Circuit Court for Charles County
Case No. 08-J-15-000227

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 66

September Term, 2016

IN RE: B.C.

Krauser, C. J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 7, 2017

The Circuit Court for Charles County, sitting as the juvenile court, found "B.C.," appellant, involved in the crimes of robbery, second-degree assault, theft under $1,000, conspiracy to commit robbery, conspiracy to commit second-degree assault, and conspiracy to commit theft under $1,000. The juvenile court subsequently placed B.C. on supervised probation and ordered that he perform 200 hours of community service as well as pay restitution to the victim. On appeal, B.C. claims that the evidence was insufficient to support any of the crimes for which he was adjudicated involved and that, in any event, two of his three conspiracy adjudications must be vacated because all three conspiracy adjudications were based on the same transaction. We affirm.

"The test of appellate review of evidentiary sufficiency 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.'" *Donati v. State*, 215 Md. App. 686, 718 (2014), *cert. denied*, 438 Md. 143 (2014) (internal citations omitted). "The test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (internal citations omitted). Moreover, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (internal citations omitted). "Further, we do not 'distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.'" *Id.* (internal citations omitted). Although this standard of

review is derived from criminal cases, we apply the same standard when reviewing the sufficiency of the evidence in juvenile delinquency cases. *In re Landon G.*, 214 Md. App. 483, 491 (2013).

Section 7-104(a) of the Maryland Criminal Code defines theft, in part, as willfully or knowingly obtaining or exerting unauthorized control over property with the intention of depriving the owner of the property. *Id.* When such a taking occurs as a result of force or threat of force, the offender is guilty of robbery. *Coles v. State*, 374 Md. 114, 123 (2003). Second-degree assault can be committed in several ways, including by intentionally or recklessly causing offensive physical contact with another that is not accidental, consented to, or legally justified. *Nicolas v. State*, 426 Md. 385, 403-04 (2012). Finally, when two or more persons agree to commit any of these crimes, a conspiracy to commit that crime has occurred, regardless of whether the crime is actually committed. *Carroll v. State*, 428 Md. 679, 696-97 (2012).

Here, the victim, "K.H.," testified that he and two other juveniles, B.C. and "T.Y.," were riding bikes together when T.Y asked to see K.H.'s cell phone and K.H. refused. Shortly thereafter, K.H. told B.C. and T.Y. that he was going home, at which time he gave B.C. a "dap" (a sort of handshake). Upon doing so, T.Y. grabbed K.H.'s hand and "put [him] down on the ground." T.Y. then sat on K.H.'s head and "started going through [his] pockets." As T.Y. was doing this, B.C. held K.H.'s legs. T.Y. then took K.H.'s phone, which was never recovered. At no time did K.H. consent to being touched or having his phone taken.

In light of the above facts, sufficient evidence existed to show that B.C. intentionally and without consent or legal justification caused offensive physical contact with K.H. and, in the process, took K.H.'s phone with the intention of depriving him of the property. That B.C. did not commit the actual taking does not affect his responsibility for the theft because, "[a]s a general rule, when two or more persons participate in a criminal offense, each is ordinarily responsible for the acts of the other done in furtherance of the commission of the offense[.]" *Owens v. State*, 161 Md. App. 91, 105 (2005). Moreover, even though no evidence was presented that B.C. and T.Y. had an express agreement to commit the crimes, the victim's testimony supported a reasonable inference that B.C.'s behavior was not spontaneous but rather part of a conscious design. *See Carroll*, 428 Md. at 696-97 ("The agreement at the heart of a conspiracy 'need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design.'") (internal citations omitted).

As for B.C.'s claim that only one conspiracy adjudication may stand, he is mistaken. Generally, "[i]f a defendant is convicted of and sentenced for multiple conspiracies when, in fact, only one conspiracy was proven, the Double Jeopardy Clause has been violated." *Savage v. State*, 212 Md. App. 1, 26 (2013). When this happens, however, it is the sentences, not the underlying convictions, that are vacated (or "merged"). *Id.* at 26 n. 21; *See also In re Montrail M.*, 325 Md. 527, 533 (1992) (discussing the effect of merger on adjudications in juvenile court). Moreover, when a juvenile court issues only one "sentence," as the court did here, the doctrine of merger is inapplicable because the juvenile has not been subjected to multiple punishments. *See In re Montrail M.*, 325 Md. at 535.

("There was only one 'punishment' imposed, and absent a separate sanction for each adjudication, the principles of merger were not violated."). In short, because the juvenile court did not impose separate penalties for each conspiracy adjudication, there is no "sentence" for this court to vacate.

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