UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0571

September Term, 2014

DERRICK JAMAR THOMPSON

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: July 14, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this case a sixty-two year old man was savagely and senselessly beaten by a gang of young men in a series of attacks initiated by the appellant, Derrick Jamar Thompson, then age twenty. A jury in the Circuit Court for Charles County found Thompson guilty of attempted second degree murder, first and second degree assault, conspiracy to commit first degree assault, theft of property valued at less than $1,000, and unauthorized removal of property. The circuit court sentenced him to twenty-five years incarceration for attempted second degree murder and to concurrent sentences of incarceration of twenty-five years for conspiracy to commit first degree assault, of eighteen months for theft, and of four years for unauthorized removal of property.

As explained below, we shall affirm in part and, in part, vacate and remand.

The crimes commenced about 2:00 a.m. on Sunday, August 5, 2012, in the Ryon Court neighborhood of Waldorf. The principal eyewitnesses for the State were the victim, John Bergling, who was delivering the Sunday edition of The Washington Post in Ryon Court, Andrew Washam, who drove Thompson and other young men to Ryon Court to party in the early morning hours on the night of the crimes, and Jasmine Lownes, one of the guests at the party.

A description of the locale will assist the reader. Ryon Court is a townhouse development on the northwest side of Vivian Adams Drive. The development is accessed from Vivian Adams Drive by a single street, also named Ryon Court (the main street). Townhouses on the westerly side have odd-numbered addresses, and those on the easterly

side have even-numbered addresses.[1] On each side of the main street are no-outlet side streets, five on the westerly side and four on the easterly side. There are two groups of townhouses on each side of each side street. As one enters this development from Vivian Adams Drive, there is a wooded area on each side of the main road. As one proceeds into the development, the first side street is on the left. Somewhat further along, on the right, is the next side street. In other words, the side streets are staggered so that each meets the main street at a "T" intersection. There is considerable open space between the backs of the townhouses fronting on the side streets. This open space may be a park or playground. Each townhouse has an open-air, nose-in, parking area between the side street and the lawn in front of the buildings.

Across Vivian Adams Drive from the entrance to the main street in Ryon Court is a parking lot for the Waldorf Station of the Charles County Sheriff's Department. The station house is to the south of the parking lot at 3670 Leonardtown Road. Vivian Adams Drive intersects with Leonardtown Road just west of the station house. Somewhat to the west of that intersection, at 3395 Leonardtown Road, is a 7-Eleven (that does not close at 11:00 p.m.).

Late on Saturday evening, August 4, 2012, a group of twenty-five to thirty, predominately female, college age persons had gathered in a park or playground area along

[1]The street numbers of the townhouses ascend as one moves from the back of Ryon Court to Vivian Adams Drive.

the main street in Ryon Court, across from the second side street containing 3340-3382 Ryon Court. They were continuing the celebration of the birthday of Sharleah Queen, who lived across the main street. After midnight on Sunday, August 5, 2012, Thompson, Andrew Washam, Jerrod Benson, and two other young males arrived at the party, with vodka and marijuana. Washam had driven the group there in his automobile. About an hour later, Washam drove two young women whom he, Thompson, and Benson met at the party to the nearby 7-Eleven to get something to eat. The women were Jasmine Lownes and Sharleah Queen.[2] The five then returned to the party in the park where Washam, and presumably others, resumed drinking. After about fifteen minutes, Ms. Lownes went into Sharleah Queen's house on side street 3340-3382.

About 2:00 a.m. that night, Bergling picked up, in Waldorf, his inventory of newspapers and, after one delivery elsewhere, went to Ryon Court. After making one delivery on the first, odd-numbered, side street, he went to 3340-3382. People on the left side of the main street were playing music.

As Bergling got out of his van to toss the first papers, "a young black man" wearing a short-sleeved, black t-shirt with "some kind of white writing across the chest" ran up behind him. Bergling identified the man as Thompson. When asked if he was certain, Bergling responded: "One hundred percent. I looked right at his eyes." Bergling added that

[2]Still photographs from the surveillance cameras at the 7-Eleven assisted the police in identifying Thompson and others. Thompson was wearing a short-sleeved, black shirt, with writing or a design on it that a number of witnesses said was in white.

he got a "[v]ery good" look at Thompson, who was "within six feet" of Bergling, "[l]ooking him right in the face[.]"

Thompson asked Bergling, "what are you doing?" and Bergling answered, "serving newspapers." Bergling then turned to walk to his van when Thompson "punched [him] in the back of the head" so hard that it "knocked [Bergling] off [his] feet." Thompson kicked Bergling in the face, and he stumbled and fell backward. When Bergling tried to get up, Thompson "kicked [him] once more up under the chin."

At that point, several more people ran at Bergling and tackled him. The group held him down on the ground and tried "to turn [his] face and mash [it] down into the parking lot[.]" The men pinned Bergling's arms down so he could not defend himself, then began "stomping" him, kicking him in the back of the head, and punching him. When Bergling tried to raise his head, one of the men "punched [him] in the face, and then ordered [him] not to look at him and to keep [his] voice down."

During what Bergling described as five minutes of "constant beating," he managed to work his left hand free and "put it behind his head to try to protect [himself] from the beating," at which point one of the men noticed Bergling's wedding band. The man said, "oh lookie, what do we have here," and reached for Bergling's wedding ring. When Bergling tried to use his thumb to prevent the theft of his ring, the man called Bergling an "'MF'" and said "let it go or they'll cut that finger off[.]" The group went through Bergling's pockets and demanded his wallet and cell phone. Bergling told them he did not have either.

The group then stripped Bergling of his shoes and clothes, leaving him "stark naked laying there in [a] parking [space.]" Bergling heard his van drive away, and several men running. A few minutes later, Bergling knocked on doors seeking help, but no one answered. He then decided to try and reach the nearby police station.

As Bergling ran past the end unit townhouse on the southeasterly corner of the main street and 3340-3382, he heard "a bunch of people running up behind [him]." Three or four people began punching and kicking Bergling again. Bergling "tried to push [his] way to some kind of safety," and, when he reached a walkway, he heard the men run off. Bergling hid between two parked cars for a minute or two and continued toward the police station.

He managed to make his way along the main street, just beyond the first even-numbered side street (3390-3432) when he heard someone cry out, "'[w]here do you think you're going? We're not finished with you yet.'" The men resumed kicking and punching Bergling in the back of the head. The force was such that he fell forward onto his hands, which he described as "hamburger" by the time the assaults were over.

Bergling was kicked into the street. He was blind. He reached out and felt a wooden fence that he knew was on the even-numbered side of the main street and that would lead him to the small wooded area at the entrance to Ryon Court. As Bergling crouched next to the fence, he heard his assailants asking each other if they had seen where he went. Then, they left. Bergling crawled along the fence line and about an additional fifty feet to the wooded area. He hid there for about fifteen minutes. Gradually, his vision restored to a gray

fog, and he saw pinpoints of light, which he realized were the lights on the poles in the parking lot of the Sheriff's station house. Bergling made his way there.

Jean Kenlon was working the front desk of the Charles County Sheriff's station at 2:45 a.m. on August 5, 2012, when she heard the front door open but did not see anyone walk in. When she looked over the counter, she saw a naked man with a bloody face, later identified as Bergling, crouched under the desk. Bergling was scared that he was being pursued and was apologizing for his condition. He told Kenlon that he had been beaten up and that the perpetrators had taken his clothes and his van.

Charles County Sheriff's Officer Bagley arrived at the station and saw Bergling crouched underneath the counter. He saw that Bergling's face looked "like he had been beaten to a pulp almost[.]" Blood was coming from his nose and lips and his eyes were nearly swollen shut.

Bergling was transported by ambulance to the hospital. His cornea was lacerated, his nose was broken in two places, his ribs were broken, and he had cuts and bruises all over his body, including on his face that required stitches. Bergling testified that he was later diagnosed with corneal erosion, which is a trauma-induced condition that affects the eye's ability to lubricate and is extraordinarily painful. He also testified that he has had long-term vision problems due to the assault, which required treatment from a corneal specialist and three retinal specialists.

Washam made a plea arrangement with the State. He testified that, after returning to the party from the 7-Eleven, one of the women pointed to the end of 3340-3382 and said "[a]ren't those your friends over there?" The witness went to the group. He saw a man lying on the ground surrounded by six or seven people. Thompson was one of them. The man was being "stripped of his belongings," when someone yelled out, "run him the fuck over." Washam then got in the man's van, drove it to Vivian Adams Drive, past the police station, and parked it there. Washam's fingerprint was later recovered from the outside of the driver's side door of Bergling's van.

Washam walked back to Ryon Court to get his car. While walking back, he saw Thompson "near a fence kind of huddled over a little bit." The witness did not see anyone else. At his car, three of his previous passengers were either "at [his] car or coming towards [his] car pretty fast." They got in the car and, as Washam was "taking off," they said to hold on, "Derrick is coming." Thompson got in and the five left Ryon Court.

On the ride back to Washam's house, Thompson and the three others were "bragging" about "how tough they were" and talking about what they were going to do with the ring. The five walked back to Ryon Court.[3] Thompson went to the parking lot of the Sheriff's station where he was briefly accosted but not detained by an officer. The remaining four were accosted and photographed by the police at the crime scene, but not detained. Washam

[3]Washam said they were hoping some young ladies were still there.

did not speak to Thompson again until he called a few days later and asked Washam to drop him off at a pawn shop.

Thompson pawned the ring on August 7, 2012, for $60. According to the pawnbroker's record, the person pawning the ring presented a Maryland identification card bearing the same number as that of Thompson's card, that was in evidence.

Jasmine Lownes testified that, while she was in Sharleah Queen's house after returning from the 7-Eleven, Sharleah came in, "yelling for us." She was "really shocked" and "like kind of shooken up." She said, "Those three dudes just beat up some old mailman." Jasmine understood (as could the jury) that Sharleah was referring to the trio whom they "had just left."

Additional facts will be stated in addressing the issues on appeal.

Questions Presented

We interpret appellant's brief to present four issues which we rephrase as follows:

1. Did the trial court err in giving an instruction on second degree murder in response to a jury question?

2. Was the evidence sufficient for a reasonable jury to conclude that Thompson conspired to commit first degree assault?

3. Was the evidence sufficient for a reasonable jury to conclude that Thompson committed first degree assault?

4. Was the evidence sufficient for a reasonable jury to convict Thompson of the unauthorized removal of the victim's van?

I

There was no error in the court's revised instruction responding to a jury question. Alternatively, any such error has not been preserved. We explain.

In its initial charge to the jury, the court, without objection, instructed in relevant part:

> "Attempted second degree murder is a substantial step beyond mere preparation toward the commission of murder in the second degree. Second degree murder does not require premeditation [or] deliberation.
>
> "In order to convict the Defendant of attempted second degree murder the State must prove (1) that the Defendant took a substantial step beyond mere preparation toward the commission of murder in the second degree; (2) that the Defendant had the apparent ability at that time to commit the crime of murder in the second degree; and (3) that the Defendant actually intended to kill John Bergling."

The jury began its deliberations at 12:32 p.m. on December 5, 2013. At 4:00 p.m., the jury sent a note asking, "Can I have a better understanding of second degree murder than what was given?" This prompted an extended discussion between the court and counsel, in the course of which the State pointed out that "[f]or attempt[ed] second degree murder you must have the specific intent to kill."[4] Defense counsel said it would be "fine" if the court did not "read the disjunctive" in Maryland Pattern Jury Instruction Criminal 4:17(B).

[4]In *Earp v. State*, 76 Md. App. 433, 438-39, 545 A.2d 698, 701 (1988), this Court said:

> "An indispensable element of attempted murder, be it first or second degree ... is the intent to murder. ... [W]hen the victim does not die, a necessary ingredient of the intent to murder is a specific intent to kill."

Thereupon the court, in response to the note, instructed:

> "I am going to read [to] you from the pattern [jury] instructions, it's Maryland pattern jury instruction 4:17(B) second degree murder. Second degree murder is the killing of another person with either the intent to kill, or the intent to inflict such serious bodily harm that death would be the likely result. Second degree murder does not require premeditation or deliberation. In order to convict the Defendant of second degree murder, the State must prove that the Defendant caused the death of another, and that the Defendant engaged in the deadly conduct with the intent to kill."

Counsel agreed that the supplemental instruction conformed to what had been discussed.

While the jury was deliberating, counsel and the court met again. Defense counsel told the court that "[w]e inadvertently let you read the disjunctive in the first paragraph" of the instruction. Following further discussion, the jury was returned to the courtroom and was given a revised instruction:

> "THE COURT: Good evening. I say evening because it's almost five o'clock.
>
> "Ladies and gentlemen, when I gave you the instruction ... when I said to you the second degree murder instruction ... I want you to know that I ... I did in error. I'm going to reinstruct you on that. So, would you please disre ... if you deliberated after you were in here, delib ... don't deliberate with that in mind. I'm going to ask you to go back and ... and cancel any deliberations in response to the definition of second degree murder that I gave you. Is that ... okay.
>
> "So, I'm going to give you now the second degree murder instruction that applies. Second degree murder is the killing of another person with the intent to kill. Second degree murder does not require premeditation or deliberation. In order to convict the Defendant of second degree murder, the State must prove that the Defendant caused the death of another and that the Defendant engaged in the deadly conduct with the intent to kill."

The court then asked counsel if the corrected instruction was "satisfactory" and both replied in the affirmative.

Thus, there was no error and no preservation of any error. Although we do not understand Thompson to argue plain error, there was no plain error.[5]

II

Thompson submits that the evidence is insufficient to convict for conspiracy to commit first degree assault.[6] Appellant says that there is no evidence of an agreement between him and any other to assault Bergling. Appellant asserts that the State's case rests exclusively on the admission made by Washam when his guilty plea was accepted to conspiring to commit assault in the first degree upon Bergling. Washam named Thompson and the other passengers in his car on August 5, 2012, as his co-conspirators. Thompson suggests that this evidence from Washam is uncorroborated. Appellant's view of the law and of the record is too narrow.

[5]Thompson's opening brief was unclear as to whether he was raising the sufficiency of the evidence of intent to kill and challenging the admissibility, through Bergling, of evidence of his injuries. In its brief, the State argued, alternatively, that those issues had not been properly raised, that the evidence of intent was sufficient, and that the description of the injuries was admissible. In rebuttal oral argument, Thompson clarified that he was not raising the sufficiency of the evidence of intent, or the admissibility of the evidence of injuries, as appellate issues. He explained that the purpose of those apparent arguments was to demonstrate that the alleged error in the supplemental instruction was not harmless.

[6]The proscription is: "A person may not intentionally cause ... serious physical injury to another." Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article, § 3-202(a)(1).

We review an issue regarding the sufficiency of the evidence by determining "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." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979).

To prove a conspiracy, the State must establish that there existed an agreement among two or more people to accomplish an unlawful act, or a lawful act using unlawful means. *Khalifa v State*, 382 Md. 400, 436, 855 A.2d 1175, 1196 (2004) (quoting *Townes v. State*, 314 Md. 71, 75, 548 A.2d 832, 834 (1988)). Direct evidence of a formal agreement is not required. "[I]t is sufficient if the parties tacitly come to an understanding regarding the unlawful purpose. ... [T]he State [is] only required to present facts that would allow the jury to infer that the parties entered into an unlawful agreement." *Carroll v. State*, 202 Md. App. 487, 505, 32 A.3d 1090, 1100 (2011) (quoting *Armstead v. State*, 195 Md. App. 599, 646, 7 A.3d 169, 196 (2010)) (citation and internal quotation marks omitted).

Evidence of concerted action by co-conspirators, for example, is sufficient for a jury to infer a prior agreement. *Carroll*, 202 Md. App. at 506, 32 A.3d at 1100 ("These actions show that the men were acting in concert."); *Jones v. State*, 8 Md. App. 370, 377, 259 A.2d 807, 812 (1969) ("[C]oncurrence of action on a material point is sufficient to enable a jury to presume concurrence of sentiment, and from this the actual fact of conspiracy may be inferred.") (quoting *Lawrence v. State*, 103 Md. 17, 22, 62 A. 96, 98 (1906)); *Hill v. State*, 231 Md. 458, 461, 190 A.2d 795, 797 (1963) ("[T]hese overt acts of concurrence of action

on material points show guilty knowledge on the part of the appellant, and that they were all acting in concert.").

This Court has held that joint action furnished sufficient evidence of conspiracy to assault where a mob beat innocent victims. *In re Lavar D.*, 189 Md. App. 526, 985 A.2d 102 (2009).

Convictions for assault and conspiracy were upheld against an insufficiency of the proof argument in *People v. Smoke*, 43 A.D.3d 1332, 843 N.Y.S.2d 875, *lv. denied*, 9 N.Y.3d 1039, 881 N.E.2d 1211 (2009). There,

> "[t]he People established that the victim was attacked by five assailants brandishing various objects, including a baseball bat, hockey stick, and golf club, and the victim identified defendant as one of the assailants who struck him with an object (*see People v. Tedesco*, 30 A.D.3d 1075, 1076, 816 N.Y.S.2d 269, *lv. denied* 7 N.Y.3d 818, 822 N.Y.S.2d 493, 855 N.E.2d 809 [(2006)]). Further, the communication of defendant with his coconspirators 'could be readily inferred from the evidence' (*People v Serra*, 293 A.D.2d 338, 740 N.Y.S.2d 200, *lv. denied*[,] 98 N.Y.2d 681, 746 N.Y.S.2d 471, 774 N.E.2d 236 [(2002)])."

Id. at 1333, 843 N.Y.S.2d at 875.

The Superior Court of Pennsylvania sustained conspiracy and assault convictions in *Commonwealth v. Poland*, 26 A.3d 518 (Pa. Super. 2011), on facts remarkably similar to those in the case before us.

> "On the evening of April 2, 2008, Tyesha Tazwell (Tazwell) walked through the Gallery at 8th and Market Streets in Philadelphia, Pennsylvania towards the Southeastern Pennsylvania Transportation Authority (SEPTA) subway station located therein. Along the way, Tazwell passed a group of a dozen or more individuals, including Stanley Poland, most of whom wore identical shirts commemorating a deceased, mutual friend. Once past them,

> Tazwell was kicked to the ground, then punched and kicked by one half of the members of the group while the other half cheered them on. The assailants then fled to a nearby subway train."

Id. at 519-20.

The court dispatched a lack of agreement among alleged conspirators argument by quoting from an earlier, similar case.

> "'Here, ... all the co-conspirators acted as a group in concert. Before the police arrived, they acted together to commit an assault on the lone black man. They were told as a group to disperse but instead they decided, as a group, to stay and engage in joint criminal conduct in which each was spurring the others on toward a common criminal purpose. It is unnecessary to prove an explicit and formal agreement between the conspirators. The agreement necessary to support a conspiracy conviction can be wholly tacit so long as the surrounding circumstances confirm that the parties have decided to act in concert. In this case, the actors' relationships and their conduct before, during and after the criminal episode established a unity of criminal purpose sufficient for the jury to find conspiracy beyond a reasonable doubt.'"

Id. at 523 (quoting *Commonwealth v. French*, 396 Pa. Super. 436, 441-42, 578 A.2d 1292, 1294-95 (1990)). *See also Commonwealth v. Thomas*, 65 A.3d 939 (Pa. Super. 2013) (relying on *French* and *Poland* in a group beating case).

In the case before us, after Thompson initially had punched and kicked Bergling, the others joined in the stomping and pummeling.[7] The victim estimated the first beating lasted five minutes, during which the assailants stripped the victim of all of his clothes and stole his wedding ring. From the fact that Thompson ended up with possession of the ring and

[7]Bergling estimated there were seven assailants in total in the first attack.

pawned it, the jury could infer that he removed it, and thus remained a participant in the assault after others had joined in.

Indeed, the jury reasonably could infer that Thompson continued to participate in the second and third attacks. The third attack took place after Bergling had made his way along the main street from the second, even-numbered side street, past the houses on the southeasterly side thereof, past an unimproved parkland, wooded area, past the houses on the northwesterly side of the first, even-numbered side street, and past that side street. Washam saw Thompson along the fence in that area when Washam was returning to Ryon Court after moving Bergling's van. The jury could conclude that Thompson was in that area because he had followed Bergling with one or more others to participate in the further beating of Bergling that blinded him.

There was sufficient evidence to convict Thompson of conspiracy to commit first degree assault.

III

Bergling identified Thompson as the person who struck him in the head, kicked him in the face, and kicked him under the chin in the opening of the first attack. There is no merit to the notion that the evidence of first degree assault was insufficient.

IV

Count 9 of the indictment charged Thompson with violating Maryland Code (2002, 2012 Repl. Vol.), § 7-203 of the Criminal Law Article (CL), by removing the victim's van.

Section 7-203 reads in relevant part: "Without the permission of the owner, a person may not take and carry ... out of the custody of another or use of the other ... any property, including ... a motor vehicle." CL § 7-203(a)(2). A violation of § 7-203 is a misdemeanor. CL § 7-203(b).

Appellant argues that the evidence was not sufficient to convict him of the unauthorized removal of Bergling's van. There is no direct evidence that Thompson participated in the physical removal of the van by Washam. The State, however, argued to the jury that Thompson was guilty of that offense either as an accomplice or as a co-conspirator.

In the course of the first attack, someone yelled, "[R]un him the fuck over." Washam testified that, hearing that exclamation, he moved the van to prevent anyone from running Bergling over, but the jury could have rejected that motivation. When Bergling was stripped of his clothes and possessions, his house keys and van keys were taken. Washam apparently used the van keys to move the van. Contrary to his testimony, the jury could find that the more likely motivation was to prevent Bergling from using the van to get to safety and raise the alarm. Thus, Washam was a co-principal with Thompson in assaulting Bergling, but the question here is whether Thompson is a co-principal in the unauthorized use of the van.[8]

[8]"When a person embraces a misdemeanor, that person is a principal as to that crime, no matter what the nature of the involvement." *State v. Hawkins*, 326 Md. 270, 280, 604 A.2d 489, 494 (1992).

Anello v. State, 201 Md. 164, 93 A.2d 71 (1952), addressed co-principal, criminal liability under an earlier version of the unauthorized use statute that was not substantively different from CL § 7-203. The Court said:

> "It is clear that no one, whether principal perpetrator or aider or abettor, can violate this statute unless he possesses criminal intent. The legal definition of the word 'aider' is not different from its meaning in common parlance. It means to assist, support or supplement the efforts of another. The word 'abettor' means in law one who instigates, advises or encourages the commission of a crime. Thus the word 'abet' may import that one is present at the commission of a crime without giving active assistance. Just as there are no accessories in petit larceny at common law, but all participants are principals, likewise there are no accessories in the larceny of use of property, as the statute makes aiders or abettors equally guilty with the principal perpetrator of the crime. *Slaughter v. State*, 113 Ga. 284, 38 S.E. 854 [(1901)]. To be an aider or abettor it is not essential that there be a prearranged concert of action, although, in the absence of such action, it is essential that he should in some way advocate or encourage the commission of the crime. *McKinney v. Commonwealth*, 284 Ky. 16, 143 S.W.2d 745 [(1940)]. While guilty knowledge is essential to a conviction of a person accused of larceny of use, such knowledge may be inferred from facts and circumstances such as would cause a reasonable man of ordinary intelligence, observation and caution to believe that the property had been unlawfully taken."

Id. at 168, 93 A.2d at 72-73 (some citations omitted).

Here, there was not sufficient evidence from which the jury could find that Thompson intended to deprive Bergling of the use of the van by having Washam move it from Ryon Court. Appellant was not riding in the van, as was the appellant in *Anello*. Indeed, one cannot reasonably infer that Thompson knew that the van had been moved at any time prior to the consummation of the CL § 7-203 crime. When Washam returned to Ryon Court after

moving the van, Thompson was still at the scene of the third attack, apparently looking for Bergling. Thompson was not an "accomplice."

Anello, however, was not a conspiracy case. Much like the instant matter is *In re Lavar D.*, 189 Md. App. 526, 985 A.2d 102 (2009), in which three juveniles were found to be involved in assault, conspiracy, and other charges. They were part of a group of perhaps nine or more persons who pummeled and kicked two victims in an altercation that started on an MTA bus and spilled out onto the street. In sustaining evidentiary sufficiency for the juvenile court's finding, this Court applied the principle underlying one of the holdings in *Grandison v. State*, 305 Md. 685, 506 A.2d 580, *cert. denied*, 479 U.S. 873, 107 S. Ct. 38, 38 (1986), namely:

> "[W]here the existence of a conspiracy is established, the law imposes upon a conspirator, full responsibility for the logical and natural consequences of acts committed by his fellow conspirator if such acts are done in the pursuance ... of the conspiracy."

In re Lavar D., 189 Md. App. at 574-75, 985 A.2d at 129.

Grandison recognized that

> "[s]uch responsibility attaches even though the conspirator was not physically present when the acts were committed by his fellow conspirators and would extend even to a homicide which is a contingency of a natural execution of the conspiracy, even though such homicide is not specifically contemplated by the parties."

Grandison, 305 Md. at 703, 506 A.2d at 589.

When Washam joined the conspiracy to assault Bergling by taking his van keys and moving the van for the logical and natural purpose of impeding the victim's possible escape to the nearby police station, Thompson also violated CL § 7-203.

Thus, the unauthorized removal charge was presented to the jury on two theories. For one theory there was sufficient evidence, but for the other the evidence was insufficient. A general verdict was taken on that count and we can only speculate on which theory the verdict rested. Under these circumstances, the verdict cannot stand.

Analogous to the instant issue are the cases reported as *State v. Frye*, 283 Md. 709, 393 A.2d 1372 (1978). There the Court could not determine whether sentences imposed for murder and for an underlying felony should merge. The problem was that the jury had been instructed on wilful, deliberate and premeditated murder and on felony murder, but only a general verdict had been taken. The verdict, as the verdict here, was ambiguous. The Court reasoned as follows:

> "The convictions and sentences for the underlying felonies in the present cases are supportable if the juries found wilful, deliberate and premeditated killings but are not supportable if the murder verdicts rested upon the felony murder theory, and it is impossible to tell which basis was chosen by the juries in rendering the verdicts on the murder counts. The Supreme Court in *Yates v. United States*, 354 U.S. 298, 312, 77 S. Ct. 1064, 1073, 1 L. Ed. 2d 1365 (1957), made it clear that the doubtful verdict in such a situation cannot stand:
>
> > "'In these circumstances we think the proper rule to be applied is that which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected." *Stromberg v. California*, 283 U.S. 359, 367-68[, 51 S. Ct. 532, 535, 75 L.

> Ed. 1117 (1931)]; *Williams v. North Carolina*, 317 U.S. 287, 291-292[, 63 S. Ct. 207, 209-10, 87 L. Ed. 279 (1942)]; *Cramer v. United States*, 325 U.S. 1, 36, n.45[, 65 S. Ct. 918, 935, 89 L. Ed. 1441 (1945)]."'

Id. at 722-23, 393 A.2d at 1379.

In the companion *Jones* case, the Court ruled that the State "may, if it is so inclined, elect to re-try Jones on the murder [and] underlying felony" charges and that, if the State failed to elect to do so within a reasonable time the judgments on the underlying felony counts should be vacated.[9] *Id.* at 724-25, 393 A.2d at 1380. Here, the State may, if it is so inclined, elect within a reasonable time to re-try Thompson on the unauthorized removal charge.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY ON THE CHARGE OF UNAUTHORIZED REMOVAL VACATED AND CHARGE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. JUDGMENTS ON ALL OTHER CHARGES AFFIRMED.

COSTS TO BE PAID 80% BY THE APPELLANT AND 20% BY THE COUNTY COMMISSIONERS OF CHARLES COUNTY.

[9]That disposition was not available in the *Frye* case because Frye had not appealed his murder conviction.