

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0649

September Term, 2015

CLIFFORD EUGENE MOCK

v.

STATE OF MARYLAND

Graeff,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: April 15, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare

decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Washington County convicted Clifford Eugene Mock, Appellant, of theft under \$1,000.00. Appellant was sentenced to a term of eighteen months' incarceration. In this appeal, Appellant presents the following question for our review:

Was the evidence legally sufficient to sustain Appellant's conviction of theft under \$1,000.00?

Finding the evidence sufficient, we affirm.

BACKGROUND

On November 4, 2014, Annette Johnson was at the bus station when she was accosted by Appellant, who “grabbed a hold” of her and “grabbed” her purse. After a brief struggle, Ms. Johnson was able to regain possession of the purse, at which time she noticed that Appellant had removed a pack of cigarettes from her purse. Ms. Johnson testified that she did not give Appellant permission to take her cigarettes, nor did she have any prior agreement with Appellant regarding the cigarettes.

Another individual, Monica Jarc, was at the bus station at the time of the incident and witnessed the altercation. Ms. Jarc indicated that she saw Appellant become “physically aggressive” toward Ms. Johnson, “grabbing at her purse, pushing at her, trying to pull her up.” Ms. Jarc indicated that there was “a lot of screaming” and that Ms. Johnson stated: “Leave me alone, leave me alone.” According to Ms. Jarc, Appellant then “grabbed the purse, reached in, removed something and shortly after that...took off running.”

Ms. Jarc called the police, and Washington County Police Officer Thomas Cox responded to the scene. After Appellant was taken into custody, Officer Cox questioned him

about the incident, at which time Appellant indicated that he was arguing with Ms. Johnson “over a debt” and that he believed “she owed him cigarettes.” Appellant also admitted that he took Ms. Johnson’s purse, but he gave it back to her and “left with the cigarettes.” Officer Cox retrieved a pack of cigarettes from Appellant’s person, and these cigarettes were later identified as the same ones taken from Ms. Johnson’s purse.

At trial, Appellant testified that he had known Ms. Johnson for approximately two years and that, on the day in question, the two were “drinking together.” At some point, according to Appellant, the two “went half on a pack of cigarettes,” gave their money to a third individual to purchase the cigarettes, and then agreed to meet later “behind Market Lot.” When Ms. Johnson did not show up, Appellant “went uptown” and saw her “sitting at the bus station.” Appellant approached Ms. Johnson, reached in her bag, and pulled out a pack of cigarettes. According to Appellant, Ms. Johnson took back the cigarettes and proceeded to kick him, knocking him to the ground. Appellant then grabbed her leg, “got the cigarettes, stood up from underneath her leg and walked away[.]”

DISCUSSION

Appellant argues that the evidence was legally insufficient to sustain his theft conviction. Appellant maintains that he “acted under a good faith claim of right when he

took the cigarette pack from Annette Johnson.” Therefore, according to Appellant, “he should not stand convicted of stealing property that actually belonged to him.” We disagree.¹

“In reviewing the sufficiency of the evidence presented...we consider the evidence in the light most favorable to the prosecution.” *Painter v. State*, 157 Md. App. 1, 10 (2004) (internal citations omitted). “We then determine whether, based on that evidence, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Id.* at 10-11 (internal citations omitted). “The 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.’” *Id.* at 11 (internal citations omitted). “When we apply that test, we consider circumstantial as well as direct evidence.” *Id.* And as to circumstantial evidence, it alone may be “sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.” *Id.* (internal citations omitted).

¹At trial, when arguing “claim of right” in his motion for judgment of acquittal, defense counsel may have conceded that this was a question of fact for the jury. On appeal, the State argues that this “concession effectively withdrew that grounds for granting the motion for judgment of acquittal from the trial court’s consideration,” which rendered the issue unpreserved under Md. Rule 4-324. Even if we agreed with the State’s conclusions, which we do not, the record reflects that defense counsel continued his argument after he made this “concession.” Therefore, the State’s contention that the issue was waived is without merit, as there was no “withdrawal” of defense counsel’s motion.

Under Section 7-104 of the Criminal Law Article of the Maryland Code, a person commits theft if he obtains or exerts unauthorized control over property with the intention of depriving the owner of the property. *Id.* In order to convict a defendant of theft, the State must prove beyond a reasonable doubt that the defendant intended to commit the act (to obtain or exert control over the property) and that the defendant intended to cause the particular result (to deprive the owner of property). *See State v. Coleman*, 423 Md. 666, 673 (2011). Implicit in this determination is that the defendant intended to deprive another person (the owner) of the property. If, on the other hand, the defendant is the owner of the allegedly stolen property, he cannot be convicted of theft. *See Id.*

A defendant may even rebut the intent element of theft without having any actual ownership in the property, provided he can establish that he “acted in the honest belief that [he] had the right to obtain or exert control over the property[.]” Md. Code, Criminal Law § 7-110(c)(2). This is sometimes referred to as the “claim of right” defense:

The claim of right defense springs from the notion that in cases of common law larceny the defendant must have had an intent to permanently deprive the owner of the property. If the defendant acted under a mistake as to his right to deal with the property, he could not be guilty of larceny....[T]his defense operates to negate the *mens rea* for the offense of theft, thereby providing a total defense.

Sibert v. State, 301 Md. 141, 147-149 (1984) (internal citations omitted).

Nevertheless, whether a defendant was acting under a “claim of right” is a question of fact for the jury, and any evidence presented by the defendant in support “will be weighed

by the trier of the facts in resolving the issue of whether the defendant possessed the requisite mens rea to commit the offense of theft.” *Id* at 147. In addition, “[g]iven the subjective nature of intent, the trier of fact may consider the facts and circumstances of the particular case when making an inference as to the defendant’s intent.” *State v. Manion*, 442 Md. 419, 434 (2015). We further note that, in drawing these inferences, “it is the jury’s task, not the court’s, to measure the weight of evidence and to judge the credibility of witnesses.” *Dawson v. State*, 329 Md. 275, 281 (1993). As such, “[w]e defer to any possible reasonable inferences [the factfinder] could have drawn from the admitted evidence and need not decide whether [the factfinder] could have drawn other inferences from the evidence[.]” *State v. Mayers*, 417 Md. 449, 466 (2010).

In the present case, Appellant’s “claim of right” to the pack of cigarettes rests solely on his assertion that he and Ms. Johnson pooled their money to purchase the cigarettes. This assertion, however, was directly refuted by Ms. Johnson, who testified that she and Appellant had no such agreement. In light of this testimony, as well as the testimony of Ms. Jarc, a reasonable inference could be drawn that Appellant did not have a good-faith claim of right to the cigarettes, despite his assertions to the contrary. *See Pryor v. State*, 195 Md. App. 311, 329 (2010) (“A fact-finder is free to believe part of a witness’s testimony, disbelieve other

parts of a witness’s testimony, or to completely discount a witness’s testimony.”).

Accordingly, the evidence was legally sufficient to sustain Appellant’s theft conviction.²

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

²We should note that, even without Ms. Johnson’s testimony, Appellant’s “claim of right” would likely fail. Under Md. Code, Criminal Law § 7-110(a)(1), “[i]t is not a defense to the crime of theft that the defendant has an interest in the property...if another also has an interest in or right to possess the property[.]” *Id.*