

Circuit Court for Worcester County
Case No. C-23-CR-17-000103

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1353

September Term, 2017

DIANNA BUTLER

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 9, 2018

*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.

Following a bench trial in the Circuit Court for Worcester County, Dianna Butler, appellant, was convicted of theft scheme and theft of property valued at less than \$1,000. Butler’s sole claim on appeal is that the evidence was insufficient to sustain her convictions. For the reasons that follow, we affirm.

In analyzing the sufficiency of the evidence admitted at a bench trial to sustain a defendant’s convictions, we “review the case on both the law and the evidence,” but will not “set aside the judgement . . . on the evidence unless clearly erroneous.” Maryland Rule 8-131(c). “We review sufficiency of the evidence to determine 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.” *White v. State*, 217 Md. App. 709, 713 (2014) (internal quotation marks and citation omitted).

Butler was convicted of theft scheme based on evidence that she wrote five bad checks from her mother’s closed PNC bank account over a seven-month period. She was also convicted of theft of property valued at less than \$1,000 based on evidence that she opened a BB&T account in the name of “Mortgages 4 You”; funded the account using \$600 in bad checks from the PNC account; received a debit card for that account; and then used the debit card to make a cash withdrawal and various purchases, knowing that the checks from the PNC account would later be dishonored.

On appeal, Butler first claims that there was insufficient evidence to support her theft scheme conviction because the State failed to prove that she committed an “additional deception” beyond representing that the checking account contained sufficient funds to cover the checks. *See Murphy v. State*, 100 Md. App. 131 (1994) (holding that, under

former Art. 27, § 344(b), a person who passes a bad check but does not commit an “additional deception” beyond the “implicit false representation” that there are sufficient funds to cover the check may not be prosecuted for theft even where the checks were passed under a “common scheme”).¹

In convicting Butler, the trial court found that, “[i]n addition to knowingly deceiving the payees of the checks as to the existence of the account and the availability of funds to pay the checks,” she committed “additional deceptions” by “falsely represent[ing] to the payees in four instances that she . . . was authorized to sign and issue checks as a drawer, and also falsely represent[ing] in one instance that the signature of the drawer on the check, Regina Butler, was the true and legitimate signature of Regina Butler.” We agree that a false representation regarding either a person’s authority to issue a check or the legitimacy of a signature on a check constitutes deceptive conduct. Moreover, the trial court’s findings that Butler committed those deceptive acts were supported by evidence that: (1) the PNC bank account had been opened by Regina Butler, Butler’s mother; (2) Regina Butler was the only person authorized by the bank to use the account; (3) if Regina Butler had wanted another individual to be placed on the account she “would have to come to a PNC branch with the person being added” and produce a new signature card; (4) Butler did not start writing checks on her mother’s account until after the account had been closed

¹ In its brief, the State notes that the current theft statute “arguably” does not require proof of an “additional deception” because the language in that statute differs somewhat from the language of former Art. 27, § 344(b). Because we hold that the State presented sufficient evidence that Butler committed an “additional deception” beyond the passing of the bad checks, we need not resolve this issue on appeal.

in May 2015; (5) one of the checks passed by Butler contained her mother’s signature; and (6) the signature on that check was different than the signature on the signature card that Butler’s mother had signed when she opened the account.

In challenging the sufficiency of the evidence, Butler notes that she told the police that her mother was aware she was writing the checks and that she held power of attorney for her mother. She thus contends that, based on that evidence, it is “conceivable that [she] held a power of attorney or was in a principal/agent relationship with her mother.” However, in determining that Butler did not have the authority to write the checks, the trial court was free to disbelieve Butler’s statements to the police, especially considering that Butler had not been added to the account by her mother and Butler did not start writing checks until after the account had been closed.

Butler also asserts that there was insufficient evidence to convict her of theft of property valued at less than \$1,000 because, she claims, the State failed to prove that she was the person who used the debit card the day after the account was opened. Again, we disagree. Viewed in a light most favorable to the State, the trial court could reasonably find that Butler was the person who used the debit card based on the evidence that: (1) Butler was the sole account holder for the BB&T account; (2) she funded the account using checks from her mother’s closed PNC account that contained her mother’s forged signatures; (3) the debit card transactions were made the day after Butler opened the account; (4) one of the debit card transactions occurred in Berlin, Maryland, where Butler also passed a bad check the same day; and (5) after the checks used to fund the account were dishonored, Butler wrote two additional bad checks on the account. Consequently,

we are persuaded that the State presented sufficient evidence to support Butler's convictions for theft scheme and theft.

**JUDGMENTS OF THE CIRCUIT
COURT FOR WORCESTER
COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**