UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1218

September Term, 2015

DARRELL SHANNON LANG

v.

STATE OF MARYLAND

Meredith,
Leahy,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: May 1, 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 in the Circuit Court for Montgomery County convicted Darrell Shannon Lang ("Appellant"), of sixteen crimes stemming from a home improvement fraud scheme perpetrated over a two-week period against a ninety-year-old victim. Lang was found guilty on six counts of exploiting a vulnerable adult, three counts of exploiting a person who is at least 68 years old, six counts of theft of property valued between $1,000.00 and $10,000.00, and one count of engaging in a theft scheme involving property valued between $10,000.00 and $100,000.00.[1] He was acquitted on three other counts of exploiting an individual at least 68 years old.

In this appeal, Lang, who was sentenced to fifteen years with all but twelve years suspended, plus payment of restitution, raises the following issues:

1. "Did the trial court give a faulted flight instruction in this case?"
2. "Was the evidence sufficient to support Appellant's convictions beyond a reasonable doubt?"

We decline Lang's request for plain error relief based on the flight instruction. To the extent Lang's sufficiency challenge is preserved, which is only with respect to the exploitation offenses, there is sufficient evidence to support those convictions.

BACKGROUND

Between November 15 and 30, 2012, Darrell Lang cashed six checks totaling $11,600.00, which were made payable to him by ninety-year-old Gertrude Cooney. At trial, it was undisputed that Mrs. Cooney wrote these checks as payment for roofing

[1] The court imposed a sentence of 15 years, with all but 12 years suspended, for the theft between $10,000.00 and $100,000.00 count, and merged all other convictions into this sentence.

materials and labor on her Silver Spring home, but that no materials were purchased and no roofing work was performed. The State charged that Lang knowingly participated, along with Justin Taylor, in the fraudulent home improvement scheme. Lang's defense was that he never met or visited Mrs. Cooney, that he did not know Justin was charging her for work that he did not do, and that he merely cashed the checks as a favor to Justin, without knowledge of any theft scheme. Our summary of the trial record presents the evidence in a light favorable to the State. *State v. Smith*, 374 Md. 527, 533 (2003) ("The standard for appellate review of evidentiary sufficiency 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.").

At trial in May 2015, Gertrude Cooney,[2] then age 93 and residing in an assisted living facility, testified that in November 2012, she was living in her house on Sidney Road in Silver Spring. Diane Cooney, who lived within a mile of Gertrude's house, testified that she assisted her mother-in-law with her daily needs. In April and May 2012, Diane's name had been added to Gertrude's Bank of America accounts because the elder Mrs. Cooney was "having trouble making decisions, and anything financial was very confounding to her[.]" Gertrude had not been paying her bills and felt overwhelmed by that task, so she typically waited to open and review mail with Diane, who came over "a couple times a week" to go "through each bill with her[.]" In most cases, when Gertrude wrote a check, she noted what it was for on the memorandum line.

[2] We shall, at times, use first names to distinguish between Gertrude Cooney and her daughter-in-law Diane Cooney, and between Justin Taylor and his uncle Bernie Taylor.

Previously, for a few home improvement projects, Gertrude Cooney had hired Bernie Taylor, who lived "someplace in . . . Virginia" and had performed satisfactory work. On May 29, 2012, Bernie Taylor charged her $2,500.00 for roof repairs consisting of new boot vents and flashing.[3] On November 12, 2012, he returned to her home with his nephew, Justin Taylor, to perform additional home improvement work. That day, the Taylors applied a "dry lock" coating to the foundation of Mrs. Cooney's house and cleaned out her gutters. Justin Taylor drafted an invoice charging Mrs. Cooney a total of $1,800.00 for those services and for the previously installed boot vents on her roof. The invoice misidentified him as "Justin Smith." At trial, Bernie Taylor admitted that there was no roof work done that day, and that Mrs. Cooney was charged for the same boot vents that she had paid for in May. Before the work was complete that day, she made a check payable to Bernie and delivered it to Justin. Bernie cashed that check at the nearest Bank of America branch before the work was finished. He subsequently pleaded guilty to overcharging Mrs. Cooney for both the May 29 and November 12 work, and to working as a contractor without a license.

On November 15, just three days after Bernie was paid $1,800.00, Justin Taylor returned to Gertrude Cooney's home, where he received the first of six checks that she made payable to Darrell Lang. Although it had "been awhile," Gertrude remembered the names "Darrell Lang" and "Justin Taylor" as among "several" men who "were all related"

[3] At Bernie Taylor's request, this work was performed by unlicensed individuals who, like him, had driven from Culpeper County, Virginia, in a door-to-door search for work in Montgomery County. Bernie admitted that he did not inspect their work.

and "came up from" Virginia to work on her roof. Two and a half years later, however, she did not recognize Lang at trial.

When Diane Cooney discovered the checks referencing "roof," she became "very concerned." Gertrude told her, "Well, I have some people that have been here working on my roof, and so I've been making payments." But Gertrude had no proposals or invoices for the work. Nor did it appear that any roofing work had been done. Days later, Diane was at Gertrude's house when a man called the home phone, identified himself as being "with some roofers that have been doing work on her house," and asked if Gertrude "needed any more work done." Concerned about the prior checks, Diane told him to call back later, then contacted police.

Montgomery County Police Officer Christopher Jordan investigated the Cooneys' complaint. When he met with Gertrude Cooney on December 3, 2012, she moved slowly and relied on Diane to answer questions and relate information.

Bank records and video recordings established that Lang cashed all six checks, which totaled $11,600.00 and were payable to him. As shown in the following chart, in all but one case, Lang cashed the checks on the date they were written at the "Four Corners" branch of Bank of America, which is five minutes from Gertrude Cooney's home. He cashed the sixth check at a BB&T branch in Virginia.

Check Dated	Check Number	Check Amount	Memo Notation	Check Cashed by Lang
Nov. 15, 2012	9431	$1,800.00		11/15/12 at 12:51 Four Corners branch
Nov. 20, 2012	9432	$1,800.00	"materials"	11/20/12 at 11:03 Four Corners branch
Nov. 21, 2012	9434	$2,500.00	"Materials"	11/21/12 at 13:13 Four Corners branch
Nov. 26, 2012	1121	$1,700.00	"Roof"	11/26/12 at 12:06 Four Corners branch
Nov. 27, 2012	1122	$1,800.00	"R Materials"	11/27/12 at 15:27 Four Corners branch
Nov. 30, 2012	1123	$2,000.00	"Roof"	12/3/12 [time not in record] BB&T branch in Va.

The State presented telephone records as circumstantial evidence that Lang knowingly aided Justin Taylor in the theft scheme. As set forth in the chart below, the pattern was to call Mrs. Cooney, pick up a check from her, and cash it immediately at the branch of her bank closest to her house. In four instances, on November 15, 20, 21, and 27, calls were made from Justin's cell phone to Gertrude Cooney's home phone less than an hour before Lang cashed her checks at the Four Corners branch near her home. In another instance, on November 26, Lang himself called Gertrude minutes before cashing her check at Four Corners. On November 30, the date of the last check, there were two calls from Justin to Gertrude, although Lang later cashed that check in Virginia.

Date	Call(s) Made to Gertrude Cooney	Time Call Originated	Duration of Call	Time Ck. Was Cashed By Lang	Interval b/w JT Call & DL Cashing Ck.
Nov. 15, 2012	By Justin Taylor	11:56 11:58	106 seconds 40 seconds	12:51 11/15/12	56 min.
Nov. 20, 2012	By Justin Taylor	10:41	72 seconds	11:03 11/20/12	21 min.
Nov. 21, 2012	By Justin Taylor	11:16 12:41 13:24	205 seconds 95 seconds 43 seconds	13:13 11/21/12	30 min.
Nov. 26, 2012	By Darrell Lang	11:34 12:00	130 seconds 22 seconds	12:06 11/26/12	30 min. 5 min.
Nov. 27, 2012	By Justin Taylor	15:03	134 seconds	15:27 11/27/12	22 min.
Nov. 30, 2012	By Justin Taylor	11:32 14:49	66 seconds 129 seconds	12/3/12	

On December 3, 2012, around the time that Diane Cooney told the caller who was seeking "more work" from Gertrude to phone back later, Justin Taylor called Gertrude Cooney's home number at 14:00, connecting for 78 seconds, and at 14:06, connecting for 101 seconds.

Testifying in his defense, Lang claimed that he cashed the checks at the request of Justin Taylor, because Justin did not have the identification necessary to do so. According to Lang, Justin told him only that he "was doing roofing and home improvements for this lady" in Montgomery County and that he needed the money to buy materials and to pay the three or four men who were helping him on the job. Lang, who was doing tree work in the Silver Spring area, did not know whether Justin was actually doing the roofing work for which Lang was cashing checks. Typically, Justin would text or call Lang to meet him at the bank. Justin would give him the check and wait outside in his truck while Lang went inside to cash it. After keeping "a few dollars" as payment for cashing the check, Lang claimed he handed over the remaining cash to Justin.

Lang denied meeting Gertrude Cooney or going to her house. He admitted, however, that he called her on November 26, explaining that it was Justin Taylor who placed the call from his cell phone, so Lang could confirm that Justin was actually doing the roofing work, because Lang did not want to "get stuck with the checks." Lang testified: "I asked the lady . . . . is Mr. Taylor doing this work . . . for you? And she said yes." According to Lang, the second call to Gertrude Cooney that day must have been "pocket dialed."

Additional facts are included in the discussion below relevant to the issues there examined.

DISCUSSION

I.

A.

Flight Instruction

Lang did not appear for trial on November 18, 2014. Throughout that day, he had several telephone communications with defense counsel and the trial judge's staff members. The judge delayed proceedings until that afternoon, but Lang did not show up, and neither the court nor counsel was able to get in contact with him. The court nevertheless continued Lang's trial until the following day, November 18. But Lang did not appear on that day either. After more unsuccessful attempts to reach Lang, made by both the court and defense counsel, the trial judge found that Lang was "willfully avoiding the trial on this matter" and issued a bench warrant. Twenty-three days later, Lang was arrested in Virginia.

When trial proceeded, Lang explained his failure to appear on November 17 and 18, as follows:

> [DEFENSE COUNSEL]: All right. Now, I want to take you forward two years to November of 2014. Was there a previous court date in this case?
>
> [MR. LANG]: Yes. There was.
>
> [DEFENSE COUNSEL]: Okay. And, Mr. Lang, did you come to that court date?
>
> [MR. LANG]: No. I did not.

[DEFENSE COUNSEL]: *Tell us why.*

[MR. LANG]: *I had car problems, and I was a little scared too.*

[DEFENSE COUNSEL]: *What do you mean you were scared?*

[MR. LANG]: *Scared because I've never been in a jury trial and I just was hoping it would fly over.*

[DEFENSE COUNSEL]: So, did you try your best to come to court?

[MR. LANG]: Yes. I mean, yes. I did but –

[PROSECUTOR]: Objection.

THE COURT: I'll permit it.

[MR. LANG]: And my truck broke down.

(Emphasis added).

Under cross-examination, Lang explained that he had a broken fuel pump that prevented him from coming to court. He claimed to have repaired it himself but had no receipt for the replacement parts he purchased. Nor did Lang proffer any reason for thereafter failing to contact the court or his attorney regarding his pending prosecution.

The court gave the following instruction to the jury on flight as consciousness of guilt, without objection:

> A person's flight immediately after the commission of a crime, or after being accused of committing a crime, is not enough by itself to establish guilt. But it is a fact that may be considered by you as evidence of guilt. Flight under these circumstances may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether there was evidence of flight. If you decide there is evidence of flight, you then must decide whether this flight shows a consciousness of guilt.

This instruction follows Maryland Pattern Instruction – Criminal 3:24, which was approved in *Thompson v. State*, 393 Md. 291, 303 (2006), as "substantively accurate with respect to

the law of the State of Maryland on flight." *See also Hoerauf v. State*, 178 Md. App. 292, 323 (2008) (pattern instruction correctly states Maryland law on flight as consciousness of guilt).

Lang contends that "the trial court gave a faulted flight instruction in this case." Lang complains that the trial court did not additionally inform the jury that under the applicable case law,

> the following four inferences must reasonably be able to be drawn from the facts of the case as ultimately tried: that the behavior of the defendant suggests flight; that the flight suggests a consciousness of guilt; *that the consciousness of guilt is related to the crime charged or a closely related crime*; and that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

Thompson, 393 Md. at 312 (emphasis added). Although Lang concedes that his trial counsel did not request that language or otherwise object to the instruction as given, he argues that the court's failure to specifically instruct the jury that it had to find "consciousness of guilt concerning the crime charged" warrants plain error relief. For the reasons explained below, we disagree.

B.

Plain Error Review

Under subsection (e) of Maryland Rule 4-325,

> [n]o party may assign as error the . . . failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. . . . An appellate court . . . may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

This preservation requirement exists "to ensure fairness for all parties in a case and to promote the orderly administration of law . . . by requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors." *Robinson v. State*, 410 Md. 91, 103 (2009) (citation and quotation marks omitted). It also prevents error that requires re-trial and precludes "sandbagging" of the trial judge to obtain "a second 'bite of the apple' after appellate review." *Sydnor v. State*, 133 Md. App. 173, 183 (2000), *aff'd on other grounds*, 365 Md. 205 (2001).

For these fairness reasons, "appellate invocation of the 'plain error doctrine' 1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon." *Morris v. State*, 153 Md. App. 480, 507 (2003). *See also Conyers v. State*, 354 Md. 132, 171 (1999) (When applied "in the context of erroneous jury instructions, the plain error doctrine has been used sparingly.").

C.

Analysis

As Lang acknowledges, an accused's flight from a scheduled trial date may warrant a flight instruction. *See, e.g., Sorrell v. State*, 315 Md. 224, 231-32 (1989) (flight instruction generated by evidence that defendant "voluntarily and knowingly absented himself" from courthouse during trial). In *Decker v. State*, the Petitioner challenged the State's admission of evidence that he fled from prosecution, thereby reflecting his consciousness of guilt of the crimes charged against him. 408 Md. 631, 634-35 (2009). Decker had originally appeared for trial, but walked out of the courthouse as the trial was

about to start. *Id*. at 637. In holding that the State was permitted to introduce evidence of Decker's departure from the earlier trial proceedings, the Court explained:

> We agree with the State that, in material respect, this case is quite similar to *Sorrell.* In both this case and *Sorrell*, the jury learned that the defendant left the courthouse, whether in the midst of trial, as in *Sorrell*, or on the day trial was scheduled to commence, as here. And both here and in *Sorrell*, the jury could infer from the circumstances surrounding the departure from the courthouse that it likely was prompted by a concern that the trial would not conclude well for the defense. In that regard, the jury in the present case could take into account that Petitioner, well aware of the charges he was facing, departed from the courtroom where his trial was about to occur and where at least one witness for the State [] was also present.

Id. at 646.

Here, the jury reasonably could infer that Lang voluntarily and knowingly failed to appear for either of the scheduled November 17 and 18 trial dates because, as defense counsel conceded in closing, he harbored a "head in the sand" hope that in his absence, the prosecution, which depended on evidence from a 93-year-old victim with failing memory and faculties, about events that took place more than two years earlier, would be unable to proceed and the charges "would fly over," i.e., be dropped. Although Lang maintained that he did not appear for trial because he was afraid, not because he felt guilty about his exploitation of Mrs. Cooney, the trial court correctly gave the task of deciding between those inferences to the jury. *See, e.g., Thompson*, 393 Md. at 305 ("the determination as to the motivation for flight [was] properly entrusted to the jury"); *Sorrell*, 315 Md. at 230 ("We have left juries free to determine whether flight tends to reflect a consciousness of guilt under the circumstances."); *Hunt v. State*, 312 Md. 494, 509 (1988) ("it was for the

jury to then decide whether Hunt's flight related to the stolen car, to the murder, or to another unconnected reason").

In doing so, the trial court could have, and perhaps should have, instructed the jury to decide whether Lang's behavior evidenced guilt in the charged crimes. But trial counsel neither requested such language, nor objected to the lack of it. And, further, Lang has not established that he was prejudiced by this omission. Based on Lang's own testimony that he failed to appear for a "previous court date *in this case*," if the jury decided to infer consciousness of guilt from Lang's flight, the only inference that it possibly could draw was that Lang's absence stemmed from his guilt in the crimes for which he was on trial. (Emphasis added). Indeed, we may fairly regard trial counsel's failure to request the instruction that Lang now complains should have been given, as an indication that such language was not essential to his defense.

The following admonition by Judge Moylan bears repeating here:

> Resourceful advocates frequently urge upon us the desirability of noticing "plain error" as a needed sanction against judges who fail to state the law with full accuracy. That argument overlooks the concomitant desirability of holding fast to the rigors of Rule 4–325(e) as a needed sanction against lawyers who fail to spot the issues except in hindsight, who fail to focus the attention of the judge upon the issues, and who fail to make a proper record for appellate review.

Austin v. State, 90 Md. App. 254, 271 (1992). Lang has not clearly established that failing to instruct the jury using the "four inferences" language from *Thompson* was error or that it prejudiced him, and we decline to exercise our "unfettered discretion" to undertake plain error review. *Morris v. State*, 153 Md. App. 480, 507 (2003); *see also Yates v. State*, 429 Md. 112, 131 (2012) ("This exercise of discretion to engage in plain error review is 'rare.'"

(quoting *Savoy v. State*, 420 Md. 232, 255 (2011))). Discerning no error sufficient to compel this Court to exercise plain error review, we shall affirm the judgment of the circuit court.

II.

Insufficiency Challenge

Lang alternatively contends that the evidence was insufficient to support the convictions for theft scheme, theft, exploitation of a vulnerable adult, and exploitation of a person at least 68 years old. Lang concedes that this sufficiency challenge is not preserved with respect to the theft convictions, because when defense counsel moved for a judgment of acquittal, he did not particularize arguments concerning those charges. *See* Maryland Rule 4-324(a) (defendant moving for judgment of acquittal must "state with particularity all reasons why the motion should be granted"); *Byrd v. State*, 140 Md. App. 488, 494 (2001) (sufficiency challenge was not preserved where defense counsel failed to state with particularity why motions for judgment of acquittal should be granted). Nevertheless, Lang urges that we reverse his theft convictions because he presented clear and un-contradicted testimony that he never met Mrs. Cooney and that he was merely assisting a friend, Justin Taylor, in cashing checks for work Taylor represented he completed.

Appellate review is limited to the challenges that were actually argued, in order to "prevent unfairness and require that all issues be raised in and decided by the trial court[.]" *Peterson v. State*, 444 Md. 105, 126 (2015). With respect to the convictions challenged in this appeal, at trial defense counsel argued only that Lang could not be convicted of the exploitation offenses because there was no evidence that Lang was aware of Gertrude

Cooney's age and vulnerability.[4] Accordingly, we shall address only the sufficiency challenge to the exploitation convictions.[5]

A.

Standards Governing Sufficiency Review of Exploitation Convictions

Whether evidence was legally sufficient to support a conviction is a question of law that requires this Court to determine if, when the evidence presented at trial is considered in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Spencer v. State*, 422 Md. 422, 433 (2011); *see Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). "If the evidence 'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt[,]' then we will affirm that conviction." *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). This standard "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789.

[4] The trial transcript for May 12, 2015 reflects that no mention of the theft charges or counts 1, 4, 7, 10, 13, 16 or 19 was made during argument in support of the motion for judgment of acquittal.

[5] Even if preserved, we note that there was sufficient evidence before the jury that would support its conclusion that Lang was an accomplice who knowingly aided, commanded, counseled, or encouraged Taylor's theft scheme against the elderly Ms. Cooney. *See Pope v. State*, 284 Md. 309, 331 (1979).

Although "Maryland does not have an 'aiding and abetting' statute[,] . . . . a person who did not actually commit the crime in question may nevertheless be guilty to the same degree as the person who did." *Kohler v. State*, 203 Md. App. 110, 119 (2012). "Whereas principals in the first degree 'commit the deed as perpetrating actors,' . . . principals in the second degree are 'present, actually or constructively, aiding and abetting the commission of the crime, but not themselves committing it[.]'" *Id.* (citation omitted). "'An aider is one who assists, supports or supplements the efforts of another in the commission of a crime.'" *Id.* (citation omitted).

Here, the State prosecuted Lang for his role in aiding Justin Taylor's exploitation of Gertrude Cooney by cashing her checks, and charged Lang in separate counts premised on each of the six checks. Financial crimes against vulnerable adults are statutory offenses. A vulnerable adult "lacks the physical or mental capacity to provide for the adult's daily needs." Md. Code, § 3-604(a)(10) of the Criminal Law Article; Crim. Law § 8-801(a)(8). Section 8-801(b) of the Criminal Law Article establishes the following two modes of the offense:

> (b)(1) A person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult's property.
>
> (2) A person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is at least 68 years old, with intent to deprive the individual of the individual's property.

The jury convicted Lang on six counts of exploiting a vulnerable adult in violation of subsection 8-801(b)(1), corresponding to all six checks he cashed, plus three counts of

exploiting a person at least 68 years old in violation of subsection 8-801(b)(2), corresponding to the last three checks he cashed, on November 26, 27, and 30, 2012. Lang was acquitted on three charges of exploiting a person at least 68 years old, corresponding to the first three checks he cashed, on November 15, 20, and 21, 2012. These verdicts indicate that the jury found that Lang had the requisite knowledge or *scienter* for both offenses. Specifically, the jury implicitly found beyond a reasonable doubt that Lang knew or should have known that Gertrude Cooney was a vulnerable adult throughout the relevant November 15-30, 2012 period when he cashed her six checks, and that, although he may not have known her age when he cashed her first three checks, by the time he cashed the last three of those checks (i.e., on November 26, 27, and 30), he knew or should have known that she was at least 68 years old. Indeed, the evidence established that he spoke to her for several minutes on the phone on November 26.

Citing Gertrude Cooney's testimony that she never met him and her failure to recognize him at trial, as well as his testimony that he did not go to her home, Lang argues that "there was no evidence that [he] knew of Mrs. Cooney's age or her physical or mental vulnerability[.]" In his view, "[t]he trial court was simply wrong when it" denied his motion for a judgment of acquittal on the ground that "there was sufficient evidence that [he] was at her house because he cashed the checks at banks close to her residence or that he was an aider and abettor with Justin Taylor in . . . exploiting Mrs. Cooney."

We again disagree. The evidence discussed below is sufficient to support findings that Lang, in initially dealing with Gertrude Cooney through Justin Taylor, was aware that

she was financially vulnerable, and that in dealing with her directly on November 26, he learned that she was at least 68 years old.

B.

Evidence Supporting the Exploitation Verdicts

Lang does not dispute that in November 2012, Gertrude Cooney's appearance and behavior reflected that she was 90 years old. According to Officer Christopher Jordan, when he met her on December 3, 2012, she had gray hair, was "noticeably slow" in gait, and needed assistance from her daughter-in-law, Diane Cooney, to communicate. At trial, two-and-a-half years later, Gertrude had difficulties walking, seeing, and recalling names and dates.

Nor does Lang contest that Gertrude Cooney was a vulnerable adult. Diane testified that by November 2012, she was providing daily assistance to her mother-in-law in her household and financial affairs, because Gertrude had difficulty making decisions and was confounded by financial matters. In particular, Gertrude felt "overwhelmed" by making decisions and paying bills, needing Diane's help to understand and execute such routine tasks.

Moreover, Lang tacitly concedes that in November 2012, Gertrude Cooney's financial vulnerability was known to Justin Taylor, who overcharged her and persuaded her to pay twice for the same roofing work, and thereafter procured six more checks over fifteen days, totaling $11,600.00, made payable to Lang, a person she could not recall meeting, for materials that were never delivered and work that was never performed. As detailed in our background section, Bernie Taylor testified that on November 12, he

brought Justin to Gertrude Cooney's house. Justin presented her with a fraudulently inflated invoice that included, *inter alia*, work on the boot vents for which she had paid Bernie six months earlier. After asking Mrs. Cooney for a check in the full amount of the invoice before the work was done, Justin directed her to make it payable to someone else (i.e., Bernie Taylor), who cashed it at the nearby Four Corners branch.

It was undisputed that three days later, on November 15, Justin Taylor returned and again persuaded Mrs. Cooney to write checks payable to someone else, for labor and materials that she did not receive. His visits to Mrs. Cooney continued through November 30, and his phone calls to her continued through December 3, when he identified himself to Diane Cooney as "one of the roofers" who had recently been doing work for Gertrude. Through the testimony of multiple witnesses, the State proved that during that time period, no work was done on Mrs. Cooney's roof.

The State's prosecution theory was that both Justin Taylor and Darrell Lang played integral roles in the home improvement scam. In an effort to confuse Gertrude Cooney, Justin dealt directly with her, calling her shortly before he came to pick up a check, while Lang remained "out in the car." The two men then drove five minutes to the Four Corners branch, where Lang cashed her checks while Justin stayed outside. Variations of this pattern occurred on November 26, when Lang himself called Gertrude minutes before cashing her check, and on November 30, when Justin called Gertrude but Lang cashed her check of that date later, in Virginia. Based on this evidence, the State argued that Lang knew or should have known that Gertrude was financially vulnerable and well over the age of 68.

We determine that the evidence is sufficient to support the jury's findings that Lang cashed all six checks with actual or constructive knowledge of Gertrude Cooney's financial vulnerability; and that after his November 26 phone call with her, he cashed the last three checks with actual or constructive knowledge that she was at least 68 years old. Although Gertrude Cooney did not recognize Lang at trial, she recalled his name in connection with Justin Taylor's, as one of the "related" men who were supposed to have been working on her roof. Lang, age 43 at trial, had known Justin Taylor, who is the nephew of Lang's lifelong friend Bernie Taylor, "since he was a baby." All three men lived near each other in Culpeper County, Virginia.

Phone records show regular communications between Lang and Bernie Taylor, who admitted overcharging Gertrude Cooney in May 2012 and again on November 12, 2012. There were more than fifty calls between Lang and Justin Taylor between November 13 and December 3, 2012, while this theft scheme was active.

Moreover, this was not a singular instance of cashing a check for a friend. The circumstances surrounding the check cashing undermine Lang's implausible claim that he was merely a remarkably accommodating friend who dropped everything to run to the bank whenever Justin Taylor wanted to cash a check. Gertrude Cooney made all six checks payable to Lang. He cashed the first five in person, near her Silver Spring residence, which is more than 70 miles from where Lang and Justin Taylor lived in Virginia. And he kept proceeds from each check. On four occasions (November 15, 20, 21, and 27), Lang cashed Mrs. Cooney's check less than an hour after Justin Taylor called. That location and timing is consistent with the State's theory that after calling Mrs. Cooney, Justin picked up the

checks while Lang waited in the car, then they immediately drove to the Four Corners branch, where Lang cashed them while Justin stayed outside. Although Lang claimed that on each of those days, Justin contacted him to arrange a meeting at the bank, there were no calls recorded between the two men around the time the first three checks were cashed (November 15, 20, 21).[6] Moreover, on November 26, Lang himself called Mrs. Cooney at 11:31 a.m. and 12:00 p.m., only minutes before he cashed her fourth check at 12:06 p.m.[7] For the fifth check, cashed during "rush hour" at 15:27 on November 27, Justin called Lang just ten minutes before he cashed the check, meaning that Lang would have had to be waiting at or near the Four Corners branch in order to meet Justin and make it inside the bank that quickly.[8]

The pattern of calls to Mrs. Cooney, Lang's profitable role in cashing her checks, the lack of any phone calls between Lang and Justin Taylor at relevant times, and the improbability of Lang consistently making it from elsewhere in the County to the Four Corners branch on short notice, collectively undermine Lang's claim that he was not a

[6] On November 15 and 20, 2012, there were no calls between Justin Taylor and Lang. And the only call on November 21 occurred nearly five hours after Lang cashed Mrs. Cooney's check at 13:13 at the Four Corners branch, when Lang made a 28 second call to Justin, at 18:08.

[7] On November 26, more than nine hours after he cashed Mrs. Cooney's check at 12:06, Lang made four calls to Justin between 21:23 and 21:25, lasting from 7 to 44 seconds.

[8] On November 27, Lang called Justin at 9:58 (38 seconds). Justin then called Lang at 12:11 (82 seconds), 12:19 (108 seconds), 12:26 (46 seconds), and 12:44 (34 seconds). Lang's call log shows two "0 second" calls at 14:08 and 14:12. Justin then called Lang at 15:17 (28 seconds). Ten minutes later, at 15:27, Lang cashed Mrs. Cooney's check at the Four Corners branch.

knowing participant in the theft scheme. To be sure, Lang testified that on the five dates he cashed checks at the Four Corners branch near Mrs. Cooney's home, he was coincidentally doing tree work elsewhere in the Silver Spring area when Justin Taylor contacted him to arrange meetings at the bank. He also claimed that it was Justin who placed the November 26 call from his phone so that Lang could confirm that Justin was actually doing roof work for Mrs. Cooney. But the jury was entitled to discredit or discount that testimony, and reasonably did so. Specifically, the jury could have drawn the inferences suggested by the State, that Lang, having learned about Mrs. Cooney's financial vulnerability from Bernie and/or Justin Taylor, accompanied Justin to Silver Spring, waited out of sight while Justin picked up those checks from Mrs. Cooney, and then cashed them at the Four Corners branch while Justin waited outside.

Similarly, the jury had a sufficient factual basis to reject Lang's claim that he unwittingly cashed the checks as a favor to Justin because he lacked a driver's license that could be used as identification. As the trial court pointed out, Lang's testimony that Justin Taylor was driving hundreds of miles to and from Virginia throughout this period supported the contrary inference that Justin did have a driver's license. Even if jurors believed that Justin was without a license, they could still conclude that Lang knowingly participated in the theft scheme, based on the evidence we have discussed.

In summary, there is sufficient evidence to establish beyond a reasonable doubt that Justin Taylor learned that Gertrude Cooney was a vulnerable adult while working on her house with Bernie Taylor, and that by November 15, Justin and/or Bernie had shared that information with Lang, who knowingly aided in the ongoing home improvement scam, by

cashing Mrs. Cooney's checks over the next two weeks. Such coordinated contacts and roles indicate that from the outset, Lang knew or should have known that Gertrude Cooney was a vulnerable adult. Moreover, based on Lang's phone call to Gertrude on November 26, minutes before he cashed her fourth check at the Four Corners branch, the jury reasonably found that he thereafter knew or should have known that she was more than 68 years old. Because the evidence is sufficient to establish that Lang had actual or constructive knowledge of Gertrude Cooney's age and financial vulnerability, we shall affirm all nine of Lang's exploitation convictions under Crim. Law § 8-801(b).

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.