Circuit Court for Prince George's County
Case No. JA-18-0289

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2152

September Term, 2018

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IN RE: E.T.

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

JJ.

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Opinion by Graeff, J.

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Filed: March 18, 2020

On July 26, 2018, the Circuit Court for Prince George's County, sitting as a juvenile court, found E.T., appellant, involved in acts that, if committed by an adult, would constitute robbery, second-degree assault, theft between $100 and $1,500, and conspiracy to commit robbery. On August 29, 2018, the circuit court ordered that appellant be placed on supervised probation.

On appeal, appellant presents the following question for this Court's review:

> Was the evidence adduced at the adjudicatory hearing sufficient to prove beyond a reasonable doubt that appellant committed the delinquent acts?

For reasons set forth below, we answer this question in the affirmative, and therefore, we shall affirm the judgments of the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND

On May 23, 2018, J.A., a tenth-grade high school student, entered a 7-Eleven store near Greenbelt and Good Luck roads to get change for his business that involved selling candy at track and field meets. At the time, J.A. had $450 on his person, which he was planning to use to buy a phone later that day.

As J.A. was leaving the 7-Eleven, an individual, later identified as appellant, called to J.A. from across the street and said that his friend, later identified as D.H., wanted to buy some candy.[1] When J.A. crossed the street to meet up with the two, D.H said "never mind" and asked J.A. if he had "change for a ten." As J.A. was making change, D.H.

[1] Although J.A. refers to D.H. only by his first name ("D."), it is clear from the record that "D." and D.H. are the same individual.

punched him in the face and pushed him, causing him to fall to the ground. While appellant stood by watching, D.H. grabbed J.A.'s wallet, ripped it open, and took J.A.'s money. Appellant and D.H. then ran away. Soon after the robbery occurred, a police officer who had observed the incident arrived on the scene, and J.A. reported the robbery.

At trial, J.A. made an in-court identification of appellant as the person who called him from across the street. He testified that, even though there were a group of individuals around at the time, he knew that appellant and D.H. were the ones who robbed him because appellant "was the one who approached [him]" and D.H. "was the one who punched [him] and pushed [him] down." D.H. took the money out of his wallet, and after the incident, appellant and D.H. ran away in different directions. He recognized appellant and D.H. from school. He knew appellant by name because they had a mutual friend, and although he did not know D.H.'s name at the time of the robbery, he later identified him after looking through one of his school yearbooks.[2]

Detective Curtis Hamm testified that, after he was notified about the robbery, he drove to the scene and met with J.A. As J.A. was providing his statement to Detective Hamm, appellant walked by and entered a nearby building, which prompted J.A. to identify appellant as one of the robbers. Detective Hamm subsequently detained appellant based on the identification. When the detective asked appellant where he was at the time of the robbery, appellant denied being in the area, stating that he went straight home after school and then went to the barber shop with his mother.

[2] J.A. testified that, on the day following the incident, he showed the yearbook photograph of D.H. to the guidance counselor at his high school.

Detective Hamm testified that J.A. eventually identified both appellant and D.H. as having been involved in the robbery. Although J.A. did indicate that there were "multiple people standing around watching" during the incident, J.A. told him that those people were not involved.

The juvenile court ultimately found appellant involved as to all charges. Specifically, it found:

> So this case really comes down – well, this case comes down to the intent of [appellant] on whether the State has proven (indiscernible) his intent was to assist and to aid the person who actually physically assaulted and took the wallet from the young man.
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> So (a) the State's version is he assisted in aiding him because he called him over and essentially led the citizen to or he brought his friend over to assault and steal the money, and then that's when he left. And the State's – or in one version reasonable doubt could be we don't know why he called, he just called him over. And what the other – other young man did was totally on him. There's no evidence to show that he was involved.
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> So the attorneys know that if this were a jury trial there would be some instruction about presence at the scene, mere presence at the scene is not evidence that [appellant] was involved in a crime. There could also be the flight fleeing instruction. There's also the flight is not necessarily evidence of guilt as well. It's just something to be considered and there are many lawful reasons why people flee the scene.
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> In this case – but what I also think is significant in this case is the detective's testimony is that [appellant] denied any knowledge of the incident. He denied being at the scene of the incident. And I think that does show light on the intent; that it (indiscernible) intent to avoid any knowledge of this incident. With regards to that statement there is a (indiscernible) refer to his credibility on his statement because I don't have any doubt of the State's witness that [appellant] was there; that he's the one who called him over. He knows him. They have a mutual friend. Again, he identified him moments after the incident.
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> And to me that denial is … enough to rule out any reasonable doubt. And I find him involved as to all counts[.]

## DISCUSSION

Appellant contends that the evidence adduced at the adjudicatory hearing was insufficient to prove beyond a reasonable doubt that he committed the delinquent acts for which he was found to be involved. He claims that, because the State did not allege that he personally assaulted J.A. or took his property, he could be found involved in the robbery, assault and theft only "on the theory that he aided and abetted" D.H. in committing the crimes, which required a showing that he "acted with an intent to assist D.H. in committing the robbery and related crimes." With respect to the conspiracy charge, he asserts that the State needed to prove that he and D.H. agreed to rob J.A. Appellant argues, however, that the State failed to prove either that he aided and abetted or conspired with D.H., asserting that he merely "called to J.A." and was nearby when the incident happened.

The State contends that "the evidence was sufficient to find that appellant conspired with and aided and abetted [D.H.] in robbing J.A." It notes that, although appellant and D.H. were at a 7-11, "which is widely known to sell candy," neither individual appeared interested in buying candy when J.A. entered the store. It was only after J.A. had traveled for some distance from the 7-11 that appellant called to J.A., and when J.A. came over and D.H. assaulted J.A. and stole his money, appellant "did not appear shocked or surprised," and he fled after the robbery. After the robbery, appellant made statements that indicated a "consciousness of guilt." The State argues that the court properly determined that appellant conspired with an aided and abetted D.H. in the robbery based on appellant's

"guilty behavior following the robbery *and* his suspicious behavior before and during the robbery."

"The test of appellate review of evidentiary sufficiency is 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.'" *Donati v. State*, 215 Md. App. 686, 718 (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)), *cert. denied*, 438 Md. 143 (2014). That "standard applies to all criminal cases, including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts." *Neal v. State*, 191 Md. App. 297, 314, *cert. denied*, 415 Md. 42 (2010). Moreover, "[t]he test 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.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (quoting *Mora v.* State, 123 Md. App. 699, 727 (1998) (emphasis in *Mora*). In making that determination, "we 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (quoting *Cox v. State*, 421 Md. 630, 657 (2011). In so doing, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (quoting *Sparkman v. State*, 184 Md. App. 716, 740 (2009)). We apply the same standard in juvenile delinquency cases. *In re Landon G.*, 214 Md. App. 483, 491 (2013).

We agree that the evidence here was sufficient for the court to find appellant involved in actions that amounted to robbery, second-degree assault, theft, and conspiracy to commit robbery. "Robbery is defined as 'the felonious taking and carrying away of the personal property of another from his person by the use of violence or by putting in fear.'" *Hall v. State*, 233 Md. App. 118, 138 (2017) (quoting *Metheny v. State*, 359 Md. 576, 605 (2000)). "Second-degree assault is a statutory crime that encompasses the common law crimes of assault, battery, and assault and battery." *Quansah v. State*, 207 Md. App. 636, 646 (2012), *cert. denied*, 430 Md. 13 (2013). *See Marlin v. State*, 192 Md. App. 134, 166, *cert. denied*, 415 Md. 339 (2010) (defining "battery" as "an offensive or unlawful touching"). And the elements of the offense of theft involve a person "willfully or knowingly obtain[ing] or exert[ing] unauthorized control over property." Md. Code (2018 Supp.) § 7-104 of the Criminal Law Article.

As appellant notes, the State pursued the charges of robbery, second-degree assault, and theft under the theory that appellant "aided and abetted" D.H. in committing those crimes. An aider is one who "assists, supports or supplements the efforts of another in the commission of a crime." *Moody v. State*, 209 Md. App. 366, 388 (2013) (quoting *Kohler v. State*, 203 Md. App. 110, 119 (2012)). An abettor is one who "instigates, advises or encourages the commission of a crime." *Id.* (quoting *Kohler*, 203 Md. App. at 119) If the State chooses to proceed under the theory that a defendant aided and abetted another criminal actor, it must "present evidence that the alleged aider and abettor participated by 'knowingly associating with the criminal venture with the intent to help commit the crime, being present when the crime is committed, and seeking, by some act, to make the crime

succeed.'" *McClurkin v. State*, 222 Md. App. 461, 486 (quoting *Davis v. State*, 207 Md. App. 298, 319 (2012)), *cert. denied*, 443 Md. 736, *cert. denied*, 136 S. Ct. 564 (2015). "[O]ne who encourages, aids, abets, or assists the active perpetrator in the commission of the offense, . . . is equally culpable with the one who does the act." *Nicholson v. State*, 239 Md. App. 228, 253 (2018) (quoting *Grandison v. State*, 305 Md. 685, 703 (1986)), *cert. denied*, 462 Md. 576 (2019).

Finally, a criminal conspiracy is a combination of two or more persons who agree to "accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Darling v. State*, 232 Md. App. 430, 466 (quoting *Mitchell v. State*, 363 Md. 130, 145 (2001)), *cert. denied*, 454 Md. 655 (2017). "The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Id.* (quoting *Mitchell*, 363 Md. at 145). The crime is complete "when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown." *In re Gary T.*, 222 Md. App. 374, 381 (2015) (quoting *State v. Payne*, 440 Md. 680, 713 (2014)). A criminal conspiracy "may be shown by circumstantial evidence from which an inference of common design may be drawn." *McClurkin*, 222 Md. App. at 486 (quoting *Armtead v. State*, 195 Md. App. 599, 646 (2010).

Here, appellant's act of calling out to J.A. to sell candy to D.H., D.H.'s subsequent assault and robbery of J.A., and appellant's and D.H.'s subsequent flight from the scene, permitted an inference that appellant conspired with D.H. to commit the robbery. *See Darling*, 232 Md. App. at 466 ("If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may . . . infer a prior agreement by them to act in

such a way.") (quoting *Jones v. State*, 132 Md. App. 657, 660 (2000)). Furthermore, a reasonable fact-finder could have inferred that appellant, in calling out to J.A. to sell candy to D.H., intended to lure J.A. to a location where D.H. could more easily assault and rob him. And a reasonable fact-finder could have considered appellant's false statement to the police regarding his whereabouts at the time of the crime, as well as his flight from the scene, as evidence of his consciousness of guilt. *See Mills v. State*, 239 Md. App. 258, 277 (2018) (noting that a defendant's "flight and ensuing concealment could properly be considered by the jury as evidence of consciousness of guilt").

Reviewing the evidence in the light most favorable to the State, as we must, we conclude that there was sufficient evidence to support the court's finding that appellant was involved in the charged offenses.

**JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**