

RENDERED: OCTOBER 9, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001588-MR

MARCELLE MAJORS

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE KELLY MARK EASTON, JUDGE  
ACTION NO. 12-CR-00392

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; JONES AND NICKELL, JUDGES.

ACREE, CHIEF JUDGE: Appellant, Marcelle Majors, appeals the Hardin Circuit Court's June 28, 2013, Judgment of conviction after a jury found Majors guilty of (1) Theft by Unlawful Taking over \$500.00 and being a (2) First-Degree Persistent Felony Offender. Finding no error, we affirm.

## **I. Background**

On July 19, 2012, Majors and three acquaintances, Dereco Love, Gilbert Grubbs, and Yolanda Trice, entered Kohl's Department Store in Elizabethtown, Kentucky. The group's suspicious behavior quickly drew the attention of Kohl's loss prevention supervisor, Alyson Stucker. Using video surveillance, Stucker watched Love line a shopping cart with a clear plastic garbage bag and fill it with shirts while Grubbs stuffed other merchandise into his pants. Later, Stucker observed Majors approach Grubbs and Love near Love's cart to speak with them. According to Stucker, Majors then removed a few shirts from Love's cart, and walked toward the fitting rooms. Then, Stucker observed Love and Grubbs push the cart toward Kohl's shoe department. There, Grubbs removed the plastic garbage bag full of merchandise from the cart as he and Love headed toward the door.

At that point, Stucker directed loss prevention staff to interdict. As Kohl's security staff approached Grubbs and Love, the men fled Kohl's through the north exit. Shortly after the men fled, Stucker saw Majors and Trice "kind of walking fast" through the opposite exit while being pursued by a security officer. The two women quickly entered a black car and drove away.

Stucker caught up with Majors and Trice at a nearby restaurant, where she recovered stolen Kohl's merchandise from the men's bathroom. Trice confessed to Stucker that she had taken some, but not all, of the merchandise found in the bathroom. According to Trice, however, it was Majors who stole the

majority of the goods, and Trice pointed specifically to the items that “belonged” to Majors. Using Kohl’s computer system, Stucker determined the retail value of Majors’ items was \$625.50, although the record is unclear whether any of the items were on sale at the time.

A search of Majors’ vehicle yielded further evidence: merchandise that had allegedly been stolen from other stores and a handbag lined with aluminum foil. As police built the case against Majors, they recovered additional surveillance footage from Burke’s Outlet, another Elizabethtown store, showing the foursome walking the aisles in pairs, similar to the behavior Stucker described.

A grand jury indicted Majors on charges of Theft by Unlawful Taking over \$500 dollars and being a Persistent Felony Offender in the First Degree. Majors faced a jury trial, where the Commonwealth, in accordance with KRE<sup>1</sup> 404(b), introduced three types of evidence of Majors’ motive and plan to steal.

First, the Commonwealth introduced video surveillance footage from Burke’s Outlet that depicted Majors and her three acquaintances. As at Kohl’s, the Burke’s surveillance footage showed Love loading merchandise into a shopping cart and interacting with Grubbs while Majors and Trice browsed the aisles. The trial court admitted this evidence over Majors’ objection, noting that the footage occurred close in time to the Kohl’s incident and that the footage demonstrated that the foursome (1) knew each other and (2) engaged in a common pattern of conduct.

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<sup>1</sup> Kentucky Rules of Evidence

Second, the Commonwealth introduced photographic evidence of other merchandise recovered from Majors' trunk; police suspected that these items had also been stolen. The trial court allowed this evidence over Majors' objection because, in its view, the items demonstrated Majors' intent to steal from Kohl's.

Third, Majors' foil-lined handbag was introduced by the Commonwealth, along with testimony from Stucker that shoplifters commonly used foil-lined bags to defeat store security measures. Despite Majors' objection that she never brought the bag into Kohl's, the trial court admitted it into evidence as proof of Majors' plan to shoplift.

Majors twice moved for a directed verdict, arguing the Commonwealth proffered insufficient evidence for a reasonable jury to believe that (1) Majors aided or intended the crimes committed by Grubbs and Love; (2) Majors aided or intended Trice's shoplifting; and (3) the value of the items exceeded \$500.00. The trial court denied both motions and submitted the case to the jury; the jury found Majors guilty and the court accepted the jury's verdict on June 28, 2013.

Majors now appeals, arguing the court erroneously denied her motions for a directed verdict, and improperly admitted evidence pursuant to KRE 404(b) of surveillance footage from Burke's Outlet, evidence of merchandise allegedly stolen from other stores, and the foil lined purse from Majors' trunk.

## **II. Standard of Review**

We review the trial court's denial of a motion for directed verdict in light of the evidence adduced at trial and its relationship to the statutory elements of the alleged offense. *Lawton v. Commonwealth*, 354 S.W.3d 565, 575 (Ky. 2011). We will only reverse the trial court's denial of a motion for directed verdict if "it would be clearly unreasonable for a jury to find guilt." *Commonwealth v. Benham*, 816 S.W.2d 186, 187-88 (Ky. 1991).

We may reverse a trial court's decision to admit evidence only if that decision represents an abuse of discretion. *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007). Such abuse occurs when a trial court's decision is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Id.*

### **III. Analysis**

Majors argues that the trial court erred by denying her motions for directed verdict based on the Commonwealth's failure to proffer sufficient evidence of (1) Majors aiding or intending the crimes of Grubbs and Love, (2) Majors aiding or intending the crimes of Trice, or (3) that the value of the stolen items exceeded \$500.00. In light of the deferential scope of appellate review, Majors' arguments must fail.

The trial court must grant the Commonwealth wide latitude in determining whether to direct a verdict of acquittal. Not only must the trial court assume the Commonwealth's evidence is true, but it must also "draw all fair and reasonable inferences from the evidence" in the Commonwealth's favor. *Benham*, 816 S.W.2d at 187. Further, the trial court also must leave questions regarding the

weight and credibility of the evidence to the jury. *Id.* After engaging in this review, the trial court must deny a defendant's motion if the evidence is sufficient to induce a reasonable juror to believe the defendant's guilt beyond a reasonable doubt. *Id.*

The scope of our review is similarly deferential; we ask only "whether under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt."

*Id.*

We conclude the trial court properly denied Majors' motion for a directed verdict because there was sufficient circumstantial evidence for a reasonable juror to infer her guilt beyond a reasonable doubt. *See Graves v. Commonwealth*, 17 S.W.3d 858, 862 (Ky. 2000) ("Conviction can be premised on circumstantial evidence of such nature that, based on the whole case, it would not be clearly unreasonable for a jury to find guilt beyond a reasonable doubt.").

Based on the Commonwealth's evidence, a jury could infer beyond a reasonable doubt that Majors did "aid or intend the crimes of her three acquaintances." As for Love and Grubbs, the evidence showed that Majors spoke with them while they were shoplifting and that she took items from the cart that the foursome intended to steal and walked toward another area of the store. Later, when the two men fled, she hurriedly departed by means of an exit opposite Grubbs and Love, despite being pursued by a security officer. After exiting the store, Majors provided Trice with a ride away from the premises, presumably to flee the crime scene. Moreover, Trice's incriminating statements that she and

Majors stole items from Kohl's also demonstrated that Majors was not only complicit in the theft, but an active participant.

Based solely upon these facts, a jury could infer that Majors was familiar with the thieves and their plans to shoplift, that Majors took merchandise out of the cart to aid in their shoplifting, and, when combined with Trice's statements, Major's decision to quickly leave Kohl's via an exit opposite the two men and transport Trice away from the scene demonstrated her role in the shoplifting scheme as both a willing participant and the getaway driver.

From this evidence alone, a reasonable juror could conclude Majors' guilt beyond a reasonable doubt; therefore, her argument that the Commonwealth failed to proffer evidence that Majors intended or aided her acquaintances' crimes is unpersuasive.

Likewise, Majors' argument that the Commonwealth failed to prove the value of the stolen items exceeded \$500.00 is also meritless. To support her contention, Majors attacks Stucker's testimony regarding her valuation of the items, alleging that Stucker could not really be sure that items allegedly stolen by Majors were worth \$625.50. Majors claims that while Stucker scanned the merchandise to determine its retail value, she never determined whether any of the items were on sale; because Stucker was unable to conclude that the items were not on sale, Majors contends that it was possible the items should have been valued at less than \$500.00 because Kohl's frequently sold items for below sticker price. So Majors' argument goes, since the items she stole were likely on sale, the

Commonwealth was unable to prove their value exceeded \$500.00 and the trial court should have directed her acquittal. We disagree.

Here, Stucker's valuation of the items was more than sufficient evidence for a reasonable juror to infer that the items exceeded \$500.00. Stucker scanned the retail price of the items and determined their worth at \$625.00 dollars. Such retail prices represent an expert's opinion of an item's value and a jury is free to accept them as correct. *Irvin v. Commonwealth*, 446 S.W.2d 570, 572 (Ky. 1969).

Finally, we disagree with Majors that the trial court abused its discretion by admitting any additional evidence under KRE 404(b). The rule provides in relevant part:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible:

(1) If offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . .

KRE 404(b)(1).

Importantly, the "other purposes" listed under KRE 404(b)(1) "are illustrative rather than exhaustive." *Tamme v. Commonwealth*, 973 S.W.2d 13, 29 (Ky. 1998) (quoting R. Lawson, *The Kentucky Evidence Law Handbook*, § 2.25, at 87 (3d ed. Michie 1993)). Evidence admitted under KRE 404(b) "is not limited to other acts that are criminal or unlawful, but applies to any acts offered to prove



character in order to show action in conformity therewith.” *Davis v.*

*Commonwealth*, 147 S.W.3d 709, 723 (Ky. 2004).

In this instance, the trial court did not err by admitting either: (1) the Burke’s surveillance footage, (2) evidence of other merchandise taken from Majors’ trunk, or (3) the foil lined purse. Taken together, this evidence shows that Majors and her accomplices were familiar with each other, that they engaged in strikingly similar behavior in another store shortly before the incident at Kohl’s that demonstrated each had defined roles in a common plan to shoplift, and that they possessed paraphernalia (the foil-lined purse) intended to further their shoplifting scheme. While Majors contends these pieces of evidence each violated at least one of the three prongs set forth in *Bell v. Commonwealth*, 875 S.W.2d 882, 889-91 (Ky. 1994) (holding that evidence admitted under KRE 404(b) must be (1) relevant, (2) probative, and (3) its probative value is not substantially outweighed by its prejudicial effect), our review of the record demonstrates that the trial court did not abuse its discretion by admitting any of the contested evidence.

Reasonable minds may differ as to the probative value of a piece of evidence relative to its prejudicial effect and, therefore, the admissibility of that evidence. But on appeal, we only ask whether the trial court’s decision is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Clark*, 223 S.W.3d at 95. Clearly, the contested evidence in this case constituted a close call. However, because the trial court reasonably concluded this evidence satisfied the requirements for admissibility, we must affirm.

#### **IV. Conclusion**

For the reasons set forth above, the Hardin Circuit Court's June 28, 2013, Judgment is affirmed.

ALL CONCUR.

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