Circuit Court for St. Mary's County
Case No. C-18-CR-22-000002

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0112

September Term, 2023

CLINTON MAURICE GANTT

v.

STATE OF MARYLAND

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: August 2, 2024

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be citated as persuasive authority only if the citation conforms to Md. Rule 1-104(a)(2)(B).

A jury sitting in the Circuit Court for St. Mary's County convicted appellant Clinton Maurice Gantt of attempted theft of over $100,000.00, possession of cocaine, and possession of drug paraphernalia. The court sentenced Mr. Gantt to 20 years of imprisonment for attempted theft, but suspended all but 10 years. The court also sentenced Mr. Gantt to a concurrent, one-year term of imprisonment for possession of cocaine. The court imposed a fine for possession of drug paraphernalia, but suspended the fine. Finally, the court imposed a period of supervised probation for five years, commencing "upon completion of the active sentence."

Mr. Gantt has presented two questions on appeal, which we quote:

1. Is the evidence insufficient to sustain Mr. Gantt's attempted theft conviction?

2. Where Mr. Gantt was convicted of possession of cocaine based solely on the cocaine residue recovered from a "crack pipe," must this Court vacate his conviction for possession of drug paraphernalia?

Under the highly deferential standard of review for questions regarding the sufficiency of the evidence, we are constrained to conclude that the evidence was sufficient to sustain the conviction for attempted theft. We vacate the conviction for possession of drug paraphernalia.

BACKGROUND

Mr. Gantt was charged by way of a criminal information with attempted robbery, attempted theft, disorderly conduct, possession of cocaine, and possession of drug paraphernalia. On the first day of trial, before jury selection began, the State entered a plea of nolle prosequi on the disorderly conduct charge.

At a jury trial on August 23 and 24, 2022, the following facts were elicited.

Ashley Simms

Ashley Simms, a teller, testified that at around the close of business on November 3, 2021, Mr. Gantt walked in, wearing a yellow hospital gown and yellow socks. He produced a credit or debit card and said that his account had a negative balance. Using the card, Ms. Simms checked the account, but realized that it belonged to someone else. She asked Mr. Gantt for his identification; he gave her an identification card; and she used it to find his account. She told him that he did not have a negative balance, but that he had no money in the account.

Mr. Gantt "was talking about a lot of different things . . . so it was kind of hard to keep up with him." "He was kind of all over the place." "He eventually said that he wanted $100,000," which confused Ms. Simms "because he didn't have any money in his account." She said: "Well, sir, you don't have any money in your account. Like, how do you want these funds?"

At one point Mr. Gantt asked if she was afraid of him. In fact, she was afraid, because he was acting aggressively and yelling. He reached around a plastic barrier that had been erected during the COVID-19 pandemic and "got in [her] face." "He was very agitated and wanted money." "He just kept saying he wanted $100,000." "Eventually," he said that "he wanted all blue bills," meaning $100 bills—the only blue bills they have. At some point, her supervisor, Brenda Raley, stepped in to help.

On cross-examination, Ms. Simms testified that Mr. Gantt mentioned a lot of different things, including God. His behavior was odd, and he became progressively more agitated. She was reminded that he was wearing a vest over his hospital gown, as well as a knee brace. She agreed that he gave her an identification card with his name on it.

Brenda Raley

Ms. Raley, an assistant manager, was seated in the teller line next to Ms. Simms when Mr. Gantt entered the credit union. She noticed that "[h]e was dressed oddly," wearing a vest over a hospital gown, short pants, and "socks on with the little grippies on the bottom." He was not wearing shoes.

Mr. Gantt asked for $20,000.00, and Ms. Simms informed him that he didn't have any money in his account. When Ms. Raley noticed Mr. Gantt "getting kind of loud," she asked if he was talking about getting a loan. After Mr. Gantt responded affirmatively, she gave him an application. Mr. Gantt "went and wrote some stuff on it," but things "just weren't right [on the application]," so she told him to take the application home with him and "come back tomorrow." She was "just trying to get him to leave." Mr. Gantt took "two minutes" to fill out the application before returning it to someone else.

Before he left the bank, Mr. Gantt "was getting louder and louder," saying that "he wanted money." "At one point, he said he wanted $50,000." "[H]e would be over by the teller line and then he would go over to the other side of the room." "[H]e jumped up on some of the furniture in the lobby." He reached around the plexiglass in front of Ms.

Simms. "He was kind of scary with all of his antics." He talked about "God and different things," and the volume of his speech alternated between being difficult to hear and "sometimes" being "very loud."

Ms. Raley did not believe that Mr. Gantt understood her. "[H]e said he wasn't leaving unless he got money, and [she] explained to him that that's not how a loan works." She told him that the credit union would approve or deny his application, "and then [Mr. Gantt] would get the money," but that "it doesn't happen immediately." Mr. Gantt responded that he "wasn't leaving without the money."

On cross-examination, Ms. Raley testified that Mr. Gantt had approached a credit union member and asked him for money. Because of his hospital gown, she "was wondering if he had escaped from somewhere." "He was acting crazy."

On redirect examination, Ms. Raley discussed Mr. Gantt's encounter with the credit union member. Mr. Gantt had started to leave the building, but came back in several times. He stood in the entrance foyer with the member. Ms. Raley did not want the member to be stuck with Mr. Gantt, so she went out to the foyer to ask Mr. Gantt to leave. After about two or three minutes, Mr. Gantt left.

Jessica Denison

The branch manager, Jessica Denison, testified that Mr. Gantt was "dressed oddly," "wearing a hospital gown, no shoes, and a black vest." Although she could not hear his conversations with Ms. Simms and Ms. Raley through her monitor, she noticed that "he came into the branch and was pretty irate with" Ms. Simms. She heard Mr.

Gantt ask Ms. Simms whether she believed in God, whether she was scared of him, and whether she had a boyfriend. He "demanded" cash and said "that he was not leaving the branch until he received it." His monetary demands increased as the encounter progressed. "[H]e specifically wanted hundred dollar bills"—bills with blue lines on them.

As Mr. Gantt got louder, Ms. Denison decided to leave her office because she knew that she had other employees who "were probably frightened." She told the young female employees to go into a locked room—a room that is accessible only with codes—and to call the credit union's security officer. She also told them that she would contact the police.

Ms. Denison went out to the teller line to relieve Ms. Simms and Ms. Raley and to allow them to go into the locked room. She made contact with Mr. Gantt, who was "aggressive." He asked her how long it would take to count "the amount of money that he was asking for" and handed her the loan application. "[I]n hopes that he would leave the branch," she "explained to him that it would take 24 to 48 hours to get a response" and that they would respond as soon as they could. Mr. Gantt told her that "he was not leaving until he got the amount of money that he was asking for," which had increased to $500,000.

Ms. Denison also discussed the loan application with Mr. Gantt. She asked Mr. Gantt if she could give him a call when his loan application was complete and asked for

his telephone number. Mr. Gantt gave her his telephone number, and Ms. Denison wrote it on the application..

Mr. Gantt became "irate" and "more demanding" when Ms. Denison told him that he would not get cash that day. He told her "that he had stomped people, [and] that he was a stomper." She described him as "aggressive" and "threatening." At times, he would adjust his knee brace, which made her uncomfortable, because she was unsure of whether he had a weapon. She ultimately activated the branch's silent alarm and called 911 with her cellphone. After Mr. Gantt left the building, she locked the door to prevent him from coming back in.

On cross-examination, Ms. Denison acknowledged that Mr. Gantt returned the loan application to her with "God" listed as his cosigner. She also acknowledged that, on the day of the incident, she had told the police that Mr. Gantt had "[thrown] a temper tantrum inside the bank" and that he had been "rude and vulgar," but that he hadn't "physically harmed" or strong-armed anyone that day. She acknowledged that she may have told the deputies that Mr. Gantt was "a crazy person" that day.

Corporal Glenn Knott

Corporal Glenn Knott of the St. Mary's County Sheriff's Office testified that, on the date of the incident, he was the first law enforcement officer to arrive on the scene. When he arrived, Mr. Gantt was outside the credit union, "in hospital attire," speaking to another person. He detained Mr. Gantt and went into the credit union, where the employees were upset and shaken.

When Corporal Knott spoke with Mr. Gantt, "He was okay at times," but at "[o]ther times, he was belligerent, stating off the wall things[.]" Mr. Gantt told him that he had gone to the credit union to "straighten his account out" and that he had tried to open a loan application.

On cross-examination, Corporal Knott testified that he told his supervisor that Mr. Gantt was "1096"—which means "crazy." He also told his supervisor on the day of the incident that he "didn't think [he] had anything," as "there wasn't any weapon and there wasn't any strongarm."

Sergeant Skylar LaFavre

Sergeant LaFavre testified that he arrived at the credit union just after Corporal Knott. Mr. Gantt was wearing a hospital gown, boxer shorts, a puffer vest, a knee brace, and a camouflage hat. The sergeant handcuffed Mr. Gantt and searched him for weapons. He found no weapons.

Mr. Gantt was "very talkative[.]" He screamed that he was a "stomper" who "stomp[ed] on ni**as." He repeated those phrases at least 10 times, while leaning toward the sergeant and putting his face near the sergeant's body-worn camera. He remained loud and agitated.

Mr. Gantt said that he was a genius and asked the sergeant whether he knew any other geniuses. He also said that he was "the black version of the Incredible Hulk." He asked the sergeant whether he believed in God. When the sergeant responded that he did,

Mr. Gantt told him that he "would live forever because God was going to destroy the Earth [and] recreate it for all the good people."

One of the other officers recognized Mr. Gantt because Mr. Gantt had been in an automobile accident the night before.

Mr. Gantt told Sergeant LaFavre that he wasn't doing his job correctly because he (Mr. Gantt) had a crack pipe in his pocket. The sergeant confiscated the pipe. At that point, the sergeant gave Mr. Gantt his *Miranda* warnings and confirmed that he understood his rights and was willing to talk.

According to Mr. Gantt, he "came to the bank because he wanted to get $100,000." When the employees told him that it would take 48 hours to process a loan, he said, "'Well, then I want $500,000.'" "[H]e was upset that he was not getting his money that same day and . . . he wanted to get it before end of business." The State introduced the footage from Sergeant LaFavre's body-worn camera, depicting his interaction with Mr. Gantt.

On cross-examination, Sergeant LaFavre testified that Mr. Gantt was trying to get a bystander to record his interaction with the police and to post it on TikTok, a social media platform. Mr. Gantt's behavior was "erratic," "his eyes were very wide," and the volume of his voice "would fluctuate." Mr. Gantt told the sergeant that he had smoked crack "about five minutes before he went into the bank."

On redirect examination, Sergeant LaFavre testified that Mr. Gantt knew who he was, knew where he was, and knew that he was talking to the police. Mr. Gantt gave logical responses to the sergeant's questions.

The Surveillance Video

The State presented a surveillance video depicting the events that occurred inside the credit union that day. The video footage has no sound.

The footage depicts Mr. Gantt entering the building in the clothing described by the other witnesses—the hospital gown, a vest, a knee brace, yellow hospital socks, and a brightly colored camouflage hat. Once Mr. Gantt arrives at the front of the teller line, he presents a card to a teller, Ms. Simms.

Mr. Gantt is seen speaking energetically to Ms. Simms, picking his card back up and leaning against the counter to talk with the teller. He abruptly leaves the teller line, walking across the lobby and opening the door to allow another customer to enter. After briefly returning to the teller counter, Mr. Gantt goes to the waiting area at the center of the lobby. There, the video shows him sitting on a chair, and then immediately getting up, springing onto the couch in a standing position and bouncing there briefly before jumping off and returning to his original seat.

In the video, Mr. Gantt returns to the counter, where he continues speaking to the tellers. Mr. Gantt adjusts his hospital gown, revealing his knee brace, and continues talking with his arms fully outstretched to the side. When the second teller—Ms. Raley—leaves, Mr. Gantt begins to talk to Ms. Simms, pointing and encroaching in the

face of a customer whom she is assisting. After Ms. Raley returns with a piece of paper—the loan application—Mr. Gantt walks to the lobby and stands at a vacant desk to fill it out. He briefly walks off camera before he returns to the counter.

After another brief conversation with the tellers and their customer, Mr. Gantt is seen abruptly leaving the frame. A few seconds later, he returns to the seats in the lobby waiting area. Seconds later, Mr. Gantt approaches one of the side offices, where the branch manager, Ms. Denison, speaks with him. Mr. Gantt sits on a couch outside in the waiting area, where he and Ms. Denison talk for approximately forty seconds before Mr. Gantt abruptly rises from the couch and sprints across the lobby and through the first door. After standing for a few moments in the foyer with another customer, Mr. Gantt exits the building entirely.

Video from the Interior of the Police Car

The State played a video taken from the interior of Corporal Knott's police car after Mr. Gantt's arrest. In the video, the corporal suggests to Mr. Gantt that if he told the tellers that he was leaving with $500,000 in all blue hundreds, "one way or another, you know what they gotta think, right?" Mr. Gantt acknowledges that he changed the amount that he requested from $100,000 to $500,000 because "they pissed [him] off." He repeats, again, that he is "a stomper."

The Crack Pipe

In a search incident to Mr. Gantt's arrest, Sergeant LaFavre located a crack pipe on his person. The residue on the pipe was tested and determined to be cocaine.

* * *

After the evidence was submitted, Mr. Gantt's counsel moved for a judgment of acquittal on the related charges of attempted robbery and attempted theft. In support of the motion, the defense argued that there was no evidence of Mr. Gantt's specific intent to permanently deprive the credit union of its property, because he had filled out a loan application, which is a lawful way of obtaining property, and there was no evidence that Mr. Gantt did not intend to repay the loan if he were to receive one. By urging the credit union's employees to hurry up in processing the loan, Mr. Gantt, the defense argued, did not transform a loan into an unlawful means of obtaining property. Moreover, the defense argued, Mr. Gantt provided his name, his identification, his social security number, and his contact information—all the information that would be needed to identify him in the event of an arrest—which demonstrated that he did not intend to permanently deprive the credit union of its property.

The defense also argued that Mr. Gantt's behavior was "not the behavior of a rational person" and that it demonstrated his inability to form specific intent. The defense stated that the witnesses described Mr. Gantt's behavior as erratic and bizarre, that he said things that made no sense, and that he didn't seem to understand what people around him were saying.

On several occasions, the defense referred to Mr. Gantt's intoxication, which could negate the specific intent necessary to commit a theft or robbery. In his "altered state of mind," counsel argued, Mr. Gantt may have believed that "he was the black

Hulk" or that "he could put God as his cosigner and could still lawfully obtain a loan." Counsel concluded by reiterating that there was no evidence to show that Mr. Gantt intended to permanently deprive the credit union of its property.

The State responded that Mr. Gantt did not request a loan application until Ms. Raley suggested it, which indicated that his intent was not to obtain a loan. The State stressed that Mr. Gantt was asking for money that he knew he did not have, that he requested the money in specific denominations, that he said that he would not leave until he got it, and that he became increasingly agitated and irate, demanding larger and larger amounts. Mr. Gantt, the State argued, was rational enough to go to a bank when he wanted money. Finally, the State argued that Mr. Gantt's behavior was "alarming" and that it would "clearly place any reasonable person in fear."[1]

The circuit court denied the motion for judgment of acquittal, finding that there was sufficient evidence if believed by the jury to convict Mr. Gantt of attempted robbery and attempted theft.

* * *

[1] Citing the video footage from Sergeant LaFavre's body-worn camera, the State also argued that Mr. Gantt had said, "I wanted to look crazy." Thus, the State suggested that Mr. Gantt was only pretending to be out of his mind. In fact, the official transcript does not record Mr. Gantt as saying "I wanted to *look* crazy." According to the transcript, he said, "I wanted to *go* crazy, but I ain't know the cops were going to show up, but this is even better for TikTok." (Emphasis added.) The statement occurs in the course of a lengthy soliloquy in which Mr. Gantt tells the sergeant that he is "suing St. Mary's Hospital for a hundred million dollars," talks about the pain medication that he received at the hospital, accuses someone of being a racist, and says that he is "a stomper" and is "about to take a million dollars out the bank, all blue hundreds," because he is "a stomper."

The jury acquitted Mr. Gantt of attempted robbery, but convicted him of possession of cocaine, possession of drug paraphernalia, and attempted theft of more than $100,000.00.

Mr. Gantt filed a timely notice of appeal.

STANDARD OF REVIEW

In assessing the sufficiency of the evidence supporting a criminal conviction, we ask "'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.'" *McClurkin v. State*, 222 Md. App. 461, 486 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original); *accord Stanley v. State*, 248 Md. App. 539, 564 (2020). "In applying that standard, we give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *McClurkin v. State*, 222 Md. App. at 486 (quoting *Harrison v. State*, 382 Md. 477, 488 (2004)); *accord Stanley v. State*, 248 Md. App. at 564.

On appellate review of the sufficiency of the evidence, a court will not "retry the case" or "re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Smith v. State*, 415 Md. 174, 185 (2010); *accord Stanley v. State*, 248 Md. App. at 564. The relevant question 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." *Fraidin v. State*, 85 Md. App. 231, 241 (1991)

(emphasis in original); *accord Smith v. State*, 232 Md. App. 583, 594 (2017); *Stanley v. State*, 248 Md. App. at 564-65.

DISCUSSION

I. Attempted Theft

"'A person is guilty of an attempt when, with intent to commit a crime, he engages in conduct which constitutes a substantial step toward the commission of that crime[.]'" *Hall v. State*, 233 Md. App. 118, 138 (2017) (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). In other words, an attempt "requires a 'specific intent to commit the offense coupled with some overt act in furtherance of the intent which goes beyond mere preparation.'" *Carroll v. State*, 428 Md. 679, 697 (2012) (quoting *Dixon v. State*, 364 Md. 209, 238 (2001)).

In Maryland, theft is proscribed by Md. Code (2002, 2021 Repl. Vol.), Criminal Law Article ("CL") § 7-104(a), which states, in relevant part, that a person may not obtain unauthorized control of the property of another if the person: "intends to deprive the owner of the property[.]" The statute defines "deprive" as withholding the property of another: "(1) permanently; (2) for a period that results in the appropriation of a part of the property's value; (3) with the purpose to restore it only on payment of a reward or other compensation; or (4) to dispose of the property or use or deal with the property in a manner that makes it unlikely that the owner will recover it." CL § 7-101(c).

"The requirement of intentional deprivation makes theft a specific intent crime." *State v. Coleman*, 423 Md. 666, 673 (2011).

To prove that Mr. Gantt had the requisite specific intent to commit attempted theft, the State needed to demonstrate, first, that Mr. Gantt intended to take the credit union's property; and second, that he had the deliberate purpose of permanently depriving the credit union of that property.

There are any number of reasons why a jury could have found that Mr. Gantt did not have the specific intent to commit theft—i.e., to permanently deprive the credit union of its money. He may have been undergoing some sort of mental health crisis. He had been hospitalized and appears to have lost some of his clothes: he was wearing a hospital gown, boxer shorts, and hospital socks, and did not have his shoes or pants even though it was early November. He was raving about God and the biblical apocalypse, and he claimed to be both a genius and a comic book superhero (whose alter ego is also a genius). He asked a random stranger for money. He jumped up and down on the credit union's furniture. He identified himself to the teller, which is not entirely consistent with the notion that he intended to steal money. At Ms. Raley's suggestion, he filled out a loan application and gave his telephone number, which, again, is not consistent with the notion that he intended to steal money. He listed God as his co-signer on the loan application. When he was apprehended, he mugged for the camera and tried to get a stranger to post a video of his arrest on social media. He claimed to have smoked crack cocaine five minutes before he went into the credit union. Corporal Knott thought that he was crazy. Ms. Raley wondered whether he had escaped from somewhere.

In his brief, Mr. Gantt advances two specific arguments in support of his contention that the evidence at trial was insufficient to prove that he had the specific intent to commit a theft. Mr. Gantt first argues that the evidence demonstrates that he was so intoxicated that he was incapable of forming the specific intent. Second, Mr. Gantt argues that because he applied for a loan, he could not have intended to obtain unauthorized control of the credit union's funds. We shall address each of these arguments in turn.

A. Voluntary Intoxication

"Generally, voluntary [intoxication] is no defense to a criminal charge." *State v. Gover*, 267 Md. 602, 606 (1973). All persons are "'presumed to be in possession of [their] mental faculties until the contrary is shown.'" *Id.*at 607 (quoting *Beall v. State*, 203 Md. 380, 385-86 (1953)); *accord Bazzle v. State*, 426 Md. 541, 553 (2012) (stating that "mere intoxication is insufficient to negate a specific intent"). "The only exception to this occurs when a defendant, charged with a crime requiring a specific intent, is so [intoxicated] that he is unable to formulate that mens rea." *State v. Gover*, 267 Md. at 606. "'As a defense to intent . . . the accused must show that he was so intoxicated that he was robbed of his mental faculties.'" *Id.* at 607 (quoting *Beall v. State*, 203 Md. at 386). "[The] intoxication then will excuse his actions and serve as a defense." *Id.* at 606.

Nonetheless, "'[t]he degree of intoxication which must be demonstrated to exonerate a defendant is great.'" *Bazzle v. State*, 426 Md. at 559 (quoting *State v. Gover*, 267 Md. at 607). For example, in *Bazzle v. State*, 426 Md. at 558, the Court held that the

defendant was not entitled to a jury instruction on voluntary intoxication even though his blood-alcohol content was almost twice the legal limit,[2] he claimed to be unable to recall some of his own behavior on the night of the incident, his alleged behavior was "senseless"[3] and "illogical,"[4] and a witness testified that he was "about to pass out." *Id.* at 548. By contrast, in *Smith v. State*, 69 Md. App. 115, 121-22 (1986), this Court held that the defendant was entitled to a jury instruction on voluntary intoxication where he had "ingested three beers, three shots of schnapps and six ten-milligram valium pills" over 90 minutes,[5] he was described as "acting 'strange,' 'slurring,'" and being "'down, drunk, [and] unbalanced when he was walking,'"[6] he repeatedly demanded beer in a "'dull monotone' without raising his voice" just before the crime occurred,[7] and he was still "'totally out of it,' and 'falling in the doorway'" 30 minutes later. *Id.* at 120.

Mr. Gantt argues that "there was ample evidence that [he] was sufficiently intoxicated to lack the ability to form the specific intent to commit theft." We assume for the sake of argument that there was. But the question here is not whether the jury could

[2] *Id.* at 555.

[3] *Id.* at 548.

[4] *Id.* at 555.

[5] *Id.* at 119.

[6] *Id.* at 120.

[7] *Id.*

have found that Mr. Gantt was so intoxicated that he was unable to form the specific intent to commit theft. The question is whether the jury had no choice but to find that Mr. Gantt was so intoxicated that he could not form the specific intent.[8]

Viewing the record, as we are required to do, under the highly deferential standard of review that applies to sufficiency challenges, we cannot say that the jury had no choice but to find that Mr. Gantt was so intoxicated that he could not form the specific intent to commit theft. Most notably, the basis for the defense of voluntary intoxication is Mr. Gantt's statement to Sergeant LaFavre that he had smoked crack cocaine about five minutes before he entered the credit union. As the State points out, however, the jury was not required to believe what Mr. Gantt had said.[9]

Furthermore, the record contains at least some evidence suggesting that Mr. Gantt, at times, had control over his mental faculties. He was able to help the teller in finding his account information. For some of the time when he was in the credit union, he sat on a couch, talking to the branch manager, Ms. Denison. Sergeant LaFavre testified that Mr.

[8] According to Mr. Gantt, "the evidence at trial supports a finding that [he] was so intoxicated at the time of the incident that he was incapable of forming a specific attempt to commit theft and, thus, was incapable of forming a specific intent to commit attempted theft." But, again, the issue is not whether the evidence "supports" that finding, but whether the evidence compels that finding.

[9] Nor was there any evidence at trial about how much crack Mr. Gantt may have smoked, his level of tolerance for the drug, or the likely effects of the drug. Yet "[t]he mere consumption of [a drug], 'with no evidence as to the [effect] of that [drug] on the defendant, would not permit a jury reasonably to conclude that he had lost control of his mental faculties to such an extent as to render him unable to form the intent[.]'" *Bazzle v. State*, 426 Md. at 555 (quoting *Lewis v. State*, 79 Md. App. 1, 13 n.4 (1989)).

Gantt knew who he was, knew where he was, and knew that he was talking to the police, and gave logical responses to questions. Finally, the State argued that, when Mr. Gantt wanted money, he was sufficiently rational to go to a credit union—a bank—rather than, for example, a fast-food restaurant. If the jurors credited any of these points, they could have reasonably concluded that Mr. Gantt was not so intoxicated as to be unable to form a specific intent to commit a theft.

In this case, the court submitted the issue of voluntary intoxication to the jury, as it was perhaps required to do. The jury, however, was simply unpersuaded that Mr. Gantt was "'robbed of his mental faculties'" *State v. Gover*, 267 Md. at 607 (quoting *Beall v. State*, 203 Md. at 386) or was "so [intoxicated] that he [was] unable to formulate" the mens rea for theft. *Id.* at 606. On the record in this case, viewed in accordance with the highly deferential standard of review that we are compelled to apply, we cannot say that the court was obligated to take the issue of voluntary intoxication away from the jury and to conclude, as a matter of law, that Mr. Gantt was so intoxicated that he was unable to form the specific intent to commit theft. We decline to disrupt the jury's rejection of the voluntary intoxication defense, as there was sufficient evidence to support a conclusion that Mr. Gantt was capable of forming specific intent.

B. No Intent to Gain Unauthorized Control

Mr. Gantt argues that he could not have intended to obtain unauthorized control of the credit union's funds—i.e., that he could not have intended to commit a theft—because "he attempted to obtain the funds by applying for a loan." "By its very nature," he

argues, "a loan requires the consent of the owner." "It follows," he concludes, that a person who is authorized to borrow funds for temporary use through a loan cannot be guilty of theft."

We are unpersuaded that Mr. Gantt's efforts to obtain a loan prove conclusively that he had no intent to gain unauthorized control over the credit union's funds. In fact, as the State points out, Mr. Gantt did not actually request a loan. Instead, Ms. Raley suggested that he go home with a loan application, fill it out, and return the next day. And she made this suggestion only to defuse the encounter between Mr. Gantt and Ms. Simms, in which Mr. Gantt, who had been told that he had no money in his account, demanded $100,000 and reached around the plastic divider that separated him from the teller.

It is true that Mr. Gantt filled out the loan application. But when Ms. Raley and Ms. Denison told him that he would have to wait 24 to 48 hours for the credit union to process his application, he became irate and started to act in a threatening manner—yelling that he had stomped people and that he was a stomper. He demanded larger and larger amounts of money, told the frightened bank employees that he wanted it in $100 bills, and refused to leave until he got it.

As previously stated, there are many reasons why a jury might have found that Mr. Gantt lacked the specific intent to permanently deprive the credit union of its funds. Nonetheless, under the highly deferential standard of review that we must employ, we

cannot say that the jury had no choice but to find that he lacked that specific intent. Consequently, we must affirm the conviction for attempted theft.

II. Possession of Drug Paraphernalia

Mr. Gantt also argues that his conviction for possession of drug paraphernalia (i.e., the crack pipe) should be vacated because his conviction for possession of cocaine was based solely on the residue found within the crack pipe. The State agrees. Both parties cite *Dickerson v. State*, 324 Md. 163, 174 (1991), for the proposition that a conviction for possession of paraphernalia cannot stand where it is based on the possession of the "vial" or "container" that holds the illegal drugs that the defendant has been convicted of possessing.

Here, Mr. Gantt was convicted of possession of cocaine based on the cocaine residue found in his crack pipe. He was also convicted of possession of drug paraphernalia based on his possession of the same crack pipe. As in *Dickerson*, there was no paraphernalia other than the crack pipe that could be used to sustain a conviction for possession. We agree with both parties that Mr. Gantt's conviction for possession of drug paraphernalia must be vacated.

THE JUDGMENTS OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY ARE AFFIRMED IN PART AND VACATED IN PART; THE JUDGMENT FOR ATTEMPTED THEFT (COUNT 2) IS AFFIRMED; THE JUDGMENT FOR POSSESSION OF DRUG PARAPHERNALIA (COUNT 5) IS VACATED. THE CASE IS REMANDED FOR FURTHER PROCEEDINGS

CONSISTENT WITH THIS OPINION.
COSTS ARE TO BE EVENLY DIVIDED.