Circuit Court for Montgomery County
Case No. 06-J-16-050143

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1519

September Term, 2016

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IN RE: M.V.

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Kehoe,
Leahy,
Krauser, Peter B.,
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Krauser, J.

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Filed: February 14, 2018

M.V., appellant, was found involved, by the Circuit Court for Montgomery County, sitting as a juvenile court, in a conspiracy to break and enter a motor vehicle and in resisting arrest. On appeal, he challenges the sufficiency of the evidence supporting both offenses. For the reasons that follow, we affirm.

## BACKGROUND

At approximately 10:00 P.M. on April 12, 2016, Officer Kevin Milano, Officer McGinnis,[1] and other members of the Gaithersburg City Police Department were conducting surveillance in an area where residents had reported several break-ins of vehicles, when they observed six juvenile males walking down the street, pulling on the door handles of one car after another. The group appeared to be working in two teams of three, with one person of each group acting as a lookout and the other two testing car door handles, presumably to see if the car had been left unlocked. As a member of one of the two three-member teams, appellant alternatively acted as a lookout or as a door handle tester.

After checking the handles of approximately 30 cars, the group approached a parked white SUV. Officer McGinnis then heard a "very loud noise," and saw the juveniles take off running. Upon approaching the vehicle, the officer observed a large rock on the ground next to the door on the driver's side of the vehicle. He then observed scuff marks in the paint of the car and what appeared to be dirt from the rock on the window. Believing that

[1] The transcript does not reflect Officer McGinnis's first name.

"the rock was thrown at the vehicle in an attempt to break the window," the officers, after pursuing and catching up with the juveniles, detained them and informed the group that they were under arrest. Appellant then attempted to reach into his pocket, and the officers ordered him not to. When appellant failed to comply with that instruction, the officers removed him from the group. Then, when officers attempted to place appellant in handcuffs, "he started kicking and fighting," and he "was pulling his body and his arms away from the officer, twisting and struggling." Moreover, "[w]hen he was placed on the ground, he was kicking his legs against the ground and contorting his body[.]"

**Standard of Review**

"A delinquent act is an act which would be a crime if committed by an adult." *In re Lavar D.*, 189 Md. App. 526, 585 (2009). As such, the "'same standard of review applies in juvenile delinquency cases[,]'" as in criminal cases. *In re James R.*, 220 Md. App. 132, 137 (2014) (quoting *In re Timothy F.*, 343 Md. 371, 380 (1996)). That standard is "'whether, after considering 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.'" *Lavar D.*, 189 Md. App. at 585 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In applying that standard, "[w]e give 'due regard to the [fact finder's] finding of facts, its resolution of conflicting evidence, and significantly, its opportunity to observe and assess the credibility of witnesses.'" *Id.* (quoting *Harrison v. State*, 382 Md. 477, 487-88 (2004)). Furthermore, in cases tried without a jury, we "review the case on

both the law and the evidence, and we will not set aside the judgment of the trial court on the evidence unless clearly erroneous." *Id.* at 586.

**Discussion**

Appellant contends that the evidence was insufficient to establish his involvement in a criminal conspiracy to commit the offense of breaking and entering a motor vehicle because the State failed to establish an agreement among the juveniles to break into any vehicle. He further asserts that there was no evidence that any of the juveniles threw the rock that damaged the parked SUV, and that the "rock may very well have been aimed at the juveniles themselves[.]" Hence, the juvenile court, he maintains, was left to speculate that he had agreed with the other juveniles to break into the vehicle.

Section 6-206(b) of the Criminal Law Article provides: "A person may not be in or on the motor vehicle of another with the intent to commit theft of the motor vehicle or property that is in or on the motor vehicle." And, "[t]o commit conspiracy, the law only requires an individual to have entered into an agreement with another to commit a crime, and to have actually intended for the crime to be committed." *Washington v. State*, 450 Md. 319, 343 (2016). However, the "agreement at the heart of a conspiracy 'need not be formal or spoken, provided there is a meeting of the minds reflecting unity of purpose and design.'" *Carroll v. State*, 428 Md. 679, 696-97 (2012) (quoting *Khalifa v. State*, 382 Md. 400, 436 (2004)).

There was sufficient evidence of appellant's involvement in the conspiracy at issue. Two police officers testified that they observed appellant as part of a group of six juveniles

who were methodically and systematically testing door handles on automobiles in an area where break-ins had recently occurred. What is more, an officer testified that appellant operated both as a lookout and as a door tester in the juveniles' scheme.

Moreover, there was sufficient circumstantial evidence that one of the group threw the rock in an attempt to break the car's window. *See Brown v. State*, 182 Md. App. 138, 156 (2008) ("'Circumstantial evidence is as persuasive as direct evidence.'") (quoting *Mangum v. State*, 342 Md. 392, 400 (1996)). Immediately after Officer McGinnis heard a loud noise, the juveniles ran away from the parked vehicle around which they had gathered, and the officer, upon observing the damage to the vehicle himself, testified that it was "fresh." Additionally, Officer McGinnis testified that both "pieces of the rock" and "dirt from the rock were on the window[.]" Appellant's argument as to the lack of an agreement among the juveniles is, therefore, unpersuasive, as the State presented sufficient evidence to demonstrate that the juveniles were working in concert in an attempt to break into the vehicle.

As for appellant's conviction for resisting arrest, he contends that the State failed to establish that he had resisted when his arrest occurred. Appellant concedes that he refused to submit to the arrest, but contends that there "is no indication that appellant directed any force at the arresting officer," which he maintains is an essential element of resisting arrest.

Section 9-408(b) of the Criminal Law Article provides: "A person may not intentionally (1) resist a lawful arrest; or (2) interfere with" a police officer making a lawful arrest. Consequently, to establish that a defendant unlawfully resisted arrest, under section 9-408(b), the State must demonstrate: 1) that a police officer arrested or attempted

to arrest a defendant; 2) "that the officer had probable cause to believe that the defendant had committed a crime"; and 3) "that the defendant refused to submit to the arrest [and] resist[ed] the arrest by force." *Rich v. State*, 205 Md. App. 227, 240 (2012). There is no requirement in that statute that the force used to resist arrest must be directed at the arresting officer. Moreover, as we noted in *Rich*, "when a person 'goes limp' in response to an officer's attempt to effectuate an arrest courts have held that such conduct constitutes force for resistance purposes." 205 Md. App. at 253 n.8 (citation omitted).

Finally, in *DeGrange v. State*, 221 Md. App. 415, 416 (2015), we upheld DeGrange's conviction for resisting arrest based on facts quite similar to those in the instant case. There, police officers sought to arrest DeGrange for purportedly violating a peace order. *Id.* But, when police officers arrived to arrest her, she refused their commands to stand. *Id.* at 418. An officer then placed his hands on her arms, but she pulled her arms away. *Id.* Then, after one officer grabbed one of DeGrange's arms, while another officer took the other arm, DeGrange "began to fight and struggle with the officers, attempting to pull her arms and hands under her body." *Id.* Officers ordered DeGrange to place her hands behind her back, but she refused, kicked and yelled. *Id.* Eventually, officers placed her in handcuffs, and she was subsequently convicted of resisting arrest. *Id.*

On appeal, DeGrange argued that there was insufficient evidence to sustain her conviction for resisting arrest. *Id.* at 420. This Court rejected her argument, noting that "[t]he level of force required [to constitute resisting arrest] is not high." *Id.* at 421. We concluded that there was sufficient evidence to support DeGrange's conviction for resisting arrest. *Id.* at 422.

Appellant's conduct was comparable to that of DeGrange, in his attempts to avoid arrest. Officer Milano testified that, after detaining the six juvenile males that were observed methodically testing car door handles, the police advised appellant that he was under arrest. Then, when officers attempted to place appellant in handcuffs, "he started kicking and fighting," and he "was pulling his body and his arms away from the officer, twisting and struggling." Moreover, "[w]hen he was placed on the ground, he was kicking his legs against the ground and contorting his body[.]" We therefore conclude that the juvenile court's finding of appellant's involvement in resisting arrest was based on sufficient evidence.

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