UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2223

September Term, 2013

IN RE: TERREZ C.

Meredith,
Graeff,
Leahy,

JJ.

Opinion by Graeff, J.

Filed: June 11, 2015

On October 29, 2013, the Circuit Court for Montgomery County, sitting as a juvenile court, found Terrez C., appellant, involved in the delinquent acts of theft, motor vehicle theft, and conspiracy to steal the vehicle.[1] On December 16, 2013, a disposition hearing was held, and the court placed appellant on supervised probation with the Department of Juvenile Services.

On appeal, appellant presents one question for our review:

> Was the evidence sufficient to support the trial court's adjudication that appellant was involved in the delinquent acts of theft, motor vehicle theft, and conspiracy?

For the reasons set forth below, we shall affirm the judgments of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 1:00 a.m. on June 7, 2013, the victim left her job as a bartender and drove her 2006 burgundy Mercedes SUV to a nearby Exxon gas station. She pulled up to the gas pump closest to the convenience store, retrieved a $10 bill and her cell phone, and walked toward the convenience store. A man approached her from behind and screamed: "Give me everything you have." The victim slowly turned around, and the man pointed a black handgun directly at her face. The man was approximately six feet tall, wore a handkerchief over his face, had "long dreadlocks," and wore dark sunglasses.

The man took the ten dollars and the cell phone the victim was holding and ran toward her car. He then yelled for the victim to give him her car keys. When she tossed the

[1] Appellant was born on June 13, 1996. He was 16 years old at the time of the incident and 17 years old at the time of the adjudicatory hearing.

keys to the man, she noticed two other African American men "positioned by [her] car, which was when [she] realized that [the men] weren't after the items in [her] car, [but] they were actually going to take [her] car." She ran into the convenience store, stating that she had been robbed, and she "collapsed underneath the [cashier's] desk." The cashier called the police.

Metropolitan Police Officer Angela Galley received a "lookout" for an "armed carjacking that had just occurred" at a gas station near the Key Bridge and the District of Columbia/Maryland line.[2] She and her training officer, William Belton, began driving near the Key Bridge, looking for a mid-size, maroon, Mercedes SUV. Approximately 20-30 minutes after receiving the lookout, Officer Galley spotted a vehicle meeting that description, and the officers turned around to follow it.

At the same time, Metropolitan Police Officer Matthew Hillard,[3] and his training officer, Officer Carter,[4] began to canvas the area surrounding the Key Bridge Exxon. Officer Carter thought the vehicle might be on Arizona Avenue because "a lot of armed carjackings, they like to take it up to Arizona." As they were driving along Canal Road toward Arizona Avenue, they spotted what they believed to be the stolen Mercedes SUV.

[2] Officer Galley's last name is also spelled "Galli" in the record. We adopt the spelling used in the transcript from the adjudicatory hearing.

[3] Officer Hillard's last name is also spelled "Hiller" in the record. We adopt the spelling used in the transcript from the adjudicatory hearing.

[4] Officer Carter's first name is not indicated in the record.

At that point, Officers Hillard and Carter, along with Officers Galley and Belton, engaged their vehicles' emergency lights and sirens in an attempt to effectuate a traffic stop, but the SUV "took off at a high rate of speed." A chase ensued. The SUV continued, crossing into Bethesda, Maryland. Because it was raining and dark outside, and because the SUV was traveling at a very high rate of speed, the officers were advised to call off the chase.

Officers Hillard and Carter decided to "back[] off a little bit," but Officers Galley and Belton continued following the SUV until Officer Galley noticed "the taillights of the stolen SUV go off the side of the road, [and] come back down, causing the vehicle to crash and stop where it was." The crash occurred only a few miles from the Key Bridge Exxon station.

Officers Galley and Belton drove to the scene of the crash. They exited their vehicle and observed three men, who fit the description of the assailants from the gas station, exiting the totaled SUV. One of the men exited out of the rear "hatchback window," which had been completely shattered in the crash, and he headed to the right, into a wooded area bordering a neighborhood. The other two men, one of which "had dreads in his hair," headed to the left, toward a nearby river. Although it was dark outside and raining, the officers were able to see the three men rather clearly because the officers were parked very close to the crashed vehicle, their police vehicle had bright lights on top of it, and there were bright lights that illuminated the area.

Officer Galley described the man who exited the vehicle from the rear window as African American. He was wearing a "dark-colored raincoat, dark pants, and sneakers that were reflective" and had orange on them. Officer Galley never saw the man's face. Because she was closest to this particular man, Officer Galley chased after him, but only for approximately thirty seconds because she knew that at least one of the men involved had a weapon and she did not want to leave Officer Belton.

Officer Galley returned to the scene of the crash. Other officers then arrived, including Officers Hillard and Carter. The officers searched the SUV, and in the "hatchback, trunk area," they found a black, 40 caliber handgun. Approximately 20 yards from where the car crashed, Officer Hillard found the black and orange baseball cap that he saw on the driver.

Officer Paul Petty was the first Montgomery County Police Officer to arrive at the scene of the crash. He testified that the vehicle was "heavily damaged. It had rolled over . . . . [The] [w]indows were busted out, [and the] tires were flattened."

After receiving a description of the assailants from the Metropolitan Officers, Officer Petty "put up" a "basic, general lookout" describing the three men to other Montgomery County Officers assigned to the Bethesda District. Thinking that the suspects likely escaped into the residential area east of the crash scene, he began driving his police car through the nearby neighborhoods.

Officer Daniel Boyle, another member of the Montgomery County Police Department, also began driving around the neighborhood near the crash scene. Two teenagers "flagged" him, stating that a young, African American male wearing a white T-shirt and jeans told them that he "had been kidnapped or that he was in some sort of trouble."

When Officer Boyle went to the reported location of the young male, which was "less than two miles, less than a mile, maybe" from the scene of the crash, he saw a young man emerge from behind shrubbery along the side of the road. The man was wearing a white T-shirt and jeans, was wet from the rain, smelled of alcohol, and had a fresh "lump on his forehead." Officer Petty arrived on the scene a few minutes later, and he testified that the injury looked like "a very serious rug burn" or like the young man had "scraped [his forehead] against the concrete."

Officer Boyle detained the young man. When Metropolitan Police Officers Galley and Belton arrived, they identified the young man as the person who escaped out of the rear hatchback window of the victim's Mercedes SUV. Officer Galley testified that she was able to identify him because of his small stature and because she recognized his reflective sneakers with "orange coloring on them." Although he was not wearing the dark colored raincoat she described, the white T-shirt "was perfectly dry," despite the rain, and the

officers subsequently found a dark-colored rain coat.[5] Once Officer Galley identified the young man, he was transported to the hospital to treat the injury on his forehead.

At trial, Officers Boyle, Galley, and Petty identified appellant as the young man who exited from the rear of the vehicle involved in the crash. The victim identified the totaled Mercedes as her SUV. She testified that the Kelly Blue Book value of her vehicle at the time it was stolen was approximately $25,000.

Appellant did not testify or present any evidence. As indicated, the juvenile court found appellant involved in acts that would be crimes if committed as an adult.

DISCUSSION

Appellant contends that the evidence was "insufficient to support the trial court's finding that [he] was involved in theft, motor vehicle theft, unauthorized use of a motor vehicle and conspiracy to commit these crimes and its finding that appellant was delinquent." He does not challenge the juvenile court's finding that he was present in the vehicle, but rather, he asserts that the State failed to show, as required to support the finding of involved, either that he participated in the initial theft, that he knew the SUV was stolen, or that he had control over the SUV.[6]

[5] Officer Galley did not testify where officers found this raincoat.

[6] At trial, defense counsel arguably contested the juvenile court's jurisdiction over the matter: "But my client was not in exclusive possession of this vehicle at all, your honor, and he can't be the thief of a car taken in D.C., at least jurisdictionally-wise." Appellant has not pursued that argument on appeal, for good reason. Although the car was stolen in the (continued...)

The State disagrees. It contends that the evidence was sufficient to support the juvenile court's finding.

A delinquent act is defined as "an act which would be a crime if committed by an adult." Md. Code (2012 Supp.) § 3-8A-01(l) of the Courts and Judicial Proceedings Article ("CJP"). An allegation that a juvenile has committed a delinquent act must be proven beyond a reasonable doubt. CJP § 3-8A-18(c)(1); Md. Rule 11-114(e)(l). The evidence is legally sufficient to meet this standard if, "after viewing the evidence in the light most favorable to the [State], *any* rational trier of fact could have found the essential elements of the [delinquency petition] beyond a reasonable doubt." *In re Timothy F.*, 343 Md. 371, 380 (1996) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). *Accord In re Heather B.*, 369 Md. 257, 270 (2002). The standard of review on appeal is whether the evidence showed directly or circumstantially or supported a rational inference of facts that enabled the trier of fact to be convinced beyond a reasonable doubt that the juvenile committed the act. *In re Landon G.*, 214 Md. App. 483, 492 (2013).

When the trier of fact has made an inference, "the question is not whether the trier of fact could have made other inferences from the evidence or even refused to draw any inference, but whether the inference it did make was supported by the evidence." *In re*

[6](...continued)
District of Columbia, the taking continued into Bethesda, Maryland, and therefore, the Maryland juvenile court had territorial jurisdiction over the matter. *See In re Melvin M.*, 195 Md. App. 477, 481 n.2 (2010); *Allen v. State*, 171 Md. App. 544, 557-61 (2006), *aff'd on other grounds*, 402 Md. 59 (2007).

Melvin M., 195 Md. App. 477, 482 (2010). Indeed, "the fact-finder 'possesses the ability to choose among differing inferences that might possibly be made from a factual situation and [the appellate court] must give deference to all reasonable inferences [that] the fact-finder draws.'" *In re Landon G.,* 214 Md. App. at 491 (quoting *Bible v. State*, 411 Md. 138, 156 (2009)). Where a case is tried before a court sitting without a jury, as in delinquency proceedings, the judgment of the court will not be set aside unless clearly erroneous. Md. Rule 8-131(c); *In re Antoine H.*, 319 Md. 101, 108 (1990).

I.

Theft

The juvenile court found appellant involved in theft, i.e., that appellant possessed property that he knew was stolen, conduct which, if committed by an adult, would be a violation of Md. Code (2012 Repl. Vol.) § 7-104(c) of the Criminal Law Article ("CL"). Subsection (c) provides, in pertinent part, as follows:

> (1) A person may not possess stolen personal property knowing that it has been stolen, or believing that it probably has been stolen, if the person:
>
> (i) intends to deprive the owner of the property;
>
> (ii) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
>
> (iii) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

Possessing stolen property requires four elements: "(1) the property must be stolen; (2) the defendant must be in possession of the stolen property; (3) the defendant must know

that the property has been stolen . . . ; and (4) the defendant must intend or act to deprive the owner of the property in the manner described in" either subsection (c)(1)(i), (c)(1)(ii), or (c)(1)(iii). *In re Landon G.*, 214 Md. App. at 493. Here, appellant challenges the second and third elements. He contends that the evidence was insufficient to establish that he possessed the SUV and that he knew the SUV was stolen.[7]

A.

Possession of the Stolen Vehicle

Appellant maintains that he did not have possession of the vehicle. Specifically, he argues that the evidence failed to establish that he had sufficient control over the vehicle necessary to possess it.

"[P]ossession is an element of the crime of theft," and although not defined in the theft statute, it has been described as either "'actual or constructive, exclusive or joint,'" and it involves "'directing influence'" over the property allegedly possessed. *In re Landon G.*, 214 Md. App. at 495 (quoting *In re Melvin M.*, 195 Md. App. at 483). In cases involving a stolen vehicle and a passenger defendant, "possession usually is joint with the driver, because '[t]he person who has a directing influence over a car, determining if and where the

[7] Appellant contends that these elements "are equally applicable" to the conviction for theft of a motor vehicle pursuant to Md. Code (2012 Repl. Vol.) § 7-105 of the Criminal Law Article ("CL"). We agree. Accordingly, our analysis of appellant's claims in this regard applies to the convictions of theft and theft of a motor vehicle. The court found appellant not involved on the charge of unauthorized removal of property pursuant to CL § 7-203, so no analysis of that charge is required.

car goes and how fast, is generally the driver.'" *Id.* (quoting *In re Melvin M.*, 195 Md. App. at 490).

Appellant points to this Court's holding in *In re Melvin M.*, 195 Md. App. at 483, and suggests that we should conclude, as we did in that case, that there was insufficient evidence to establish that appellant possessed the stolen vehicle, and therefore, insufficient evidence to find him involved in the theft of the vehicle. In that case, we held that "mere presence in the vehicle, without more, is insufficient to show possession to sustain a conviction for theft of an automobile." *Id.* at 490. We noted that, "when a joint enterprise or acting in concert inference has been permitted [regarding a passenger in a vehicle], it has been based on evidence that the driver and the passengers all reacted to being approached by the police by fleeing from the stolen vehicle." *Id.* at 490. In that case, however, there was no evidence of flight. *Id*.

More recently, in *In re Landon G.,* 214 Md. App. at 496, we stated that "the conceptual lynchpin underlying a finding of possession of a stolen vehicle by a passenger is the presence of 'other incriminating evidence' that tends to show a joint enterprise or acting in concert by the driver and the defendant passenger." We noted examples of such "other incriminating evidence," such as "flight by the driver and the defendant passenger when approached by the police, use of the vehicle in a crime or other joint activity, and a relationship between the driver and the defendant passenger." *Id.*

Here, there was such "other incriminating evidence." When the police activated their emergency lights, the stolen vehicle "took off at a high rate of speed" before crashing. Appellant and the other occupants then got out of the vehicle and fled from police. Accordingly, there was sufficient evidence for the court to find that appellant was in possession of the vehicle.

B.

Knowledge that the Vehicle was Stolen

This evidence further supports the finding that appellant knew that the vehicle was stolen. As this Court explained in *In re Landon G.*:

> We recognize that appellant's flight from the stolen vehicle when confronted by the police has been used by us to support the trial court's finding of both joint possession and guilty knowledge. Such use is acceptable because appellant's flight supports two separate factual inferences—a joint enterprise or acting in concert with the driver, *see In re Melvin M.*, 195 Md. App. at 490, 6 A.3d 955 (stating that "when a joint enterprise or acting in concert inference has been permitted in this context, it has been based on evidence that the driver and passengers all reacted to being approached by the police by fleeing from the stolen vehicle"), and guilty knowledge, *see Spears v. State*, 38 Md. App. 700, 707, 382 A.2d 616, *cert. denied*, 282 Md. 739 (1978) (stating that "[t]he record supports a rational inference that appellant's flight [from the police] was a result of his knowledge that the car was stolen and the serial number removed"); *see also [Commonwealth v. Carson*, 592 A.2d [1318,] 1321, 1323 [(1991)]; *Interest of Scott*, 388 Pa.Super. 550, 566 A.2d 266, 269 (1989), *appeal denied*, 527 Pa. 649, 593 A.2d 421 (1990) (stating that "where a passenger in a stolen vehicle flees for the purpose of avoiding arrest, a fact finder may infer therefrom the dominion and guilty knowledge necessary to convict").

214 Md. App. at 503.

Accordingly, the evidence supported the finding that appellant had knowledge that the car was stolen. There was sufficient evidence for the juvenile court to find that appellant was involved in theft and theft of a motor vehicle.

II.

Conspiracy

Appellant next challenges the finding of involved regarding the conspiracy charges. The Court of Appeals has explained this crime as follows:

> "A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The essence of a criminal conspiracy is an unlawful agreement. The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design. In Maryland, the crime is complete when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown."

Mitchell v. State, 363 Md. 130, 145 (2001) (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). The existence of the agreement may be inferred from the circumstances. *Id.* Indeed, "[a] conspiracy may be shown by circumstantial evidence from which an inference of a common design may be drawn and it is not necessary to demonstrate that the conspirators met and agreed in terms to a design and to pursue it by common means." *Id.* (quoting *Seidman v. State*, 230 Md. 305, 322 (1962)).

Appellant contends that, because there was insufficient evidence to show that he was involved with the theft of the SUV, the evidence "likewise fail[ed] to show that he conspired with anyone to steal or use the SUV without authorization." He asserts that, because the

State failed to show that he had any knowledge or participation in the theft, the State failed to show that he had a "meeting of the minds" with other individuals to take the SUV or continue in the unauthorized use.

As indicated, we have held that there was sufficient evidence to support the court's finding that appellant had knowledge of the theft. Accordingly, appellant's claim in this regard is without merit. The evidence was sufficient to support the juvenile court's finding that appellant was involved in conspiracy to steal the motor vehicle.

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