Circuit Court for Harford County
Case No: 12-K-17-1703

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2634

September Term, 2018

ANTHONY KEITH PAGE

v.

STATE OF MARYLAND

Fader, C.J.,
Gould,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: November 7, 2019

A jury sitting in the Circuit Court for Harford County convicted Anthony Keith Page, the appellant, of three offenses related to a burglary of Auto Plus, an auto parts warehouse and store in Abbington. The court sentenced Mr. Page to a term of imprisonment followed by supervised probation, and also ordered him to pay restitution to both Auto Plus and Super Pawn, a pawn store in Laurel to which Mr. Page sold several items that had been stolen from Auto Plus. Mr. Page now contends that: (1) the evidence was insufficient to establish his criminal agency; (2) the trial court erred in denying his *Batson* challenge; and (3) the sentencing court erred in ordering him to pay restitution to Super Pawn. We will affirm the judgments.

BACKGROUND

About 6:30 a.m. on September 15, 2017, Donald Stevenson, Jr. arrived for work at Auto Plus. He soon discovered that the store's glass front door was shattered and promptly called 9-1-1. The police, along with store manager Matthew Florian, arrived a few minutes later to find that the front door was smashed; there was a "cinder block laying on the floor"; and about 60 items were missing, including a pressure washer, battery jump packs, cables, battery tenders, various lights, air hoses, and grease guns, with a total value of $4,832.02, along with approximately $200 in cash from the office safe.

The police obtained surveillance video footage from two adjacent businesses. The video, which the jury viewed at trial, is not part of the record on appeal. According to a narration provided during trial by a Harford County Sheriff's Office detective, the video showed "a smaller dark-colored pick-up truck" entering the business premises and "then backing to the front" of the Auto Plus store. The detective stated that the video then

captured "a figure" getting out of the truck, walking back to the vehicle, and then throwing an object through the front door. The video also captured the person going in and out of the business numerous times and then getting back in the truck and driving away.

Using a database that identifies transactions at pawn stores, the police discovered that on the date of the burglary, Mr. Page sold Super Pawn a number of items that appeared to match descriptions of those missing from Auto Plus. Specifically, Super Pawn's records revealed that at 11:39 a.m. on September 15, a few hours after Mr. Stevenson discovered the burglary at Auto Plus, Mr. Page sold Super Pawn 17 items that were later identified as having been stolen that morning from Auto Plus. Mr. Page returned to Super Pawn the following day and sold seven additional stolen items.

The police obtained a search warrant for the home of Mr. Page's grandmother, where Mr. Page resided, and they executed the warrant on September 20. Although they did not recover any of the stolen goods at the grandmother's house, they did observe a dark green Chevy S-10 pick-up truck parked across the street, which they later discovered was registered to the grandmother. The bed of the truck contained a "built in" tool box.

At trial, Mr. Page testified that he is an auto mechanic. He claimed that on the morning of the burglary he had received a phone call from Kevin Braun, an acquaintance, who advised that he had tools to sell. They arranged to meet, and Mr. Page bought the tools. When he could not "flip" the goods to other mechanics, Mr. Page took them to Super Pawn and sold them. He denied using his grandmother's truck to burgle Auto Plus.

In rebuttal, the State introduced evidence that Mr. Braun, who had died before trial, had been confined in the Harford County Detention Center from February 8 through October 11, 2017.

The jury convicted Mr. Page of all three charges. Mr. Page timely appealed.

DISCUSSION

Mr. Page argues that (1) the evidence adduced at trial was insufficient to establish his criminal agency in the crimes charged; (2) the trial court erred in denying his *Batson* challenge; and (3) the sentencing court erred in ordering him to pay restitution to Super Pawn. We address each contention in turn.

I. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE CONVICTIONS.

The standard for reviewing 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." *Darling v. State*, 232 Md. App. 430, 465 (2017) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "The standard of review is the same 'regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone.'" *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Smith v. State*, 415 Md. 174, 185 (2010)). "In determining whether evidence was sufficient to support a conviction, an appellate court 'defer[s] to any possible reasonable inferences [that] the trier of fact could have drawn from the . . . evidence[.]'" *Jones v. State*, 440 Md. 450, 455 (2014) (alterations in *Jones*) (quoting *Hobby v. State*, 436 Md. 526, 538 (2014)).

Viewed in the light most favorable to the State, the evidence presented at trial was sufficient to permit a rational juror to conclude that Mr. Page burglarized Auto Plus on September 15, 2017. Just hours after Mr. Stevenson discovered the broken glass and called the police, Mr. Page sold Super Pawn numerous items that had been stolen from Auto Plus. That alone was enough to support a conviction under our decision in *Molter v. State*: "We have long and consistently held that exclusive possession of recently stolen goods, absent a satisfactory explanation, permits the drawing of an inference of fact strong enough to sustain a conviction that the possessor was the thief." 201 Md. App. 155, 163 (2011) (emphasis removed) (quoting *Brewer v. Mele*, 267 Md. 437, 449 (1972)). Moreover, as the State points out, the jury received additional evidence implicating Mr. Page, including his discredited explanation that he purchased the items from Mr. Braun and evidence that the perpetrator drove a small, dark-colored pick-up truck similar to the one owned by Mr. Page's grandmother.

Mr. Page argues that in spite of *Molter*'s explicit language, we should interpret that case actually to require more than the unexplained possession of recently stolen goods because in *Molter*, the State had additional evidence. Even if we could otherwise ignore such a clear statement of the law, we recently rejected that proposition in *Hall v. State*:

> *Molter* does not stand for the proposition that a minimum amount of evidence is necessary in addition to the possession of recently stolen property in order to support an inference that the possessor was the thief or burglar. Rather, it stands for the proposition that the unexplained possession of recently stolen property permits the jury to infer guilt by *itself*.

225 Md. App. 72, 82 (2015); *see also Grant v. State*, 318 Md. 672, 680-81 (1990) ("Ordinarily, the unexplained, exclusive possession of recently stolen goods permits an

inference that the possessor is the thief. . . . And when it is shown that the property was stolen as a consequence of a breaking, the trier of fact may further infer that the thief was involved in the breaking." (citations omitted)).

The only explanation Mr. Page offered for his possession of the recently stolen goods was that he had purchased them that morning from Mr. Braun. The State undermined this claim by introducing evidence that Mr. Braun was incarcerated at the time. In short, Mr. Page's "unexplained, exclusive possession of [the] recently stolen goods," *Grant*, 318 Md. at 680, "is proof of guilt that may stand alone" to support his convictions, *Molter*, 201 Md. App. at 163. And, as noted above, the jury did receive additional evidence implicating Mr. Page. We therefore hold that a jury could reasonably conclude beyond a reasonable doubt that Mr. Page committed the charged crimes.

II. THE COURT DID NOT ERR IN DENYING MR. PAGE'S *BATSON* CHALLENGE.

Mr. Page next contends that the circuit court erred in denying his *Batson* challenge to the State's striking of two African-American jurors, identified in the record as Jurors No. 1 and 16. Because the circuit court judge followed precisely the three-step procedure required for *Batson* challenges and reasonably determined that Mr. Page failed to show any purposeful discrimination, we will affirm.

"[T]he exercise of peremptory challenges on the basis of race, gender, or ethnicity violates the Equal Protection Clause of the Fourteenth Amendment." *Ray-Simmons v. State*, 446 Md. 429, 435 (2016). In *Batson v. Kentucky*, 476 U.S. 79 (1986), the United States Supreme Court set forth a three-step process to assist trial courts in resolving a claim that a party used a peremptory challenge to strike a prospective juror based on his or her

race, gender, or ethnicity. *See Ray-Simmons*, 446 Md. at 435. First, the challenger must make a prima facie showing that the striking party exercised a preemptory strike for a constitutionally impermissible reason. *Id.* at 436. "A prima facie case is established if the [challenger] can show 'that the totality of the relevant facts gives rise to an inference of discriminatory purpose.'" *Id.* (quoting *Johnson v. California*, 545 U.S. 162, 168 (2005)). Second, the burden shifts to the striking party, here the State, to provide "an explanation for the strike that is neutral as to race, gender, and ethnicity." *Ray-Simmons*, 446 Md. at 436. "[This] explanation must be neutral, 'but does not have to be persuasive or plausible. Any reason offered will be deemed race-neutral unless a discriminatory intent is inherent in the explanation.'" *Id.* (quoting *Edmonds v. State*, 372 Md. 314, 330 (2002)). Third, the trial court must determine whether the challenger has proved "purposeful racial discrimination." *Id.* at 437 (quotation omitted). The court evaluates "whether the [striking party's] demeanor belies a discriminatory intent" and "whether the juror's demeanor can credibly be said to have exhibited the basis for the strike attributed to the juror by the [striking party]." *Id.* (alternations in *Ray-Simmons*) (quoting *Synder v. Louisiana*, 552 U.S. 472, 477 (2008)). "Because a *Batson* challenge is largely a factual question, a trial court's decision in this regard is afforded great deference and will only be reversed if it is clearly erroneous." *Ray-Simmons*, 446 Md. at 437 (citation omitted).

During voir dire, Juror No. 16 informed the court that she knew defense counsel, an attorney with the Office of the Public Defender, from her own work as "records manager" for that office in a different jurisdiction. After the juror stated that she could be impartial, and defense counsel clarified that she had not had any contact with Juror No. 16 since

counsel changed offices in 2001, the court declined to strike Juror No. 16 for cause. The State later used a peremptory strike on Juror No. 16.

The State then used its second peremptory strike on Juror No. 1, an African-American juror who had not answered any questions during voir dire. The defense made its *Batson* challenge, arguing that "[t]he only two strikes that [the State] employed [we]re [] African American jurors," and that "[i]t d[id]n't appear that another [African-American] juror will come up for approximately another eight jurors." The court turned to the State for an explanation. Regarding Juror No. 16, the State explained "that it was asking too much to believe" that her employment with the Office of the Public Defender would not in some way influence her. Regarding Juror No. 1, the State asserted that (1) he "was the same age as the Defendant," (2) he "basically lives in Edgewood," like Mr. Page, and (3) "since he was put in the jury box . . . he just had this either falling asleep or he [wa]s very unhappy about being seated on the jury. And that was my take from watching his body language." The court accepted these explanations and found "that there is no pretext in the reasons [the State] exercised those strikes."

Conceding that the trial court satisfied the first two steps of the *Batson* test, Mr. Page asserts that the court erred in step three. He contends that he met his burden of proving that the State engaged in intentional discrimination because the prosecutor's explanation for striking Juror No. 1 "was simply an explanation that served as a surrogate for race." Mr. Page also nominally challenges the State's exercise of a peremptory strike as to Juror No. 16, but he fails to present any supporting argument as to that juror.

The record provides no basis on which we could disturb the trial court's finding that the State's proffered neutral reasons for striking the jurors were not pretexts for unlawful discrimination. *See Acquah v. State*, 113 Md. App. 29, 58 (1996) ("If the trial court finds the prosecutor's explanation credible, there is little left to review."). Mr. Page is essentially asking us to revisit the facts and come to a different finding from that of the trial judge. That is not our role. We hold that the trial court's factual finding was not clearly erroneous and that the court did not commit any legal error in handling Mr. Page's *Batson* challenge.

III. THE COURT DID NOT ERR IN ORDERING MR. PAGE TO PAY RESTITUTION TO SUPER PAWN.

Mr. Page's final contention is that the court erred in ordering him to pay $365 in restitution to Super Pawn. We hold the court did not.

"Generally, an appellate court reviews a circuit court's order of restitution for abuse of discretion." *In re G.R.*, 463 Md. 207, 213 (2019) (citation omitted). If the court's order involves "an interpretation and application of Maryland statutory and case law," the decision is reviewed without deference. *Id.* (quotation omitted). As relevant here, § 11-603 of the Criminal Procedure Article provides that a court may enter a judgment of restitution ordering a defendant to "make restitution" for the commission of a crime if, "as a direct result of the crime," the "victim" incurred a "direct out-of-pocket loss." Md. Code Ann., Crim. Proc. § 11-603(a)(1)(ii) (Repl. 2018). A "victim" is "a person who suffers death, personal injury, or property damage or loss as a direct result of a crime." Crim. Proc. § 11-601(j)(1). Additionally, § 11-606 of the Criminal Procedure Article authorizes a court to order that restitution be paid to "a person who has provided to or for a victim goods,

property, or services for which restitution is authorized under § 11-603 of this subtitle." Crim. Proc. § 11-606(a)(5).

At trial, the State produced evidence that 60 to 70 items valued at $4,832.02, plus $200 in cash, were stolen from Auto Plus on September 15, 2017. The State established that Mr. Page had sold Super Pawn 24 items, for which Super Pawn paid him $365. Within days of the transactions, the police recovered those items from Super Pawn. Although the State concedes that the record does not contain testimony stating expressly that the police then returned those items to Auto Plus, that seems readily apparent from what is in the record, including Super Pawn's claim for restitution (which would not exist if it had kept the items) and the reduction in Auto Plus's claim. The return of those items left Super Pawn with a deficit of $365, the amount of its unrefunded payment to Mr. Page.

At sentencing, the State asserted that because of Mr. Page's crimes, Auto Plus suffered a loss of $3,320—presumably adjusted for the return of the items found at Super Pawn—and Super Pawn suffered a loss of $365. The State informed the court that Auto Plus and Super Pawn requested restitution in those amounts, respectively. Mr. Page did not challenge the amounts at that time, and his counsel informed the court that Mr. Page "wants to pay these folks back the money that they are due." Mr. Page also did not object when the court then imposed restitution in those amounts to those businesses.

Mr. Page now contends that the court erred in imposing the restitution obligation to Super Pawn because Super Pawn was not the victim of the crime of which he was convicted. As an initial matter, the State argues that Mr. Page did not preserve his argument, but acknowledges that he may nonetheless have some limited right to raise it to

the extent he claims the restitution obligation is illegal. The State also contends, however, that even if the court erred in imposing restitution without specific testimony that Super Pawn returned the items, that would not make the sentence itself inherently illegal. *See Chaney v. State*, 397 Md. 460, 466 (2007) ("The scope of this privilege, allowing collateral and belated attacks on [a] sentence . . . , is narrow," and is "limited to those situations in which the illegality inheres in the sentence itself." (emphasis removed)).

We do not reach that argument, because even assuming that Mr. Page's argument is preserved, we will affirm. Mr. Page correctly states that "[a] circuit court may not order restitution for crimes of which the defendant has not been convicted, unless the defendant has expressly agreed to pay such restitution as part of a valid plea agreement." *Silver v. State*, 420 Md. 415, 436-37 (2011). Mr. Page's reliance on *Silver* and related cases is flawed, however, because he conflates the proposition that the trial court cannot require restitution for crimes of which the defendant was not convicted—which is accurately stated—with the proposition that the trial court cannot require restitution to a person other than the direct victim of a crime of which the defendant was convicted—which is not. Indeed, Criminal Procedure Article § 11-606 expressly provides for non-victim restitution to be paid to "a person who has provided to or for a victim goods, property, or services for which restitution is authorized under § 11-603 of this subtitle." Crim. Proc. § 11-606(a)(5).

Here, Mr. Page stole goods from Auto Plus and sold them to Super Pawn. Super Pawn suffered a direct loss when the items Mr. Page had sold were returned to Auto Plus. At that time, Super Pawn became eligible to receive restitution from Mr. Page to recoup its $365 loss. Moreover, Super Pawn's return of the items apparently resulted in a reduction

of Auto Plus's restitution claim of $1,712, thus producing a windfall to Mr. Page of $1,347.[1] Given the direct connection between the burglary and Super Pawn's loss, we do not think that the law required the State to charge and convict Mr. Page separately of defrauding Super Pawn before he could be ordered to pay restitution for its losses.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[1] Auto Plus originally claimed losses of $5,032, including goods and cash. After the return of the 24 items from Super Pawn, its claimed losses were reduced to $3,320. The total restitution obligation to both Super Pawn and Auto Plus was thus $3,685, which is $1,347 less than $5,032.