

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2584

September Term, 2015

DINO CHARLES MARSIGLIA

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Shaw Geter,

JJ.

Opinion by Kehoe, J.

Filed: January 18, 2017

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On January 22, 2016, after a bench trial, the Circuit Court for Queen Anne’s County convicted appellant, Dino Charles Marsiglia, of theft of property with a value of \$1,000 to under \$10,000. The court sentenced appellant to ten years of active incarceration. Appellant presents the following questions for our review:

1. Is the evidence sufficient to sustain appellant’s conviction?
2. Did the trial court err in unduly limiting appellant’s right of cross-examination?

For the reasons discussed below we assign no error and affirm.

BACKGROUND

In August 2015, the Paul Reed Smith Guitars (PRS) factory, located in Stevensville, received a PRS Private Stock guitar from a customer who had sent it in for repairs. PRS makes and sells several lines of guitars, including custom guitars which are sold under the Private Stock label. Private Stock guitars are highly customizable and are generally sold to professionals and collectors. The Private Stock guitar returned to PRS in this case was assigned serial number 12-191399, which indicated that the guitar was manufactured in 2012, and identified as Private Stock number PS3767. The guitar, which was returned by the customer in a distinctive paisley case, was “very well kept” and in “fine condition” when it was returned for repairs. Once the repair was completed on September 3, 2015, the guitar was in “perfect condition” and ready to be shipped back to the customer. On Friday, September 4, 2015, the guitar was invoiced and placed in the freight elevator in the warehouse to be sent “downstairs to the shipping warehouse.”

Employees returned to the factory on the following Tuesday, after a long holiday weekend, and on that Thursday the customer contacted PRS for the tracking number for the guitar. It was then that PRS discovered that the guitar, which had last been seen on the freight elevator, had never been shipped and was missing from the factory.

After a thorough search of the factory, PRS contacted the Maryland State Police (MSP), which began an investigation into the theft. During the course of their investigation, MSP checked pawn records and discovered that the guitar had been pawned by appellant on September 4, 2015 to Gold Brokers Pawn Shop in Baltimore. The Gold Brokers Pawn employee who received the guitar from appellant noted that appellant, whom she identified at trial, told her that the guitar was “worth a lot of money.” Appellant received \$700 for the guitar. The guitar and its distinctive paisley case were recovered by MSP. Stamped on the headstock of the guitar was serial number 12-191399. Private Stock number PS3767 was also hand written on the headstock.

In June 2014, appellant was hired through a temporary service to work in the maintenance department of PRS. One of his duties at PRS was to build work benches in a small construction area set up approximately ten to twelve feet from the freight elevator. An unalarmed exit door was situated in close proximity to the freight elevator. Appellant, who had free access to the entire factory, was working there on September 4, 2015. On September 9, 2015, he left the factory early, reporting that he was sick. He called in sick the next three workdays and ultimately never returned to PRS.

Each PRS guitar is assigned a unique serial number which represents the total number of guitars made by PRS. Each Private Stock guitar is also assigned a unique Private Stock number which represents the total number of private stock guitars PRS has produced, and comes with a Certificate of Authenticity which contains the build specifications for that particular guitar. All PRS guitars, including Private Stock guitars, are sold through dealers. Each guitar is assigned a dealer price which is the price the dealer would pay to PRS to purchase the guitar.

Each guitar is also assigned a minimum advertised price (“MAP”) which is similar to the suggested retail price which the dealer would advertise to the end buyer. The guitar stolen from PRS in this case was assigned serial number 12-191399 and Private Stock number PS3767. The MAP price for the guitar on the date of purchase in 2012 was \$10,079, and the dealer price for the guitar was \$6,350. PRS does not change these prices after purchase, so both the dealer price and the MAP price remained the same as of September 2015.

I. The Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to convict him as the “State failed to establish the market value of the guitar at the time of the crime in 2015,” and because the “State failed to establish PRS’s legal interest in the guitar.” The State responds that “it is readily apparent that the evidence allowed a rational trier of fact to conclude that [appellant] was guilty of theft of property worth more than \$1,000.” The State further responds that “[b]ecause PRS had possession of the guitar until it was

stolen, for the purpose of determining whether [appellant] had committed theft, PRS was the ‘owner’ of the guitar.” We hold that the evidence was sufficient to prove that the value of the guitar was over \$1,000, and that PRS was the “owner” of the guitar as contemplated by Md. Code Ann. (2002; 2012 Repl.), § 7-101(h) of the Criminal Law Article (“Crim. Law”) at the time of the theft.

We review for sufficiency of the evidence by determining “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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We do not, however, “undertake a review of the record that would amount to, in essence, a retrial of the case.” *State v. Albrecht*, 336 Md. 475, 478 (1994). “Nor is it the function of the appellate court to determine the credibility of witnesses or the weight of the evidence.” *Handy v. State*, 175 Md.App. 538, 562 (2007). Maryland Rule 8-131(c) mandates that an appellate court “not set aside the judgment of the trial court on the evidence unless clearly erroneous,” and requires the reviewing court to “give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” We give deference to the trial court’s “ability to choose among differing inferences that might possibly be made from a factual situation.” *State v. Smith*, 374 Md. 527, 534 (2003).

Appellant was charged with theft pursuant to Crim. Law § 7-104, which prohibits a person from willfully or knowingly obtaining or exerting 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.

An “owner” as defined in Crim. Law § 7-101(h) is a person, other than the offender:

- (1) who has an interest in or possession of property regardless of whether the person's interest or possession is unlawful; and
- (2) without whose consent the offender has no authority to exert control over the property.

The value of the property stolen determines the penalty. Crim. Law § 7-104(g). A person convicted of stealing property with a value of “at least \$1,000 but less than \$10,000 is guilty of a felony,” and “is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.” Crim. Law § 7-104(g)(1)(i). The value of the property stolen is determined by ascertaining the “market value of the property or service at the time and place of the crime.” Crim. Law § 7-103(a)(1). “The present market value of stolen property may be proven by direct or circumstantial evidence and any reasonable inferences drawn therefrom.” *Champagne v. State*, 199 Md. App. 671, 676 (2011).

In the present case, the court heard testimony from a PRS employee that the stolen guitar was from their Private Stock line, which are guitars typically purchased by professionals and collectors. While the employee was not aware of the actual purchase price of the guitar in 2012, he testified that at the time of purchase the minimum

advertised price of the guitar was \$10,079 and the dealer price was \$6,350. The MAP price was the price, per PRS policy, that the dealer was asked not to go below. He further testified that PRS does not adjust those prices after purchase, so in September 2015 they were valued at the same amounts by PRS. Finally, the guitar was in “perfect condition” at the time of the theft on September 4, 2015.

Appellant argues that “[i]t is a matter of conjecture that the guitar in question retained value in 2015 in excess of \$1,000 or even \$100. We disagree. A PRS employee testified that the MAP price, similar to a suggested retail price, of the guitar at the time of the theft was \$10,079. A trier of fact could infer that a highly customized guitar of the type frequently purchased by collectors and in “perfect condition” would not depreciate greatly and could in fact retain its value or even increase in value with the passage of time. Appellant had been charged with theft over \$10,000 to under \$100,000, but the court gave appellant the “benefit of the doubt” and found appellant guilty of the lesser included offense of theft having a value between \$1,000 and \$10,000. We hold that a rational trier of fact could have found beyond a reasonable doubt that the value of the guitar on the date it was stolen by appellant was over \$1,000.

Appellant next alleges that since the Statement of Charges identified the victim as PRS, the evidence was insufficient to convict appellant because the State “failed to establish PRS’s legal interest in the guitar.” We disagree.

Crim. Law § 7-101(h) defines an owner as a “person, other than the offender (1) who has an interest in or possession of property regardless of whether the person's

interest or possession is unlawful; and (2) without whose consent the offender has no authority to exert control over the property.” On the date of the theft the original purchaser of the guitar had returned the guitar to PRS. On that date, PRS was clearly in possession of the property and appellant did not have authority to exert control over the guitar or pawn it and keep the proceeds. Furthermore, “it is generally held that in a prosecution for larceny, an allegation of the ownership of stolen goods is supported by proof of any legal interest or special property in the goods, as, for instance, where the person named in the indictment is in lawful possession as a bailee or common carrier.” *Richardson v. State*, 221 Md. 85, 88 (1959). Such is the case here. PRS was in lawful possession of the guitar and had the authorization of the owner to complete repairs on it. As such, a rational trier of fact could have found that PRS was the “owner” as contemplated by Crim. Law § 7-101(h).

II. Cross-Examination

Appellant argues that the “trial court improperly cut off defense counsel’s cross examination [of a PRS employee] before the constitutionally guaranteed minimum level was met.” The State responds that appellant’s claim is “wholly unpreserved,” but [e]ven if considered, [his] claim fails on the merits.” The State argues that the “court was well within the bounds of its discretion when it disallowed the questions, and moreover, any error did not lead to the possibility that [appellant] was convicted on the basis of anything but the overwhelming evidence against him.” We agree with the State on both points.

Courts have long recognized that “cross-examination is essential to the truth-finding function of a trial.” *Peterson v. State*, 444 Md. 105, 121-22 (2015). “The Confrontation Clause of the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant the right to confront the witnesses against him.” *Martinez v. State*, 416 Md. 418, 428 (2010). “The right of cross-examination, however, ‘is not unlimited.’” *Savage v. State*, 212 Md.App. 1, 35 (2013) (quoting *Ebb v. State*, 341 Md. 578, 587 (1996)). Maryland Rule 5–611 provides:

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

“A trial court may impose reasonable limits on cross-examination when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.” *Martinez*, 416 Md. at 428.

“Generally speaking, the scope of examination of witnesses at trial is a matter left largely to the discretion of the trial judge and no error will be recognized unless there is clear abuse of such discretion.” *Oken v. State*, 327 Md. 628, 669 (1992).

To preserve for appeal a trial court’s sustaining of objections to cross examination, a “party must clearly proffer his theory [of admissibility] to the trial court.” *Bruce v. State*, 328 Md. 594, 626 (1992). The absence of a proffer leaves the appellate court unable to determine whether the trial court’s ruling prejudiced appellant’s case. *Grandison v. State*, 305 Md. 685, 642 (1986).

With these principles in mind, we turn to the appellant’s specific contentions.

A. Preservation

Appellant asserts that the “trial court improperly cut off defense counsel’s cross examination” when it sustained the State’s objections to the following questions during the cross examination of PRS employee Matthew King:

How many people work in taking orders for private stock guitars?

Do you know how much this guitar was sold for?

If a guitar is not working at the time somebody owns it, could they sell it for the same price?

You said you worked at the Paul Reed Smith Guitars for thirteen years. Do you know about how many employees work there?

How many guitars does the repair center fix in a given week?

The State correctly points out that these contentions are not preserved for review. After the trial court sustained the State’s objections to these questions, defense counsel did not make a proffer as to the substance of the testimony he sought to elicit from King and its relevance. The absence of any proffer leaves this Court “unable to determine whether the trial court’s ruling prejudiced appellant’s case.” *Grandison*, 305 Md. at 642. As such, this issue is not preserved for our review.

Even if this issue had been preserved, the trial court did not abuse its discretion when it limited appellant’s cross examination of King. As the State notes, “[i]n the absence of any formal proffer, [we] can only hypothesize that the prosecutor objected to defense counsel’s questions on the basis of relevance.”

Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Maryland Rule 5-401. “Evidence that is not relevant is not admissible.” Maryland Rule 5-402.

B. Specific Questions to which Appellant Objected

“How many people work in taking orders for private stock guitars?” and “How many guitars does the repair center fix in a given week?”

In his brief, appellant argues that these questions were “relevant to the question of whether the guitar that [a]ppellant allegedly pawned on September 4 was the same guitar as the one not determined to be missing by King until days later – Is this discrepancy to be explained by a mix-up due to the volume of guitars in for repair and the number of people doing the same kind of work as King did or by the fact that there were really two different guitars?” This argument is unpersuasive.

The guitar in this case was a custom built guitar kept in a unique paisley case and with two unique serial numbers inscribed on its headstock. The guitar pawned by appellant and recovered from Gold Brokers Pawn was in a unique paisley case, had the same unique serial numbers as did the stolen guitar, and matched the specifications contained in the Certificate Authenticity for the stolen guitar. King, who handled the guitar when it was in the PRS for repairs, identified the guitar recovered from Gold Brokers Pawn as the same guitar. That the guitar was discovered missing after it was pawned does not, as appellant argues, suggest that there were two guitars. Instead, a trier

of fact could have deduced that appellant pawned the guitar before anyone noticed it was missing over the long holiday weekend; in fact, that’s precisely what the trial court did.

During the rendering of its verdict, the court noted:

Well, there is no argument, I mean, this is the right guitar. ... I mean, that’s why we have 191399, which is what the individual from the pawn shop indicated and we have PS 3767. I mean, you can’t make this stuff up. I mean, it’s clearly the guitar. The issue of September 4th versus September 8th, that was the holiday weekend, September 4th to September 8th, it is difficult to say was it there on Friday afternoon as opposed to Tuesday morning when we all came back to work. No, no question he stole it and he pawned it. None.

“Do you know how much this guitar was sold for?”

Appellant contends that these questions were “relevant to establishing the value of the guitar for purposes of the theft statute.” We need not determine the relevancy of the first question, as it was substantively asked again and answered immediately after the court sustained the State’s objection. During the cross examination of King the following exchange occurred:

[DEFENSE COUNSEL]: Do you know how much this guitar was sold for?

[STATE]: Objection

THE COURT: Sustained

Any error the trial court could have made in sustaining the objection is harmless, as King later testified on two separate occasions that he did not know what the price was and that he was unaware of the guitar’s wholesale or retail prices in 2012.

“If a guitar is not working at the time somebody owns it, could they sell it for the same price?”

The value of a broken guitar is not relevant in this case, because there was undisputed evidence at trial that the guitar was in perfect condition at the time it was stolen.

“You said you worked at the Paul Reed Smith Guitars for thirteen years. Do you know about how many employees work there?”

Appellant argues that this question was “relevant to establishing how many other people might have been responsible for the alleged theft of the guitar.”

We conclude that the trial court did not err for two reasons. First, as the Honorable Frederick J. Scharer recently noted in *Taneja v. State*, __ Md. App. __, 2014 September Term, No. 1958 (filed Nov. 30, 2016), slip op. at 11, a defendant’s attempt to cast suspicion on a possible third party as the guilty individual is untenable without making a proffer or taking other steps to substantiate the claims. Here, appellant sought to arouse suspicion that some unknown third party other than him could have been responsible without anything to suggest that the theory was anything more than speculative or tenuous. The trial court was correct to exclude such attempts.

Second, we hold that this line of inquiry was not relevant to establishing appellant’s guilt because the uncontested evidence placed appellant with the guitar in a pawnshop a few days after the theft. “[E]xclusive 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.” *Brewer v. Mele*, 267 Md.

437, 449 (1972); *Molter v. State*, 201 Md. App. 155, 163 (2011) (“The permitted inference is more than a strand; it is proof of guilt that may stand alone.”). Evidence as to the precise number of employees at PRS might suggest that there might be other persons involved in the theft, but such evidence would not exculpate appellant.

THE JUDGMENTS OF THE CIRCUIT COURT FOR QUEEN ANNE’S COUNTY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.