

Circuit Court for Prince George's County
Case No. CT160472

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 353

September Term, 2017

ANDREW DAEHEE KIM

v.

STATE OF MARYLAND

Woodward C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned)

JJ.

PER CURIAM

Filed: December 29, 2017

*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.

A jury sitting in the Circuit Court for Prince George’s County convicted appellant, Andrew Daehee Kim, of theft.¹ Appellant was sentenced to eighteen months of confinement. Appellant appeals and argues that the evidence was insufficient to sustain his conviction. We affirm.

BACKGROUND

On March 5th, 2016, Kyle Kim (no relation to appellant) and Samuel Song went to Terrapin’s Turf bar on Knox Road in Prince George’s County. After a few hours, Song got into a verbal argument with a woman in the bar. Appellant then approached Song and the two had a verbal argument. Song knew appellant prior to this event through a mutual acquaintance. Kyle Kim, seeing Song arguing with appellant approached the two in an attempt to quell the argument. Brandon Lezcano, a friend of appellant’s, also joined the group at this time. A bouncer eventually approached the group and gave them a warning. Afterwards, appellant, Lezcano, Kim, and Song, left the bar to continue the argument.

The four walked to a nearby parking lot. During the walk, appellant and Lezcano walked together in front of Song and Kim. No one spoke during the walk. Both Song and Kim testified that as they got to the parking lot, Lezcano turned around suddenly, and unprovoked, hit Kim, causing him to “black out.” Song testified that he then came to Kim’s defense and engaged with Lezcano. As he did so, appellant punched him in the back causing him to fall. Song was then struck multiple times by appellant and Lezcano. Song

¹ Appellant was acquitted of robbery and two counts of second-degree assault. The court granted appellant’s motion for judgment of acquittal on a conspiracy to commit robbery count.

testified that he believed that the force of the beating caused him to lose consciousness for a “split second.” When appellant and Lezcano stopped beating him, he heard one of them say, “I’m taking this too.” The two then ran away. Song then noticed that his wristwatch, which he had been wearing that evening, and which he had last seen on his wrist when he stepped in between Lezcano and Kim during the fight, was no longer on his wrist.

After appellant and Lezcano ran away, Song got up and saw that Kim was unconscious on the ground. A passerby called an ambulance which arrived shortly thereafter. Kim testified that when he regained consciousness, Song was being treated in the ambulance and Song’s face was “pretty messed up.” Both Song and Kim were transported to Prince George’s County Hospital for treatment. Song, who had swelling to his eyes and face, was diagnosed with a fractured nose and held overnight.

Detective Jason Tidwell responded to the hospital and interviewed both Kim and Song. They were both shown a photograph of appellant and identified him as one of the assailants in the parking lot. They were both also shown a photo array which included Lezcano’s photograph. Song identified Lezcano as one of the assailants in the parking lot. On the back of the photograph of appellant, Song wrote “This is the guy who assaulted me & took my watch.” On the back of the photograph of Lezcano, Song wrote “This person assaulted/battery me along w/ Andrew Kim & either he or Andrew stole my watch as well.” The photograph of Lezcano was admitted into evidence, and Song was asked to identify it and was asked what he had written on the back of the photograph, whereupon the following exchange occurred:

[THE STATE]: Did you make a statement, as well?

[SONG]: Yes. I made a statement identifying that I believe that was Brandon [Lezcano].

[STATE]: What specifically did you write there?

[SONG]: I said this person assaulted me along with Andrew and was the one that stole my watch, as well.

Appellant did not testify at trial, nor did he present other witnesses.

DISCUSSION

Appellant argues that, “[a]lthough, the evidence is sufficient to sustain a finding that Lezcano stole Song’s watch, the evidence is insufficient, even when viewed in the light most favorable to the state, to support a finding that Appellant knowingly aided, counseled, commanded, or encouraged Lezcano to steal Song’s watch.” Appellant further argues that the “evidence is insufficient to support a finding that the theft was in furtherance of or during flight from the robbery.” We disagree.

When reviewing for sufficiency of evidence, we “determine ‘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.’” *Handy v. State*, 175 Md. App. 538, 561 (2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Appellant was charged with theft pursuant to Section 7-104(a) of the Criminal Law Article, which provides, in pertinent part: “A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person . . . intends to deprive the owner of the property.” The Court of Appeals has noted that, “[t]o be an accomplice a person must participate in the commission of a crime knowingly, voluntarily, and with common

criminal intent with the principal offender, or must in some way advocate or encourage the commission of the crime.” *State v. Raines*, 326 Md. 582, 597 (1992) (quoting *Watson v. State*, 208 Md. 210, 219 (1955)). Mere presence at the scene of a crime is not enough, “[i]nstead, the person must actually participate by ‘assist[ing], support[ing] or supplement[ing] the efforts of another,’ or, if not actively participating, then the person must be present and ‘advise or encourage the commission of a crime’ to be considered an accomplice.” *Silva v. State*, 422 Md. 17, 28 (2011) (quoting *State v. Foster*, 263 Md. 388, 393 (1971)) (citations omitted). Flight after the commission of a crime may be evidence of consciousness of guilt. *Decker v. State*, 408 Md. 631, 640 (2009).

Pointing to Song’s statement at trial regarding what he wrote on the back of Lezcano’s photograph, appellant argues that the evidence was sufficient to show that Lezcano took Song’s watch and not appellant. While Song stated at trial that he had written “this person assaulted me along with Andrew and was the one that stole my watch, as well,” on the back of Lezcano’s photograph, the actual statement written on the back of the photograph was “this person assaulted/battery me along w/ Andrew Kim & either he or Andrew stole my watch as well.” In addition, Song testified that “they” had taken his watch.

Moreover, appellant and Lezcano were present together in the bar during the initial argument. They then walked out of the bar together to continue the argument with Song and Kim. When Lezcano turned and hit Kim, appellant then squared up with Kim while Song engaged with Lezcano. After Kim lost consciousness, both Lezcano and appellant began to beat Song, striking him after he fell to the ground. Both were actively engaged in

the assault, and supplementing the efforts of the other. It was during this assault that Song heard one of the men say that he was going to take “this.” Both then ran away from the scene. Song then discovered his watch missing from his wrist. At all times, appellant and Lezcano were acting in concert with each other. A rational trier of fact could have found that appellant either actively participated in the theft or was “assisting, supporting or supplementing” the efforts of Lezcano. *Silva*, 422 Md. at 28.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**