of acquittal. Appellant's trial counsel argued to the court, among other things, that the evidence was insufficient to support the count charging theft of property valued $10,000 to $100,000 because Smith could not establish the fair market value of the vehicle—she was not designated as an expert and did not have any "background" familiarity with the car. The court denied appellant's motion.

The defense produced no testimonial or other evidence and rested. Appellant then made another motion for judgment of acquittal in which counsel disputed the sufficiency

of the evidence to support several counts, but made no mention of the charge for theft of property valued $10,000 to $100,000. The trial court denied appellant's motion.

The standard of review for the sufficiency of the evidence 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." *Hobby v. State,* 436 Md. 526, 538 (2014) (internal citations and quotation marks omitted) (quoting *Derr v. State,* 434 Md. 88, 129 (2013)). "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) (internal quotation marks omitted). In applying this 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 v. State*, 191 Md. App. 297, 314 (2010) (internal quotation marks omitted). "[I]t is not the function of the appellate court to determine the credibility of witnesses or the weight of the evidence." *Fetrow v. State*, 156 Md. App. 675, 686 (2004).

Appellant argues that Smith's testimony, standing alone, fails to establish the fair market value of the vehicle, and that the evidence is insufficient to support his conviction. Md. Code (2002, 2012 Repl. Vol.), § 7-103(a) of the Criminal Law Article ("CL") defines value as: "(1) the market value of the property . . . at the time and place of the crime; or (2) if the market value cannot satisfactorily be ascertained, the cost of the replacement of the property . . . within a reasonable time after the crime." "The present 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) (citing *Wallace v. State*, 63 Md. App. 399, 410 (1985)).

According to appellant, the State failed to meet its burden of proving the vehicle's market value. The cases appellant relies upon, however, are distinguishable from the case at bar. In *Barber v. State*, 23 Md. App. 655, 656 (1974), the owner of a box of pills and a diamond ring testified on direct examination that the ring's fair market value was $150. On cross-examination, however, the owner testified that she did not know the ring's fair market value, and that the ring was a gift. *Id*. Noting that "We have held an owner's statement of value insufficient to support a conviction for grand larceny when it was shown he did not know the market value[,]" we held that the evidence was insufficient to establish market value where the only evidence relied upon was that of an owner who testified that she did not know the ring's market value. *Id*. at 659-60. Here, the trier of fact heard Smith's uncontroverted and un-objected-to acknowledgment that the car was worth more than $10,000. Regardless of Smith's credibility, her testimony was clearly sufficient.

Appellant also relies on *Champagne* to argue that the evidence was insufficient. In *Champagne*, Champagne argued that the evidence was insufficient to support his conviction for theft of property valued $500 or more. 199 Md. App. 673. There, the jury heard evidence that the stolen property, a three-year-old laptop, had been purchased for approximately sixteen to eighteen hundred dollars. *Id*. at 674. On appeal, this Court held that although the victim's testimony as to the original purchase price was relevant to the determination of market value, it alone was insufficient to establish that the laptop's market

value exceeded $500 at the time of the theft. *Id*. at 676. Unlike in *Champagne*, Smith did not testify as to the car's original purchase price, but rather to the car's worth when it was stolen. Whereas in *Champagne* circumstantial evidence of the purchase price of a three-year-old laptop was insufficient to establish market value at the time of the crime, the direct evidence Smith supplied here was sufficient to support the conviction. Smith agreed, without any objection, that it was fair to say that the car was worth more than $10,000. Because Smith's testimony could have persuaded a rational fact finder to determine that the car's value exceeded $10,000, the evidence was legally sufficient. *Painter*, 157 Md. App. at 11.

II. Plain Error Review of Smith's Testimony

Appellant next argues that the trial court improperly admitted Smith's testimony as to the car's value. Maryland Rule 4-323(a) provides that "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Appellant's trial counsel lodged no objection to Smith's testimony. Instead, appellant argues that we should review the admission of Smith's testimony for plain error.

Plain error is "reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of [a] fair trial." *Robinson v. State*, 410 Md. 91, 111 (2009) (quoting *Rubin v. State*, 325 Md. 552, 588 (1992)) (internal quotation marks omitted). The "exercise of discretion to engage in plain error review is 'rare[,]'" *Yates v. State*, 429 Md. 112, 131 (2012), and appellate courts will only do so when the error

is "so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial." *Diggs v. State*, 409 Md. 260, 286 (2009) (quoting *Trimble v. State*, 300 Md. 387, 397 (1984)).

We decline appellant's invitation to engage in plain error review. Appellant's trial counsel's failure to object to Smith's testimony did not preclude an impartial trial. Instead, we think that this issue is best resolved in post-conviction proceedings. *See, e.g., Collins v. State*, 164 Md. App. 582, 608 (2005) ("The ramifications of trial counsel's error in failing to object on confrontational grounds will be better addressed in a post-conviction proceeding.").

III. Response to Jury Question

Finally, appellant argues that the trial court erred in failing to answer a question posed by the jury during its deliberations. As to the theft count, the jury verdict sheet reads as follows: "Do you find that the defendant, Joseph Randall, was in possession of recently stolen goods, to wit: Nissan Versa, valued between $10,000 and $100,000 of Nakisha Smith in Baltimore City, Maryland?" During deliberations, the jury wrote the following note to the trial court: "Does 'in Baltimore City' mean [t]he [c]rime occurred in the City or does it mean the victims are from the City. This is in reference to Question # 7 [on the verdict sheet]."

In determining how to respond to the jury's question, the court proposed to reread the jury instructions it had already provided to the jury for recently stolen property as well as possession. The State proposed removing the language "in Baltimore City, Maryland,"

from the verdict sheet itself, and appellant's trial counsel objected, arguing that the language "Baltimore City" was required on the verdict sheet. After hearing from counsel, the court concluded that it would simply reread the instructions. Apparently satisfied that the verdict sheet would not be modified, appellant's trial counsel lodged no objection to the court's decision to reread the instructions.

Because appellant failed to lodge any objection to the trial court's decision to reread the jury instructions on recently stolen property and possession, appellant failed to preserve this issue for appeal. Assuming, *arguendo*, that appellant timely objected, we would still find no error.

Appellant argues that the jury indicated its confusion about a central aspect of the applicable law, and that the trial court was obligated to clarify that confusion. *State v. Baby*, 404 Md. 220, 263 (2008) (stating that the Court of Appeals has "held that a trial court must respond to a question from a deliberating jury in a way that clarifies the confusion evidenced by the query when the question involves an issue central to the case"). A trial court, then, need only clarify confusion when the issue is central to the case.

The "central issue" that caused confusion here, as appellant concedes, is venue. We have defined "venue" as "the place where the trial may properly occur." *Smith v. State*, 116 Md. App. 43, 52 (1997).[2] Although venue is an essential element to certain crimes, venue was clearly neither an essential element nor a central issue in the theft here. *Id*. at

[2] Failure to raise the issue of improper venue as a defense or objection prior to trial constitutes a waiver. *Smith*, 116 Md. App. at 53.

61, *see also* CL § 7-104. Consequently, we perceive no error in the circuit court's response to the jury question.

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