Circuit Court for Carroll County
Case No. 08-K-16-000310

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2325

September Term, 2016

JAMES ARNETTE CHASE

v.

STATE OF MARYLAND

Berger,
Nazarian,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: July 11, 2018

Charged with, and convicted of, two theft-related offenses in the Circuit Court for Charles County, James Arnette Chase, challenges the sufficiency of the evidence to sustain the jury verdicts.[1]

BACKGROUND

The genesis of this prosecution was the disappearance of Johnnie Kearse's Chrysler minivan from his residence during the early morning of April 17, 2015. Within a few hours of Kearse having notified police, the van was located in a "trashed" condition. In their investigation, police observed blood stains on the right front headrest of the vehicle. A sample of the stain was taken and subsequent testing disclosed that it matched Chase's DNA profile. Based on that evidence, Chase was arrested and charged, denying his guilt throughout.

At trial, Johnnie Kearse testified as to his ownership of the van, his opinion of its estimated value, that he did not know Chase, and that he had not given permission to any person to operate his van on the day that it disappeared. Kearse, his wife, and their two sons, all testified as to not knowing Chase and having consented to providing DNA samples for matching purposes.

The State called the investigating officers, who testified as to their findings, particularly with regard to the blood sample and its handling and testing. The State also

[1] Pursuant to Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article (CL) § 7-105(d)(2), the conviction for motor vehicle theft under CL § 7-105(b) merged with the conviction under CL § 7-104(a) for theft over $1,000, and Chase was sentenced to a flat five years of incarceration on the theft charge.

called a forensic technologist and a serologist who established the DNA testing procedures and matching of Chase's DNA with that of the blood samples found in the Kearse minivan.

Chase, after having been advised of his testimonial rights, opted not to testify, offered no defense witnesses. After the court heard, and ruled on, defense motions for judgment, the jury was instructed, and counsel made their closing arguments. There were no exceptions to the court's instructions.

The Charges

Chase was charged under both Maryland Code[2] CL §§ 7-104, general theft provisions, and 7-105, motor vehicle theft. More precisely, as the trial court instructed the jury, Chase was charged with violation of CL § 7-104(a), unauthorized control over property of another, and of CL § 7-105(b), theft of a motor vehicle.[3] The jury returned guilty verdicts as to both charges.

Chase asserts his sufficiency challenge in two aspects: *first*, that the evidence was insufficient to establish that he "stole or possessed" the minivan; and, *second*, that the State failed to prove that the value of the van was at least $1,000, a required element to support the felony status of the offense.

[2] All subsequent statutory references, unless otherwise indicated, shall be to the Criminal Law Article of the Maryland Code (2002, 2012 Repl. Vol.), which reflects the version of the relevant statutes that were in effect at the time of the offense.

[3] As we shall discuss, CL § 7-105, although styled as "Motor vehicle theft," "'proscribes the unauthorized use of a motor vehicle'" and is "'a special sentencing-enhancing spin-off of the general unauthorized use law,'" by increasing the penalty from a misdemeanor to a felony. *See In re Landon G.*, 214 Md. App. 483, 509-10 (2013) (quoting Charles E. Moylan, Jr., Maryland's Consolidated Theft Law and Unauthorized Use §§ 16.1, 16.5 (MICPEL 2001).

The State responds that Chase's sufficiency arguments have not been preserved for appellate review, because trial counsel did not argue with particularity to the criminal agency aspect of the State's evidence in her motions for judgment of acquittal. The State also posits that defense counsel did not argue, at all, the asserted lack of sufficiency of the State's evidence as to value, an essential element of the offense.

Preservation

In response to the State's assertion of lack of preservation, we set out defense counsel's arguments, first at the conclusion of the State's case in chief:

> So the defense makes a motion for judgment of acquittal, based on the sufficiency of the evidence. The State has not made [a] prima facie case, even in looking at the evidence in the light most favorable to the nonmoving party. Which is the State in this case….
>
> I'll just leave it generally at sufficiency.

The State argued the motion and the court indicated its intention to rule on the motion on the following day, the jury having been excused for the day. On day two, the following morning, the court denied the motion. Defense counsel advised that the defense had rested without offering any evidence, and counsel proceeded to argue her renewed motion for judgment:

> At this point, the standard's [sic] a little higher, you know, to assess whether a reasonable juror could find Mr. Chase guilty based on the evidence presented. And you know, just to go into, I guess, a little more detail, I don't believe the evidence is sufficient that a reasonable juror could find Mr. Chase guilty. The only evidence that the State has presented is the fact that Mr. Chase's DNA was found in the vehicle after it was reported stolen, of course. But it was just the mere presence of his DNA.

> Mr. Chase also gave a statement, but I think, you know, it's not, it's not inculpatory really, it's just kind of going along with what everyone really has been saying; that he didn't know the victims in this case, and that he didn't know why his blood would be in there. But I don't think the statement really adds anything to corroborate his blood being in the vehicle. So, you know, I think it's analogous to, in fingerprint cases where, you know, just a single fingerprint there's an innocent explanation for it is not sufficient to convict based on that. So, analogizing it to that, we'd say that it's not sufficient to go to a jury.

Although counsel's argument is not a paragon of the particularity requirement of Md. Rule 4-324(a), we are satisfied, if only barely, that it was adequate to call the court's attention to the relevance of the DNA evidence of Chase's blood having been found in the minivan shortly after the theft. *See* Md. Rule 4-324(a) (when moving for judgment of acquittal, the defendant "shall state with particularity *all reasons* why the motion should be granted" (emphasis added)). Indeed, absent the DNA there would have been no evidence implicating Chase in the offense.

It is equally clear that counsel made no reference, in arguing either motion, to the asserted insufficiency of the evidence of value of the minivan to support a felony conviction pursuant to CL § 7-104(g)(1)(i).[4] *See Reeves v. State*, 192 Md. App. 277, 306 (2010) (affirming that, "on appeal, an appellant's sufficiency arguments are limited to the specific grounds stated in his motion for judgment at trial"). *See also* Md. Rule 8-131(a)

[4] In 2016, subsection (g) of CL § 7-104, governing penalties for violations under this statute, was amended to increase the threshold value for a felony offense from property with a value of "at least $1,000," as was in effect when this offense was committed, to property with a value of "at least $1,500." *See* 2016 Md. Laws, ch. 515, §2. This threshold change did not take effect until October 1, 2017, well after Chase had been convicted and sentenced, and has no bearing on our review.

(providing that "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court ….").

We, therefore, will proceed on the basis that the issue of criminal agency has been preserved and that the question of the value of the minivan has not been preserved for our review.

Sufficiency of the evidence

Evidence is sufficient to support a conviction if, "'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.'" *Derr v. State*, 434 Md. 88, 129 (2013) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in *Jackson*)), *cert. denied*, 134 S. Ct. 2723 (2014). The same standard exists in all criminal cases, "regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citing *State v. Smith*, 374 Md. 527, 534 (2003)). That is so because "generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *State v. Suddith*, 379 Md. 425, 430 (2004) (internal quotation and citation omitted). But, the Court of Appeals has cautioned, because "[b]y definition, circumstantial evidence requires the trier of fact to make inferences, but those inferences must have a sounder basis than 'speculation or conjecture.'" *Bible v. State*, 411 Md. 138, 157 (2009) (quoting *Taylor v. State*, 346 Md. 452, 458 (1997)). More recently, we have reinforced the axiom that "no greater certainty is required when the evidence is circumstantial than when it is direct[.]" *Martin v. State*, 218 Md. App. 1, 35 (internal

quotation and citation omitted), *cert. denied*, 440 Md. 463 (2014), *cert. denied*, 135 S. Ct. 2068 (2015).

Chase concedes that the evidence was sufficient to place him in the minivan: "…the presence of [his] blood on the headrest of the passenger seat at most established merely that he was present in the vehicle." He continues that his mere presence in the minivan was "… insufficient to prove beyond a reasonable doubt that he stole or possessed the vehicle …." That concession, however, loses sight of the fact that he was not convicted of theft of the *taking and carrying away* variety (*See* CL § 7-203(a))[5] or of theft by possession of stolen property (*See* CL § 7-104(c))[6]; rather, he was convicted of theft of a motor vehicle

[5] CL § 7-203(a) provides that: "Without the permission of the owner, a person may not take and carry away from the premises or out of the custody of another or use of the other, or the other's agent, or a governmental unit any property, including: … (2) a motor vehicle[.]"

[6] CL § 7-104(c) provides that:

> (1) A person may not possess stolen personal property knowing that it has been stolen, or believing that it probably has been stolen, if the person:
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> (i) intends to deprive the owner of the property;
>
> (ii) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
>
> (iii) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(*See* CL § 7-105(b))[7] and of theft by the *exertion of unauthorized control over the property* variety (*See* CL § 7-104(a)).[8]

Chase relies on *In re Melvin M.*, 195 Md. App. 477 (2010), in which we held that mere presence in a vehicle, known by Melvin to have been stolen, absent evidence that he engaged in conduct which demonstrated his restraining or directing influence over the vehicle, was insufficient to support a conviction for theft of the possession of stolen property variety. 195 Md. App. at 490. However, contrary to the instant appeal, Melvin had been charged under CL § 7-104(c) for *possession* of stolen property. *Id*. at 479. We reiterate that Chase has been convicted of theft of a motor vehicle and of unauthorized control over property, not of possession of stolen property. Chase's reliance on *In re Melvin M.* is misplaced.

Notwithstanding, in his brief, Chase focuses on the fact that Melvin had just been a passenger in the stolen vehicle, placing significance on the fact that Chase's blood was

[7] CL § 7-105(b) provides that: "A person may not knowingly and willfully take a motor vehicle out of the owner's lawful custody, control, or use without the owner's consent."

[8] CL § 7-104(a) provides that:

> (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.

found only on the passenger side headrest of the vehicle, which he offers is a suggestion as to him having "merely be[en] a passenger at some point[.]" We disagree.

The DNA evidence admitted at trial was taken from the blood stain found on the front passenger seat headrest *inside* the minivan. In fact, it was the front passenger side window that had been shattered, presumably to gain access to the vehicle. Kearse had testified that the blood stain was not there before the theft because he had spent a few days cleaning the minivan to use. The minivan had been located away from where Kearse had parked it the night before, and with the inside of the vehicle having been removed or damaged. The State also offered photographic evidence of the blood stain and the broken window, which was corroborated by police testimony. The jury was given instructions on direct and circumstantial evidence, and was permitted to draw from that evidence an inference of guilt as to obtaining[9] or exerting control[10] of the minivan as well as to the intent to deprive.

The introduction of the State's DNA evidence, from the swabbing of the interior of the vehicle to the testing and matching process was without objection, or even serious challenge. That circumstantial evidence stands alone as the basis for submitting the matter to the jury. *See Whack v. State*, 433 Md. 728, 732 (2013) (explaining that "DNA is a powerful evidentiary tool and its importance in the courtroom cannot be overstated…. [It]

[9] "Obtain" is defined as, "in relation to property, to bring about a transfer of interest in or possession of the property[.]" CL § 7-101(g).

[10] "Exert control" means "to take, carry away, appropriate to a person's own use or sell, convey, or transfer title to an interest in or possession of property." CL § 7-101(d)(1).

can place a defendant at the scene of a crime, providing a firm scientific foundation for a prosecutor's case, particularly when other evidence may be lacking.").

Judge Moylan recently spoke for this Court, in *Ross v. State*, 232 Md. App. 72 (2017):

> Even in a case resting solely on circumstantial evidence, and resting moreover on a single strand of circumstantial evidence, if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal sufficiency of the evidence. The State is **NOT** required to negate the inference of innocence. It is enough that the jury must be persuaded to draw the inference of guilt.

Ross, 232 Md. App. at 98 (capitalization and bold in original).

We are satisfied that the DNA evidence alone was sufficient to get the case to the jury, and we are equally satisfied that the jury did not require mere speculation to convict Chase of unauthorized control and theft of the Kearse minivan.

Value of the minivan

Although we have determined that Chase has not preserved his argument that the State did not prove the requisite value of the stolen minivan to move the charge to the felony level, we are satisfied that the proof was sufficient. Kearse's testimony that he purchased the minivan for $500 and thereafter spent $600 for a new engine was sufficient for the jury to determine a value of "at least $1,000." Moreover, Kearse opined that the minivan had a resale value of $2,000.

Chase contends that because "[t]here was no evidence presented that the market value of the vehicle could not satisfactorily be ascertained," or as to the cost to replace the

vehicle, the only question is "whether the evidence at trial established that 'the market value of the property … at the time and place of the crime' was at least $1,000." On the contrary, the evidence presented was that: Kearse was "looking for a van" and "[a] friend of a friend" connected him with "somebody [who] needed space in their yard[,]" and who would "give it to [him] for a small amount[;]" he bought the minivan for $500 "around April, end of March[;]" he paid $600 for an engine to be put in the minivan; it was 14 years old at the time of theft; and was "running fairly decent." Moreover, Kearse estimated the van to have a resale value of $2,000. An owner of property is qualified to give an opinion of the value of the property. *See Pitt v. State*, 152 Md. App. 442, 465 (2003) (providing that "[a]n owner of goods is presumptively qualified to provide testimony regarding the value of his goods" (citing *Cofflin v. State*, 230 Md. 139, 142 (1962))), *aff'd*, 390 Md. 697 (2006). The evidence of value, offered without objection, was not contested.

Post-conviction

Finally, Chase avers that his trial counsel rendered ineffective assistance in failing to argue with particularity in support of the motions for judgment of acquittal at the end of the State's case and at the end of the entire case. He invites us to consider his claim in this direct appeal. We decline the invitation.

Claims of ineffective assistance of counsel are properly raised in a post-conviction proceeding. *See Wimbish v. State*, 201 Md. App. 239, 265 (2011) (quoting *Robinson v. State*, 404 Md. 208, 219 (2008))). As the State points out, the rationale was explained by the Court in *Smith v. State*, 394 Md. 184 (2006):

> The main justification for the rule is that, generally, the trial record does not provide adequate detail upon which the reviewing court could base an assessment regarding whether counsel rendered ineffective assistance because the character of counsel's representation is not the focus of the proceedings and there is no discussion of counsel's strategy supporting the conduct in issue.

Smith, 394 Md. at 200 (citations omitted).

In *Mosley v. State*, 378 Md. 548, 562 (2003), the Court of Appeals announced that ineffective assistance review on direct appeal is appropriate only in "exceptional cases." This is not one of those exceptional cases.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS ASSESSED TO APPELANT.