UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2491

September Term, 2014

JOHN ALLEN WILLIAMS

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: March 3, 2016

A jury in the Circuit Court for Prince George's County convicted John Allen Williams ("Appellant"), of three counts of robbery, three counts of theft, three counts of second degree assault, and one count of conspiracy to commit robbery on November 18, 2014. Appellant admitted being in the parking lot while his companion robbed three women (who were with a two-year-old child) upon displaying a gun. Appellant, who was arrested approximately seven hours after the robbery and was in possession of a cell phone stolen from one of the victims, contends that the evidence was insufficient to sustain his convictions because he testified that he did not know the robberies were taking place and that he bought the cell phone from his companion without knowledge that it was stolen. Appellant presents one question for our review: "[w]as the evidence sufficient to sustain the convictions?"

We hold that the evidence was sufficient to convict because the jury could reasonably reject Appellant's explanation for his possession of the recently stolen property, and instead reasonable infer, upon the evidence presented, that Appellant was an accomplice to the robbery.

FACTS AND LEGAL PROCEEDINGS

On July 17, 2014, Appellant was indicted by a Grand Jury on fourteen counts related to the April 2014 robbery. Appellant's jury trial commenced on November 17, 2014, and on the following day he was convicted on the counts enumerated above. At trial, the State's prosecution theory was that Appellant acted as the lookout while his friend committed the robbery. It was undisputed that Appellant was arrested later the same day when police tracked down one of the victim's cell phones while Appellant was using it. Appellant

admitted that he was present near the robberies but denied being involved in them and claimed that he bought the phone without knowing it was stolen.

Lisa McGhee testified that just before 1 a.m. on April 18, 2014, she was outside an apartment building at 1101 Kennebec Street, waiting for her god-brother to pick her up. While she and her cousin Tonya Talley stood on the sidewalk, her daughter, London McGhee, and her two-year-old grandson were waiting just inside the door, where it was warmer. Lisa McGhee noticed two dark-skinned men "just talking, lollygagging," in the parking lot, standing between two parked cars. As she was talking on her cell phone, giving directions to her god-brother, the lighter-skinned male approached, wearing a black face mask. The other, a dark complected man, remained in the parking lot, "[s]tanding outside the car."

The masked man instructed Ms. McGhee to give him "everything" she had. She thought it was a joke until he brandished a gun tucked into his waistband. At that point, she complied, giving up her purse, a tote bag, and her jacket. The masked robber then turned to Ms. Talley and demanded her belongings. After she too complied, he went into the apartment building, removed his mask, and robbed London McGhee, who gave up her son's baby bag, her purse, and her coat. Among the items inside the stolen purses and bags were cell phones, bank and library cards, gift cards, stamps, eyeglasses, work identification cards, a lipstick, keys, a receipt for a recent retail transaction, and the baby's nasal aspirator.

After the women reported the robbery, and described the two men they observed in the parking lot, Prince George's County Police Detective Derek McDermott made an exigent request for information to the service provider for London McGhee's cell phone.

In response, the detective received "GPS" information that Ms. McGhee's phone was "on and active," being used in a location with a specified longitude and latitude. By 7:30 p.m. that evening, five teams of police officers had been dispatched to a shopping center located at those coordinates, to look for two men matching the clothing and physical descriptions of the reported robbers. The unmasked man was reported to be "dark complected" and wearing a black shirt.

From the parking lot of a Target store, Det. McDermott observed Appellant standing out front, wearing a black shirt and holding a cell phone like the one stolen from London McGhee. When the detective approached, Appellant was dancing to music playing from the phone. While Det. McDermott engaged Appellant in conversation, another officer called the number for London McGhee's cell phone, and the phone in Appellant's possession rang. Appellant was taken into custody and thereafter directed police to a vehicle where they recovered a number of the other items stolen from the three women.

Testifying in his own defense, Appellant admitted that he was present in the parking lot at the time the three women were robbed, but he denied acting as the lookout. He claimed that he had arrived in the car of his friend "Thad," and that they were accompanied by Thad's friend, whom he knew only as "Ant." According to Appellant, he was on probation, homeless, and planning to stay overnight with Thad. Thad had driven to the apartment complex, but Appellant did not know why they were there. All three men got out in the parking lot. When Thad and Ant began to walk away, Appellant asked them what they were going to do, but they "ignored [him] and walked off." While they were gone, Appellant finished his cigarette, then got into the car to drink alcohol and smoke

marijuana, so he did not see what they were doing. When they returned with the totes and purses, he asked them where they had gotten them and was told not to worry about it. Appellant realized they were "doing some wild stuff," and that these items had been stolen, but he did not know there had been a robbery.

After leaving the apartment complex, Thad dropped off Ant and was taking Appellant to his cousin's house in the District of Columbia when he crashed the car. The two men were taken by ambulance to a hospital, where Appellant was treated for a fractured jaw.

According to Appellant, he purchased the cell phone stolen from London McGhee after leaving the hospital. Appellant testified that he told Thad that he did not want any part of the "wild stuff" they had been involved in earlier and that he did not know that cell phones were among the items stolen by Thad and Ant. But he admitted that after the theft and car crash, he asked Thad whether he had a phone for sale; he then bought the cell phone with money that his girlfriend had given him to prevent him from "pan handling."

When asked why, if Appellant wanted to disassociate himself from Thad after the earlier thefts, Appellant did not ask his girlfriend to pick him up from the hospital, Appellant answered that he had to return Thad's jacket, which he had mistakenly grabbed. Appellant testified that it was on the way to return the jacket when he discovered London McGhee's cell phone in the pocket and that he planned to buy it from Thad.

On January 16, 2015, Appellant was sentenced to concurrent sentences of fifteen years with all but ten years suspended, plus five years of probation.

DISCUSSION

In reviewing the sufficiency of evidence, appellate courts ask "whether '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt' when the evidence is presented in the light most favorable to the State[,]" as the prevailing party. *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We are mindful that it is the responsibility of the jury, as the fact-finder, to decide which witnesses to believe, how to resolve conflicts in the evidence, how much weight to give evidence, and which inferences should be drawn from the evidence. *Dykes v. State*, 319 Md. 206, 224 (1990). We defer "to all reasonable inferences" drawn by the fact-finder, "regardless of whether [we] would have chosen a different inference." *Bible*, 411 Md. at 156 (citation omitted).

Appellant contends that the State failed to prove his guilt beyond a reasonable doubt, because his "mere presence at the scene, coupled with his possession of one of the stolen items, about seven hours later, were insufficient to implicate him in these offenses." (Ant.5) Although "mere presence at the scene of the crime is, ordinarily, not considered legally sufficient evidence to establish the commission of the crime[,]" nevertheless, "the presence of the accused at the scene of the crime is a compelling element in determining [his] guilt or innocence[.]" *Chavis v. State*, 3 Md. App. 179, 181 (1968). In particular, a fact-finder is "not compelled to believe" the accused's claim that his presence at the scene of the crime was innocent. *Id.* at 182.

Appellant acknowledges, as he must, that "[u]nexplained possession of recently stolen goods gives rise to an inference that the possessor is the thief; if the theft occurred

as part of a . . . robbery, the inference is that the possessor is the . . . robber." *Samuels v. State*, 54 Md. App. 486, 493 (1983) (citing *Brewer v. Mele*, 267 Md. 437, 449 (1972)). "The permitted inference is more than a strand; it is proof of guilt that may stand alone." *Molter v. State*, 201 Md. App. 155, 163 (2011).

In Appellant's view, his proffered "explanation for his possession of the [stolen] cell phone" – which is that "he bought it" – precluded any inference of guilt. We disagree.

In closing argument, the prosecutor detailed why Appellant's testimony regarding the events surrounding the robberies and his arrest in possession of London McGhee's cell phone was "painful," in that it was conflicting, incredible, and inculpatory. Indeed, she pointed out that, in an outburst from the public gallery during Appellant's testimony, his girlfriend had implored him to stop talking.

The jury did not credit Appellant's explanation that he unwittingly bought the stolen cell phone and that he played no role in the robberies. We accept the jury's credibility assessment because "it is not our prerogative to evaluate the credibility of a witness." *Id.* at 162. Based on that credibility assessment, the jury was entitled to conclude that Appellant did not have a reasonable explanation for his admitted possession of recently stolen goods, and therefore, to infer that Appellant participated in the robberies. *See id.* at 162-63. A defendant may be convicted as a principal in the second degree if he is "either actually or constructively present at the commission of a criminal offense and aid, counsel, command, or encourage the principal in the first degree in the commission of that offense." *State v. Raines*, 326 Md. 582, 593-94 (1992) (citations omitted). *See also Owens v. State*, 161 Md. App. 91, 99-100 (2005) ("There is no practical distinction between principals in

the first and second degrees insofar as indictment, conviction, and punishment is concerned." (citation and internal quotation marks omitted)). Accordingly, the evidence was sufficient to convict Appellant on the robbery, theft, assault, and conspiracy counts relating to all three victims.

JUDGMENTS OF CONVICTION AFFIRMED. COSTS TO BE PAID BY APPELLANT.