UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1267

September Term, 2015

IN RE: DEVONTAYE S.

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Berger, J.

Filed: April 4, 2016

Appellant, Devontaye S. ("Devontaye"), was found by the Circuit Court for Prince George's County, sitting as the juvenile court, to have been involved in robbery, theft of property with a value of $1000 or less, and second degree assault.[1] Devontaye presents a single question for our review, which we rephrase for clarity:[2] Whether the court erred in finding Devontaye to have been involved in robbery and second degree assault. Finding no error, we shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

At trial, the State called Jermale B. ("Jermale"), and the following testimony ensued:

> [PROSECUTOR]: Let me draw your attention to November 14th, 2014, you were in school that day, right?
>
> [JERMALE]: Yes.
>
> [PROSECUTOR]: Near the end of the day, . . . what class were you in?
>
> [JERMALE]: Math.
>
> [PROSECUTOR:] And who is the teacher of that class?
>
> [JERMALE]: Mr. [Braedon] Suminski.

[1] A "deliquent act" is defined as "an act which would be a crime if committed by an adult." Md. Code (2013 Repl. Vol.), Courts and Judicial Proceedings Article, § 3-8A-01(1).

[2] The issue, as presented by Devontaye, is:

> Did the trial court err in finding that Appellant committed robbery and assault where the evidence established that Appellant took property from the victim without employing force or threat of force?

* * *

[PROSECUTOR]: Okay. And so prior to class ending what, if anything were you doing?

[JERMALE]: I was just waiting for the bell to be called, so we would be released.

[PROSECUTOR]: And while you were waiting for this release, for the bell to ring, where were you?

[JERMALE]: I was sitting in Mr. Suminski's chair, behind the desk.

* * *

[PROSECUTOR]: Okay. And at this desk, did you have any possessions with you?

[JERMALE]: Yes, I had my bag.

[PROSECUTOR]: What kind of bag did you have?

[JERMALE]: I had an Adidas blue bag.

[PROSECUTOR]: And where was that bag?

[JERMALE]: It was on me, around me. The strap was around me. I had it in my hand.

[PROSECUTOR]: What, if anything else, did you have in your possession?

[JERMALE]: I had my phone.

[PROSECUTOR]: What kind of phone was that?

[JERMALE]: An S-iPhone, a blue iPhone5c.

[PROSECUTOR]: Okay. And so while you're sitting at this

desk with your belongings what, if anything, happened?

* * *

[JERMALE]: Before the bell rang, they approached me.

[PROSECUTOR]: When you say "they" who do you mean?

[JERMALE]: Daeon, Malik, and Devontaye.

[PROSECUTOR]: Okay. And you say they approached you, how did they approach you?

[JERMALE]: One to all three sides of me, front, left, and right.

* * *

[PROSECUTOR]: Now, where was Devontaye in this group of three?

[JERMALE]: He was on my left.

[PROSECUTOR]: And so when they were around you, when they approached you, how did you feel at that time?

[JERMALE]: Well, first, I thought they were playing, then I kind of felt scared a little. But – that's how I felt, kind of, in that situation.

[PROSECUTOR]: You say you kind of felt scared. Why did you feel scared?

[JERMALE]: Because I didn't know what they were going to do.

[PROSECUTOR]: And so what happened next?

[JERMALE]: Then they all tried to take my bag, but he didn't really, because I had it curled up beside me. Then Malik, he tried to go in my pockets, which they couldn't, because I had it

– had it closed up. But while I was distracted Devontaye took my phone out of my pocket.

* * *

[PROSECUTOR]: So once Devontaye took your phone, did you see where he went?

[JERMALE]: They ran out the class.

During cross-examination, the following colloquy occurred:

[DEFENSE COUNSEL]: Malik . . . and Daeon . . . grabbed at your duffle bag that afternoon in Mr. Suminski's class; is that right?

[JERMALE]: Yes.

* * *

[DEFENSE COUNSEL]: And both Malik and Daeon had their hands on your duffle bag?

[JERMALE]: Yes.

[DEFENSE COUNSEL]: Okay. And you were holding your duffle bag?

[JERMALE]: Yes.

[DEFENSE COUNSEL]: And you were trying to stop Malik and Daeon from taking your duffle bag?

[JERMALE]: Yes.

* * *

[DEFENSE COUNSEL]: So you realized your phone was missing afterwards?

> [JERMALE]: Yes.
>
> [DEFENSE COUNSEL]: Was it a few minutes afterwards?
>
> [JERMALE]: I felt him go in my pocket and take it, that's when I reacted, and they ran.

The State next called Braedon Suminski ("Suminski"), who testified that, while Jermale was seated at the desk, Devontaye, Daeon, and Malik were "around him." Suminski saw "a student go to grab Jermale's duffle bag and . . . saw Jermale grab it back." Suminski further testified that a "lot of students will just grab each other's things and then give it back or they'll hand it to someone else."

DISCUSSION

Juvenile proceedings are "civil in nature" and are distinct from criminal proceedings involving adults, "even though the conduct underlying a delinquent act and a crime may be the same." *Lopez-Sanchez v. State*, 155 Md. App. 580, 598 (2004), *aff'd*, 388 Md. 214 (2005), *cert. denied*, 546 U.S. 1102 (2006). Moreover, juvenile proceedings are conducted under a separate system of law pursuant to the provisions set forth in the Juvenile Causes Act, Md. Code, Courts and Judicial Proceedings Article (2013 Repl. Vol.), §§ 3-8A-01 *et. seq*.

Devontaye contends that the juvenile court erred in finding him to have been involved in robbery and second degree assault, because the evidence was insufficient to find him to have been involved in the offenses. The standard of review of evidentiary sufficiency

that applies in a juvenile delinquency case is the same standard that applies in a criminal case. *In re Timothy F.*, 343 Md. 371, 380 (1996). *See also In re James R.*, 220 Md. App. 132, 137 (2014). That standard, summarized by the Court of Appeals in *State v. Smith*, 374 Md. 527 (2003),

> 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. Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder. We give due regard to the fact finder's findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses. We do not re-weigh the evidence, but we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.

Id. at 533-34 (internal citations, quotations, and brackets omitted).

We first consider the sufficiency of the evidence to find Devontaye to have been involved in robbery. "Robbery, a common law crime in Maryland, is larceny from the person accompanied by violence or putting in fear." *Cooper v. State*, 9 Md. App. 478, 480 (1970) (citations omitted). "The violence may be actual as by the application of physical force, or it may be constructive as by intimidation or placing the victim in fear." *Id.* (citation omitted). We have noted that if the owner of property "resists the attempt to rob him, and his resistance is overcome, there is sufficient violence to make the taking robbery, however slight the resistance." *Id.* (citations omitted). With respect to "whether there has been a

threat of force or intimidation," the Court of Appeals has held that the test is "whether an ordinary, reasonable person under the circumstances would have been in fear of bodily harm." *Spencer v. State*, 422 Md. 422, 434 (2011).

In the instant case, Jermale testified that Devontaye, Daeon, and Malik approached him from his "front, left, and right," which "scared" Jermale. The three then "all tried to take [Jermale's] bag." While "trying to stop Malik and Daeon from taking [the] bag," Jermale "felt [Devontaye] go in [Jermale's] pocket and take" his iPhone. Finally, Suminski testified that, while Devontaye, Daeon, and Malik were "around" Jermale, Suminski saw "a student go to grab Jermale's duffle bag and . . . saw Jermale grab it back." We conclude that a rational trier of fact, viewing this evidence in the light most favorable to the prosecution, could have found beyond a reasonable doubt that Jermale resisted the attempt to rob him, but his resistance was overcome, and that an ordinary, reasonable person under these circumstances would have been in fear of bodily harm. The evidence, therefore, was sufficient to find that Devontaye took the iPhone with sufficient violence and placed Jermale in fear. Accordingly, the court did not err in finding Devontaye to have been involved in robbery.

We turn next to the sufficiency of the evidence to find Devontaye to have been involved in second degree assault. "[T]he term of art 'assault' may connote any of three distinct ideas: (1) a consummated battery or the combination of a consummated battery and its antecedent assault; (2) an attempted battery; and (3) a placing of a victim in reasonable

apprehension of an imminent battery." *Lamb v. State*, 93 Md. App. 422, 428 (1992) (indentation omitted); *see also Cruz v. State*, 407 Md. 202, 209 n.3 (2009).

Here, the record reflects that Devontaye, Daeon, and Malik simultaneously approached Jermale from different directions, in a class in which "students . . . grab each other's things." Jermale then "felt [Devontaye] go in [his] pocket and take" his iPhone. We conclude that a rational trier of fact, viewing this evidence in the light most favorable to the prosecution, could have found beyond a reasonable doubt that the actions of the students placed Jermale in reasonable apprehension of an imminent battery, and further, that Devontaye then consummated a battery upon Jermale. The evidence, therefore, was sufficient to find Devontaye to have been involved in second degree assault.

Devontaye contends that "any touching that occurred when [he] reached into Jermale's pocket was at most incidental to the theft and not a separate offense." But, we have stated that "[a]ny attempt to apply the least force to the person of another constitutes an assault." *Williams v. State*, 4 Md. App. 643, 647 (1968) (internal citation omitted). *Accord Dixon v. State*, 302 Md. 447 (1985). Here, the record reflects that Devontaye applied sufficient force upon Jermale. Devontaye's actions constituted an assault, and therefore, the court did not err in finding Devontaye to have been involved in second degree assault.

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