

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0075

September Term, 2016

COKIE JOE GOPSHES

v.

STATE OF MARYLAND

Woodward,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: April 19, 2017

*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 sitting in the Circuit Court for Howard County convicted appellant, Cokie Joe Gopshes, of theft over \$100,000, and unlawful taking of a motor vehicle. After merging the two offenses for sentencing purposes, the court sentenced Gopshes to fifteen years of active incarceration to be served concurrently with any sentence the Gopshes was already serving.

Gopshes presents two questions for our review, which we have reformulated:

1. Did the trial court properly exercise its discretion in permitting Gopshes to be impeached with his prior conviction?
2. Was the evidence sufficient to prove that Gopshes knew that the tractor-trailer was stolen?

For the reasons discussed below, we affirm.

BACKGROUND

On July 12, 2014, Detective Joseph Pugliese of the Howard County Police Department was conducting covert surveillance in the area of 801 Chesapeake Avenue in Baltimore City. He and other detectives arrived at the location, an industrial lot, at 11:43 p.m. Once there, he observed a white tractor-trailer in an otherwise empty and quiet lot. Donning a camouflage suit, Detective Pugliese approached to within ten to fifteen feet of the tractor-trailer. At 12:15 a.m. on July 13, Detective Pugliese observed Gopshes standing next to the tractor-trailer.

At 12:19 a.m. Detective Pugliese observed a yellow box truck enter the lot and park in close proximity to the tractor-trailer. Detective Pugliese then observed a group of people exit the box truck, and one person began giving orders for the others to “start working” on the tires. Another vehicle then entered the lot and the order was given to “get into a truck

and wait until he leaves.” Detective Pugliese then saw Gopshes and the other individuals enter the yellow box truck. Next, Detective Pugliese saw a Baltimore City police helicopter circling above the lot. Shortly thereafter he observed someone open a car door and start throwing what he later discovered to be tire lug nuts. The yellow box truck left the area at 12:42 a.m..

At 1:30 a.m., Detective Pugliese observed the tractor-trailer leave the lot. Detective Pugliese then returned to his car and began to look for the tractor-trailer, which he discovered parked on the side of a nearby road with its “four-way flashers” on. Gopshes was seen exiting the driver’s side door of the tractor and walking back to where the tractor and the trailer connected to each other. A few minutes later Gopshes re-entered the driver’s side door of the tractor and drove away, leaving the trailer parked on the side of the road.

Detective Pugliese followed the tractor in his unmarked vehicle. Detective Hanna Cerrone, also of the Howard County Police Department, also followed the tractor in her own unmarked vehicle. When the tractor stopped at a red light, Detective Cerrone pulled alongside the tractor and observed Gopshes in the driver’s seat, operating the vehicle. They lost sight of the tractor for a short period of time, but at 3:05 a.m., Detective Pugliese observed Gopshes walking in the area of 1667 Knecht Ave. The yellow box truck arrived shortly thereafter, picked up Gopshes, and drove away. The tractor was located in a nearby secluded lot.

Gopshes testified in his own defense that, at approximately 9:30 in the evening of July 12, 2014, he received a phone call from a person with whom he had previously worked, and this person asked him if he would help with a “side job” transporting a tractor-

trailer. He testified that later that evening he was picked up, driven to a lot in Jessup where the tractor-trailer was located, and that he had driven the tractor-trailer to the lot on Chesapeake Avenue in Baltimore. He testified that he observed a clipboard in the passenger compartment that contained paperwork detailing the load of potatoes that were in the trailer, but admitted that there was no bill of lading detailing that the potatoes were to be dropped on the side of the road. He further testified that he was aware that the trailer had a refrigeration unit that was running at the time he was operating the tractor-trailer. He testified that there were keys in the ignition, but that he was unaware that the tractor-trailer had been stolen. He testified that he believed that the people who arrived in the box truck were “adjusting the breaks or doing something with the suspension.” He also claimed (contrary to Detective Pugliese’s testimony) that when the helicopter began circling overhead and someone ordered everyone into trucks, he did not get into a truck.

The next day, the police discovered that the tractor-trailer had been stolen from a lot owned by the Capital Produce Company (“Capital Produce”) in Howard County. Capital Produce leased the truck, which had a load of twenty-four pallets of potatoes, from Penske. Neither Gopshes, nor the individual whom Gopshes claimed called and paid him for the side job, was employed by Capital Produce at any time. Nor did either of the men have permission to take the tractor-trailer. At the time of the theft, the tractor-trailer had a value of at least \$100,000.

DISCUSSION

Prior Theft Convictions

Gopshes alleges that “the trial court abused its discretion by admitting five prior theft convictions” to impeach his credibility when he “was on trial for theft related charges.” He argues that the “probative value of the theft convictions did not outweigh the significant danger of prejudicial effect,” and as a result he “was not protected from being convicted based on his past criminal record, and was subjected to impermissible unfair prejudice.” The State responds that the “trial court properly exercised its discretion when it determined that Gopshes could be impeached with five theft convictions,” as they “were highly probative of Gopshes’ credibility, which was the central issue in the case.” Further the State argues that the “court took steps to minimize the potential for unfair prejudice.” We hold that the trial court did not abuse its discretion.

Maryland Rule 5-609 governs the admissibility of a prior conviction to impeach the credibility of a witness. The rule “essentially creates a three-part test for determining the admissibility of prior convictions for impeachment purposes.” *Cure v. State*, 195 Md. App. 557, 575 (2010). *First*, the prior conviction must be an “infamous crime or other crime relevant to the witness’s credibility.” Rule 5-609(a). Theft “is the embodiment of deceitfulness” and, therefore, qualifies as an “infamous crime.” *Beales v. State*, 329 Md. 263, 270 (1993). *Second*, the conviction cannot be more than 15 years old, and may not have been reversed on appeal, pending appeal, or the subject of a pardon. Rule 5-609(b), (c). And *third*, the court must determine that “the probative value of admitting this evidence

outweighs the danger of unfair prejudice to the witness or the objecting party.” Rule 5-609 (a).

The Court of Appeals has identified “five non-exhaustive considerations to guide trial courts in weighing the probative value of a prior conviction against the danger of unfair prejudice:”

(1) the impeachment value of the prior crime; (2) the time that has elapsed since the conviction and the witness’s history subsequent to the conviction; (3) the similarity between the prior crime and the conduct at issue in the instant case; (4) the importance of the witness’s testimony; and (5) the centrality of the witness’s credibility.

King v. State, 407 Md. 682, 700 (2009) (quoting *Jackson v. State*, 340 Md. 705, 717 (1995)). This balancing is a matter within the trial court’s discretion. *Cure*, 195 Md. App. at 576. “When the trial court exercises its discretion in these matters, we will give great deference to the court’s opinion,” and we “will not disturb that discretion unless it is clearly abused.” *Jackson*, 340 Md. at 719 (internal citations omitted). The “risk of prejudice is particularly great where the crime for which the defendant is on trial is identical or similar to the crime of which he has previously been convicted.” *Id.* at 716. Therefore, Rule 5-609 “requires the trial judge to perform his or her duty of weighing the legitimate probative value of the cross-examination against the illegitimate tendency to prejudice.” *Id.* “Where credibility is the central issue, the probative value of the impeachment is great, and thus weighs heavily against the danger of unfair prejudice.” *Id.* at 721.

In the instant case, the trial court considered the factors listed above when weighing the probative value of Gopshes’ prior convictions against the danger of unfair prejudice, and concluded:

All right. The Court has considered the arguments. The Court is conducting the balancing test as to any unfair prejudice as against the probative value or even vice versa. And the court is cognizant of the direction it's been given in *Jackson v. State* [340 Md. 705, 719 (1995)] with the factors. They're not exclusive but the Court has to weigh them in its balancing. And clearly the impeachment value of the prior crime, the point in time of the conviction and the defendant's subsequent history, similarity between the past crime and the crime charged, the importance of the defendant's testimony, and the centrality of the defendant's credibility.

I think this is going to be a clear issue of credibility in determining whether or not the person should be believed. The Court definitely does not want to discourage the defendant from testifying but the Court recognizes that he has five prior theft convictions. I would also agree with the Defense that [the jury] should not know if there are any motor vehicle thefts. I think that would tip the balance or tip the scales that it would be more prejudicial. But – and they are similar crimes and I do recognize that. But clearly, this is a situation where the finder of fact has to determine credibility.

Gopshes' prior convictions were for theft, and therefore qualified as “infamous crimes” relevant to his credibility. Rule 5-609(a). Further, none of the convictions were more than 15 years old on the date of trial, as they occurred between 2001 and 2011. That Gopshes' prior convictions were for theft, weighs against their use for impeachment at his trial for theft. *Jackson*, 340 Md. at 715. Gopshes' credibility was central in this case, however, as his testimony ran directly counter to the State's theory of the case, that Gopshes was involved in the theft of the tractor trailer. Gopshes testified that he believed that he was engaged in a legitimate business activity, and therefore was not aware that the tractor-trailer was stolen. To render a verdict, the jury was required to weigh the State's evidence against Gopshes' testimony.

In light of all of this, we hold that the trial court did not abuse its discretion when it weighed the probative value of Gopshes’ prior convictions against the danger of unfair prejudice pursuant to Rule 5-609, and admitted the evidence of Gopshes’ prior convictions.

Sufficiency of Evidence

Gopshes asserts that the “evidence presented at [his] jury trial was so scarce that no rational trier of fact could have found [him] involved in the crime of theft over \$100,000, or the unlawful taking of a motor vehicle.” Gopshes argues that the “State failed to prove that [he] knew on the night in question that he was participating in a theft, in other words, that he did not act under the honest belief that he had a right to obtain or exert control over the tractor trailer at issue.” The State responds that there “was ample evidence from which a reasonable juror could conclude beyond a reasonable doubt that Gopshes knew that the tractor-trailer was stolen.” We agree.

To review for sufficiency of evidence we determine “we review the evidence in the light most favorable to the prosecution and determine whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Perry v. State*, 229 Md. App. 687, 696 (2016) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). This “review standard applies to all criminal cases, including those resting upon circumstantial evidence, [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.” *Neal v. State*, 191 Md. App. 297, 314 (2010). “We defer to any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to

draw inferences, or whether we would have drawn different inferences from the evidence.”
State v. Mayers, 417 Md. 449, 466 (2010).

In the present case, Gopshes was seen operating a stolen tractor-trailer in a nearly empty industrial lot in the middle of the night. He then was present when a group of individuals exited a box truck and began to work in the darkness on the tractor-trailer’s tires. Additionally, everyone, including Gopshes, went back inside the trucks when another truck entered the lot, in an apparent attempt to hide their presence.¹ The box truck, and its occupants then left the area when the police helicopter circled overhead and shone its spotlight down on the lot, which again suggests an effort to hide their presence. Further, Gopshes testified that there was no bill of lading indicating that the trailer was to be delivered to the side of a road, but he was aware that there was a load in the back of the trailer that required refrigeration. Nevertheless, he parked the tractor-trailer on the side of the road at approximately 1:30 a.m., disconnected the trailer, and drove off, leaving the trailer containing the refrigerated load. He then drove to a secluded and empty lot at 3:00 a.m. and left the trailer. While Gopshes testified that he was unaware that the tractor-trailer had been stolen, given the facts above, we hold that a rational trier of fact could have found otherwise.

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

¹ Gopshes testified that he did not get into a truck when the vehicle entered the lot, but instead stood by the woods and leaned up against the truck. Detective Pugliese testified however that he saw Gopshes get into the box truck. The jury was certainly entitled to credit Detective Pugliese’s account.