NOT DESIGNATED FOR PUBLICATION

No. 125,253

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

TREYVON DAJON TAYLOR,
Appellant.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; GERALD R. KUCKELMAN, judge. Opinion filed August 4, 2023. Affirmed.

Kristen B. Patty, of Wichita, for appellant.

Natalie Chalmers, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before HILL, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

HILL, J.: This case shows why we have jury trials. To convict or acquit, 12 people—not just 1—must be convinced beyond a reasonable doubt. In this direct appeal of his conviction for theft, Treyvon Dajon Taylor argues that there is insufficient evidence in the record to support his conviction. Our review of the record persuades us he is incorrect.

The jury heard different accounts of why some items were taken from an apartment and later sold.

The State's theory in this prosecution was that in April 2019 Taylor helped Megan Mathis burglarize E.N.'s apartment and take certain items. According to the State, Mathis knew the layout and contents of E.N.'s apartment because she had been there to have sex with E.N. several times. But according to Taylor, he was just helping Mathis—the mother of one of his children—move out and leave a serious relationship with a registered sex offender. Taylor maintained at trial that he took only possessions which he believed belonged to Mathis.

The record reveals that E.N. had trouble signing a lease because he was a registered sex offender. So his mother signed a lease, and E.N. and his sister lived in the apartment, paying rent to his mother. Mathis came to the apartment to hang out sometimes, and they had sex "a couple times." E.N. did not tell Mathis that he was a registered sex offender.

E.N. came home and discovered that his apartment was ransacked. He told his mother, who contacted the police. His mother reported stolen a Samsung 50-inch television, an Xbox One and games, $500 in cash, and an iPhone 6. E.N.'s mother testified that she bought the TV the day of the burglary for $375 from someone selling the TV on the internet. E.N.'s paperwork for his parole officer was also missing. Later, information from that paperwork appeared online.

E.N. testified that after the burglary Mathis and Taylor came to the apartment saying that Mathis' wallet was missing. They did not find her wallet. After they left, E.N. realized his cellphone was missing.

According to the State, E.N. then started getting phone calls while working at Sonic. Some people, including Taylor, kept calling to demand free food plus money from E.N.'s tips and paychecks. Taylor was upset that his daughter had been left with E.N. because E.N. was a registered sex offender.

The State's evidence showed that Taylor pawned the missing Xbox on the day of the burglary. Records and surveillance video from the pawn shop showed that Taylor pawned the Xbox, the remotes, and one game. Surveillance video also showed Taylor and Mathis carry a TV into the pawn shop. But the pawn shop did not buy the TV because it was too old.

According to Taylor, he helped Mathis remove her Samsung 50-inch television, her Xbox One, an iPhone 6, and $500 in cash from E.N.'s apartment in Leavenworth. Mathis testified that she was removing her own belongings and that she told Taylor that they were her belongings.

Taylor and Mathis had a daughter together, but in early 2019 they were not in a relationship. According to the defense, Mathis was dating and living with E.N. in April 2019. Mathis testified that in the first four months of 2019 she spent "a good 90 to 100" nights at E.N.'s apartment, sometimes bringing her children. Taylor did not object to Mathis dating E.N. In fact, the two men met once, played video games, and drank a beer together.

Mathis testified that she knocked over a tote bag full of paperwork in E.N.'s apartment one day, just after E.N. left for work. As she was picking up papers, she saw his parole paperwork indicating that he was a registered sex offender. Mathis did not have transportation, so she called Taylor for a ride to Sonic to confront E.N. with the paperwork. E.N. said that he had not told her about his prior offense because it was not the right time. Mathis told him that she was going back to the apartment, grabbing her

things, and leaving. At the apartment, Mathis went inside and handed belongings to Taylor, who stayed outside the apartment.

Mathis testified that she handed Taylor "quite a bit of clothes." She stated that E.N. promised to give her the Xbox, but she paid him $30 for it to avoid any ownership dispute. She also testified that the TV she took from E.N.'s apartment was hers, given to her by a friend when she moved from Nebraska to Kansas. Mathis explained that she needed money for a hotel room, which is why she pawned the Xbox and tried to pawn the TV. Mathis testified that she told Taylor that the stuff they were taking belonged to her. Taylor was upset to learn that E.N. was a registered sex offender and was concerned that he was left alone with their daughter. Mathis and Taylor testified that they took their daughter to the hospital for a sexual assault investigation, which showed no signs of abuse.

In rebuttal, the State called a diversion officer from the Leavenworth County Attorney's Office. The officer testified that Mathis stipulated in a diversion agreement that she and Taylor committed burglary. But the diversion officer also conceded that the stipulation was not made under oath and someone could admit committing a crime that they did not commit.

The jury acquitted Taylor of burglary but convicted him of one count of misdemeanor theft. The jury set the value of the stolen property at less than $1,500 but at least $50. The district court sentenced Taylor to 12 months in jail, suspended with 12 months' probation.

In this appeal, Taylor argues that the State failed to prove intent because he believed the property removed from the apartment belonged to Mathis and he did not intend to deprive E.N. of the property. The State contends that the jury had evidence before it showing Taylor knew that the property belonged to E.N.

We will not reweigh the evidence.

The law is well-established on the solitary claim made by Taylor.

> "'When the sufficiency of the evidence is challenged in a criminal case, we review the evidence in a light most favorable to the State to determine whether a rational factfinder could have found the defendant guilty beyond a reasonable doubt. An appellate court does not reweigh evidence, resolve conflicts in the evidence, or pass on the credibility of witnesses.'" *State v. Aguirre*, 313 Kan. 189, 209, 485 P.3d 576 (2021).

To convict Taylor of theft, the State needed to prove and the jury needed to believe beyond a reasonable doubt that Taylor obtained or exerted unauthorized control over E.N.'s property with the intent to permanently deprive E.N. of its possession, use, or benefit. See K.S.A. 2018 Supp. 21-5801(a)(1).

Our review of the record reveals sufficient evidence to convict. Even though no witness directly contradicted Taylor's testimony that he believed the items belonged to Mathis, the jury could discredit Taylor's testimony as unreliable. The jury had circumstantial evidence that Taylor intended to take property from E.N.

For example, the jury could consider the fact that the property was in E.N.'s home. This fact alone does not establish ownership but is the first fact the jury could consider when considering the question. Taylor also helped Mathis remove the belongings without E.N.'s presence or his permission. The State presented exhibits to support E.N.'s testimony that his apartment was "ran through," his door handle was broken, his couch was upside down, and all his belongings were scattered throughout the apartment. And the State presented evidence that Mathis herself knew that the items belonged to E.N. because she stipulated to that fact in her diversion agreement. "[A] conviction of even the gravest offense can be based entirely on circumstantial evidence." *State v. Pattillo*, 311 Kan. 995, 1003, 469 P.3d 1250 (2020). This jury had a right to infer from the

circumstantial evidence of how the items were removed that Taylor intended to take the items from E.N.

The only case that Taylor cites, *State v. Taylor*, 54 Kan. App. 2d 394, 401 P.3d 632 (2017), does not persuade us to hold otherwise because the facts are different. In the cited case, Albert Taylor was convicted of theft when a police officer found a stolen handgun in Albert Taylor's car. But the State presented no evidence that Albert Taylor stole the handgun or even that he knew that it was stolen. A panel of this court reversed Albert Taylor's theft conviction because the State failed to produce—and argued that it did not need to produce—evidence showing that Albert Taylor intended to deprive the gun's owner of its possession, use, or benefit. 54 Kan. App. 2d at 403-04, 417. In contrast, the State here did produce circumstantial evidence tending to show that Mathis and Taylor intended to deprive E.N. of his property. In the face of such evidence, the jury could discredit Taylor's testimony that he did not know the property belonged to E.N.

We will not reweigh the jury's credibility finding. *State v. Colson*, 312 Kan. 739, 750, 480 P.3d 167 (2021). Twelve people sorted out these conflicting stories and made their verdict. We will not substitute our opinion for theirs.

Affirmed.

* * *

HURST, J., concurring: I concur in the final judgment.