Circuit Court for Baltimore City
Case No. C-24-CR-24-000482

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1696

September Term, 2024

KEITH JERMAINE BUTLER

v.

STATE OF MARYLAND

Friedman,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: March 25, 2026

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

Following a jury trial in the Circuit Court for Baltimore City, Keith Butler, the appellant, was convicted of theft of property valued between $100 and $1,500.[1] On appeal, he presents one question for our review: Was the evidence sufficient to sustain his theft conviction? For the following reasons, we shall affirm.

BACKGROUND

At the beginning of November 2023, Fared Marcia-Hernandez was outside a Home Depot store, seeking work. He had recently moved to the United States and was in need of employment. His lack of transportation to job sites made it difficult to find work, so he was "just hustling every day" to find jobs.

While at the store, Mr. Marcia-Hernandez approached the appellant to ask for work. He explained his "situation," and the appellant offered to pay him $200 per day to install drywall at his business. Although this pay was less than what Mr. Marcia-Hernandez believed his work was worth, he "really needed the money," so he agreed to the offer.

Mr. Marcia-Hernandez worked for the appellant for two days. The appellant paid him $200 on the first day. On the second day, Mr. Marcia-Hernandez completed the drywall installation as agreed. However, the appellant asked him to stay late and "do lights, like, electrical work," which they had not previously agreed upon. It was getting late, and Mr. Marcia-Hernandez's wife was waiting for him outside so they could go home. He asked the appellant for his pay, but the appellant responded, "No. I'm not going to pay you."

[1] The appellant was also charged with first-degree assault, second-degree assault, and open carry of a dangerous weapon with the intent to injure. He was acquitted of these charges.

Mr. Marcia-Hernandez went outside to take a picture of the appellant's vehicle tags. According to Mr. Marcia-Hernandez, the appellant ran towards him with a knife and threatened him, stating that he knew where Mr. Marcia-Hernandez lived and that "[h]e was going to fuck [him] up" if Mr. Marcia-Hernandez returned to the property. Mr. Marcia-Hernandez and his wife fled and called the police.

The appellant testified in his own defense at trial. He stated that the agreement was to pay Mr. Marcia-Hernandez a total of $400—$200 the first day, and $200 "when he finished the job," meaning "totally completed." The appellant paid Mr. Marcia-Hernandez the initial $200 on the first day of work. However, the appellant admitted he did not make any payment to Mr. Marcia-Hernandez on the second day, explaining that Mr. Marcia-Hernandez did not finish the job. They got into "a little back-and-forth," and Mr. Marcia-Hernandez left. The appellant denied threatening Mr. Marcia-Hernandez or brandishing a knife.

At the conclusion of the trial, the court instructed the jury on two theories of theft: (1) theft by unauthorized control, and (2) theft by deception.

The jury found the appellant guilty of theft. The court sentenced the appellant to six months' imprisonment, with all but 60 days suspended.

STANDARD OF REVIEW

In reviewing a claim regarding the sufficiency of the evidence, an appellate court must 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." *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "Making this determination does not require [the appellate] court to ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." *State v. Manion*, 442 Md. 419, 431 (2015) (citation modified). Thus, this Court defers to the jury's resolution of "any conflicts in the evidence" as well as the "jury's inferences and determine[s] whether they are supported by the evidence." *Smith*, 415 Md. at 185.

DISCUSSION

The appellant argues that there was insufficient evidence to support the theories of theft by unauthorized control and theft by deception.

A. Theft by Unauthorized Control

Under the theory of theft by unauthorized control, "[a] person may not willfully or knowingly obtain or exert unauthorized control over property, if the person . . . intends to deprive the owner of the property." Md. Code Ann., Crim. Law ("CR") § 7-104(a)(1).

The extent of the appellant's argument challenging this theory is limited to one sentence in his brief: "[T]he facts of this case do not properly produce a cognizable allegation of theft by 'unauthorized control' because [the appellant] merely maintained control of his own funds during the dispute over whether funds were due." The appellant neither elaborates on this assertion nor provides authority in support of the argument. *See* Md. Rule 8-504(a)(6) (requiring appellate briefs to contain "[a]rgument in support of the party's position on each issue"). Accordingly, we decline to address it. *See Darling v. State*,

232 Md. App. 430, 465–66 (2017) (declining to address an argument raised in a single sentence and without support for the position); *Poole v. State*, 207 Md. App. 614, 632 (2012) (declining to consider a contention raised in a single sentence, in a footnote, and with no supporting argument); *Anderson v. Litzenberg*, 115 Md. App. 549, 577–78 (1997) (failure to provide legal authority to support a contention waived the contention).

B. Theft by Deception

Under the theory of theft by deception, "[a] person may not obtain control over property by willfully or knowingly using deception, if the person . . . intends to deprive the owner of the property." CR § 7-104(b)(1).[2] "[T]heft by deception is a specific intent crime requiring both an intent to deceive and an intent to deprive." *Manion*, 442 Md. at 433–34.

The appellant argues that there was insufficient evidence to prove both an intent to deceive and an intent to deprive. He contends that the disagreement over payment does not indicate any intent to deceive. Additionally, he explains that the evidence established that Mr. Marcia-Hernandez did not work for the agreed-upon two days, and, as a result, the appellant withheld payment of $200 from the total agreed-upon amount of $400.

[2] In relevant part, "deception" means "knowingly to: (i) create or confirm in another a false impression that the offender does not believe to be true; [or] (ii) fail to correct a false impression that the offender previously has created or confirmed." CR § 7-101(b)(1)(i)–(ii). "Deprive" means to "withhold 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." CR § 7-101(c).

Accordingly, he argues that he honestly believed he was entitled to withhold the $200 and thus lacked the intent to deprive.

Because intent is subjective, the factfinder determines intent "by a consideration of the accused's acts, conduct and words." *State v. Raines*, 326 Md. 582, 591 (1992). The "trier of fact can infer from a defendant's actions and the surrounding circumstances whether the defendant had the requisite intent." *Manion*, 442 Md. at 434.

For instance, "[t]he defendant's intent to deprive, 'may be inferred from acts occurring subsequent to the commission of the alleged crime.'" *Id.* (quoting *State v. Coleman*, 423 Md. 666, 674 (2011)). However, "[a]n intent to deprive does not lie where the defendant has a right to the property." *Id.* at 435 (citing CR § 7-101(j) (defining "property of another" as "property in which a person other than the offender has an interest that the offender does not have the authority to defeat or impair, even though the offender also may have an interest in the property")). "Moreover, a defendant's intent to commit theft may be negated by an honest belief in the right to the property." *Id.* "[I]f the defendant can produce evidence that he was acting under an honest belief he had a claim of right, this will be weighed by the trier of the facts in resolving the issue of whether the defendant possessed the requisite *mens rea* to commit the offense of theft." *Coleman*, 423 Md. at 676 (citation modified).

Under the theft statute, "an offender's intention or knowledge that a promise would not be performed may not be established by or inferred solely from the fact that the promise was not performed." *Manion*, 442 Md. at 434 (quoting CR § 7-104(f)). "[T]his is not to

suggest that a conviction for theft by deception may never be based, in part, upon the defendant's failure to perform, so long as other evidence sufficient to permit the trier of fact to ascertain the defendant's intent exists." *Id.* at 434–35.

We conclude that a rational jury could have found, beyond a reasonable doubt, that the appellant intended to deceive Mr. Marcia-Hernandez. The evidence showed that the appellant was aware of Mr. Marcia-Hernandez's need to work and earn money, as well as his transportation challenges. Mr. Marcia-Hernandez testified that, at Home Depot, he had informed the appellant about his "situation." According to him, they agreed that the appellant would pay him $200 per day for drywall work. However, on the second day of work, after the drywall was hung and the job was completed, the appellant refused to pay the agreed amount and insisted that Mr. Marcia-Hernandez perform additional electrical work that had not been previously discussed. Considering these facts and viewing the evidence in the light most favorable to the State, the jury could reasonably infer that the appellant knowingly led Mr. Marcia-Hernandez to believe that he would receive $200 per day solely for the drywall work, while actually intending not to pay this sum unless Mr. Marcia-Hernandez completed additional tasks, anticipating that he might acquiesce due to his vulnerabilities.

We further conclude that there was sufficient evidence upon which the trier of fact could find that the appellant intended to deprive Mr. Marcia-Hernandez of the $200 payment. Mr. Marcia-Hernandez testified that when he completed the drywall work on the second day, the appellant told him, "No. I'm not going to pay you." It was undisputed that

the appellant did not pay Mr. Marcia-Hernandez anything for the work done that day. Following this, the appellant verbally threatened Mr. Marcia-Hernandez, saying that he knew where he lived and that "[h]e was going to fuck [him] up" if he returned to the property. Based on this evidence, the jury could reasonably conclude that the appellant intended to deprive Mr. Marcia-Hernandez of the $200 payment.

The appellant contends that evidence of intent to deprive was negated by his honest belief regarding the terms of the agreement and the timing of the remaining $200 payment. The appellant presented a similar argument to the jury, which was free to weigh this claim in deciding whether the appellant had the requisite *mens rea* to commit the offense of theft. *See Coleman*, 423 Md. at 676. The jury apparently rejected the claim in finding the appellant guilty of theft. "Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Smith*, 415 Md. at 185.

For the reasons stated, there was sufficient evidence to support the appellant's theft conviction.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.