Circuit Court for Calvert County
Case No. 04-J-16-000058

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2111

September Term, 2016

IN RE J.W.

Nazarian,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Nazarian, J.

Filed: October 18, 2017

The Circuit Court for Calvert County, sitting as a juvenile court, found J.W. involved in the delinquent acts of theft of property with a value between $1,000 and $10,000, conspiracy to commit theft of property with a value between $1,000 and $10,000, unauthorized removal of property, obstructing and hindering a police officer, and malicious destruction of property valued less than $1,000. The circuit court adjudicated J a delinquent and imposed a suspended commitment to the Maryland Department of Juvenile Services, placed him on supervised probation for an indefinite period, and ordered him to pay restitution, jointly and severally with his co-respondent, in the amount of $2,649.

On appeal, J contends that the evidence was insufficient to sustain the delinquency findings for all except the finding of unauthorized use, which he does not challenge. We affirm.

I. BACKGROUND

The following facts were developed during the adjudication hearing, which was held on November 2, 2016.

Around midnight on May 9, 2016, Deputy Kirk Williamson of the Calvert County Sheriff's office was traveling southbound on Maryland Route 4 in a marked patrol car when he noticed a silver Volvo traveling northbound at high rate of speed. The Sheriff made a u-turn and caught up with the speeding vehicle. After pacing the vehicle at 90 miles per hour, he activated his emergency equipment and attempted a traffic stop. But rather than pulling over, the driver tapped the brakes and sped up, eventually surpassing 110 mph.

The Sheriff contacted the control center and advised that he was pursuing a vehicle that was failing to yield. As another patrol unit joined the pursuit, the Volvo made another u-turn, running a red light and crossing two lanes of traffic in the process, and proceeded southbound. The Sheriff followed and, once he got behind the Volvo again, relayed its registration information to the control center, which revealed that the car had been stolen from somewhere in Anne Arundel County a few days before.

The Volvo eventually turned left into a field and the Sheriff followed for about a mile, traveling at approximately 50 mph. As the Volvo approached the wood line at the north end of the field, it began to slow down, and two people jumped out and ran into the woods, going in different directions. The Sheriff, who was in uniform, stopped his patrol car, got out, and ran after the two suspects, informing them that he was a "police [officer]" and that "they needed to stop." The Sheriff pursued the suspect who had run in the northwesterly direction, but ultimately lost sight of him and stopped the foot chase.

Sheriff Williamson contacted the control center to request assistance in the search, and was joined eventually by a helicopter and approximately twelve deputies, who set up a perimeter around the area, a canine officer and his canine partner, and two other deputies, who initiated a track through the woods. One of the deputies eventually located the accomplice about a mile north of where the two suspects had entered the woods. After being taken to the Sheriff's Department and interviewed, the accomplice identified J as his passenger.

Sheriff Williamson and another officer went to J's residence. Sheriff Williamson asked J and his mother if they would meet with him at the sheriff's office, and they agreed. After getting his *Miranda*[1] warnings, J told police that his friend, J.R., had picked him up in a stolen vehicle, a silver Volvo, and that they were driving north on Route 4 when a police officer turned on his lights and tried to stop them. J told J.R. to stop, but instead J.R. turned to him and said he was "getting [them] out of this," and as they approached the wood line, J.R. told J to get ready to run. J jumped out of the car and ran into the woods, where he lay on the ground and "crawl[ed] out towards another cornfield." He "ran through fields and hid from the spotlight and got to a house and [lay] there in the grass for [a] []while and got up and started walking back on the road by the school" and "arrived home by about 3[:00] am."

The State introduced a video recording that J had taken on his cell phone about five minutes before Sheriff Williamson had activated his patrol lights. The video appears to be taken from the passenger seat and shows J.R. driving, and then focuses on the speedometer which reads 153.6 kilometers per hour (95 mph).

At the conclusion of the hearing, the circuit court found J involved in the delinquent acts of theft of property with a value between $1,000 and $10,000, conspiracy to commit theft of property with a value between $1,000 and $10,000, unauthorized removal of property, obstructing and hindering a police officer, and malicious destruction of property

[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966)

valued less than $1,000. The court placed J on supervised probation and imposed a suspended sentence. This timely appeal followed.

II. DISCUSSION

J contends that the evidence was insufficient to sustain the juvenile court's finding that he was involved in malicious destruction of property, obstructing and hindering a police officer, theft, and conspiracy to commit theft.[2] The State counters that it provided adequate proof to sustain the juvenile court's finding of involvement with respect to each of the delinquent acts.

"Our standard of review for sufficiency of trial evidence is 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." *In re Landon G.*, 214 Md. App. 483, 491 (2013) (emphasis in original) (quoting *Bible v. State*, 411 Md. 138, 156 (2009). We apply this same standard of review in juvenile delinquency cases, and a delinquent act, like a criminal act, must be proven beyond a reasonable doubt. *Id.* (citation omitted). "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." *State v. Smith*, 374 Md. 527, 534 (2003) (alterations in original) (quotation marks omitted). "If the evidence either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's

[2] In his brief, J phrases the Question Presented as follows "Is the evidence legally insufficient to sustain the findings of delinquency?"

guilt of the offenses charged beyond a reasonable doubt[,] then we will affirm." *Bible*, 411 Md. at 156 (alteration in original) (citation and quotation marks omitted).

A delinquent act is defined as "an act which would be a crime if committed by an adult." Md. Code (2017 Supp.) § 3-8A-01(l) of the Courts and Judicial Proceedings Article ("CJP"). An allegation that a juvenile has committed a delinquent act must be proven beyond a reasonable doubt. CJP § 3-8A-18(c)(1); Md. Rule 11-114(e)(1). Where a case is tried before a court sitting without a jury, as delinquency proceedings are, we do not set aside the judgment of the court unless it is clearly erroneous. Md. Rule 8-131(c); *In re Antoine H.*, 319 Md. 101, 108 (1990).

A. The Evidence Was Sufficient To Sustain The Court's Finding That J Was Involved In Malicious Destruction Of Property.

Malicious destruction of property is the willful and malicious destroying, injuring, or defacing the real or personal property of another. Md. Code § 6-301(a) (2002, 2012 Repl. Vol., 2014 Supp.) of the Criminal Law Article ("CR"). J contends that the evidence was insufficient to support a finding that he was involved in malicious destruction of property, a specific intent crime, because the evidence proved only that "their intent simply was to escape," not to destroy the crops in the field as he and his partner evaded police in a stolen car.

J relies on *In re Taka C.*, 331 Md. 80 (1993), but the analogy doesn't hold. In that case, the defendant and another boy sledded, on car hoods, down a hill that abutted the wall of a building. *Id.* at 81. The car hoods damaged the building on impact, even though the boys had piled snow against the bottom of the building to avoid hitting it directly. *Id.* at

81. The circuit court found Taka involved in the delinquent act of malicious destruction of property and we affirmed, reasoning that the circuit court could have inferred the requisite malicious intent from the act of sledding down a hill with full awareness that there was building at the bottom of it. *Id.* at 82. But the Court of Appeals reversed because, it held, the circuit court did not find that Taka hit the building with the specific intent to damage it, but only with general intent to do the act that caused the damage, *i.e.*, sledding. *Id.* at 85. Because the boys had piled snow against the wall of the building in an effort to avoid hitting it directly, the Court concluded that "[t]here was absolutely no evidence which would support a finding of specific intent to cause damage to the property." *Id.* at 85.

J contends that in this case, there was no evidence to support a finding that he had the specific intent to cause damage to the property—he intended only to escape. He further argues that even if J.R.'s conduct could be imputed to him, the evidence was insufficient to prove that *he* intended to destroy the crops. He characterizes the evidence as encompassing only the general intent to do the act which caused the damage, *i.e.*, drive the car through the cornfield to elude the police, and not the specific intent to damage the crops.

The State counters that the Court of Appeals reversed in *Taka C.* only because the evidence that Taka had piled snow against the building negated any finding of specific intent to damage the property. The absence of any such preventative measure in this case undercuts, in the State's view, the claim that J intended to drive over the cornfield but not

damage it, and that his failure to argue that the conduct was negligent "implicitly acknowledges that his conduct rose above mere negligence."

We find the facts of this case more in line with the cases that the State cites, *Teeter v. State*, 65 Md. App. 105 (1985), and *Brown v. State*, 50 Md. App. 651 (1982), where the defendant was found guilty of malicious destruction of property when he damaged property in the course of gaining entry and committing theft. The similarities lie in the fact that the destruction of property occurred in furtherance of a crime. In *Teeter*, the defendant broke a patio door in order to gain entry into a house and commit theft. *Teeter*, 65 Md. App. 105, 112. We upheld the conviction because the record did not support a finding that the door was broken in a negligent manner, and the entry and theft that followed the property damage negated any finding of negligence. *Id.* at 112. So too in *Brown*, in which the defendant broke a gas station window in an apparent attempt to commit theft, but was stopped short by the manger before actually entering the station. *Brown*, 50 Md. App. at 653. The defendant argued that he broke the window in order to get water for his disabled vehicle, *id.* at 653, but we affirmed, noting that the jury chose to disbelieve the defendant's explanation in favor of the State's. *Id.* at 655.

Spencer v. State, 450 Md. 530 (2016), which J cites in his reply brief, is distinguishable as well. There, the defendant hit and seriously injured a bicyclist when fleeing from police. *Id.* at 540. Spencer was convicted of attempted second-degree murder, *Id.* at 539, but after we affirmed, the Court of Appeals reversed, holding that the evidence was insufficient to show that the defendant had the specific intent to kill. *Id.* at 571. The

Court characterized the evidence as showing that the defendant "was driving recklessly during a police chase so as to avoid capture; thus, it can be inferred he was motivated to flee," *id.*, and noted that there "was no evidence of a specific intent, based on Spencer's acts or words that he actually saw and intended to hit [the bicyclist]. *Id.* at 571. In this case, though, J.R., and J participated in a joint enterprise, and did not inadvertently drive into the farm fields while driving recklessly—J.R. told police that he had "a plan" to get himself and J out of "this," a deliberate decision to drive through the fields, which were growing corn, as part of his plan to escape police. From this evidence, the trial court could reasonably have found beyond a reasonable doubt that J had the specific intent to damage the crops, and we discern no error in that decision.

B. The Evidence Was Sufficient To Sustain The Court's Finding That J Was Involved In Obstructing And Hindering A Police Officer.

Next, J.W. contends that the evidence was insufficient to sustain the court's finding that he obstructed and hindered a police officer. In particular, he argues that he "did not commit obstructing and hindering of a police officer by speeding away from police" because "there is no evidence to suggest that [he] had any control, constructive or actual, over the car" and that "when the police officer turned on his lights, [he] asked his co-respondent to stop." Additionally, he contends that "[t]he [S]tate failed to prove that [his] act of running away actually caused any hindrance to Deputy Williamson."

Obstructing and hindering a law enforcement officer in the performance of his or her duty is a common law offense. *Titus v. State*, 423 Md. 548, 558 (2011) (citations omitted). The offense is comprised of four elements:

> (1) A police officer engaged in the performance of a duty;
>
> (2) An act, or perhaps an omission, by the accused which obstructs or hinders the officer in the performance of that duty;
>
> (3) Knowledge by the accused of facts comprising element (1); and
>
> (4) Intent to obstruct or hinder the officer by the act or omission constituting element (2).

Id. at 559. Each element must be proven beyond a reasonable doubt. *Id.* at 552. Maryland courts have defined "obstructing" as "an act or omission making it more difficult for the police to carry out their duties." *Id.* at 561 (internal quotations and citations omitted). And hindering is "an act which deprived the officer of the opportunity to further observ[e] the subject" or "to impede or delay the progress of" the officer in performing his or her duty. *Id.* at 563.

J challenges the State's proof of the second element. He contends that he did not commit an act that obstructed an officer in the performance of his duty because he was not in control of the car, and that he did not hinder an officer in the performance of his duty because the police eventually went to his house and arrested him. We disagree.

J relies on two cases, *In re Antoine H.*, 319 Md. 106 (1990), and *Nieves v. State*, 160 Md. App. 647 (2004), both of which are distinguishable. In *Antoine H.*, police officers executing a warrant for the arrest of Joseph Howard were refused entrance into his residence for fifteen minutes; after gaining entry, Antoine told officers that Mr. Howard wasn't there. *Id.* at 106-07. The police searched the house and found Mr. Howard hiding in the cellar. The Court of Appeals held that the evidence was insufficient to support a

finding of hindering or obstructing the police because the mere denial that Mr. Howard was on the premises did not hinder or obstruct the officers in the performance of their duty—the officers searched the house anyway and found him, *id.* at 109, and "[a]ny delay in opening the door did not, in any event, result in a failure to find and arrest him." *Id.*

Similarly, in *Nieves*, this Court held that police did not have probable cause to arrest the defendant for obstructing or hindering a police officer where, during a traffic stop, the defendant initially provided the officers with his middle name instead of his first name, causing the police to run the defendant's information through a computer database a second time before discovering that his driver's license had been suspended. 160 Md. App. at 656-57. We held that any delay caused by the defendant's failure to provide his first name immediately was immaterial because his "act did not actually cause any hindrance." *Id.* at 657.

Unlike the defendants in those cases, though, J's actions actually hindered the police's efforts to arrest him. Even accounting for the fact that J had no control over the car, once it finally stopped at the wood line, J got out of the vehicle and ran into the woods, ignoring Sheriff Williamson's command to stop. From there, J hid in the woods for nearly three hours, and it took at least twelve police officers, a police dog, and a helicopter to track him down. The police also set up a perimeter around the woods to contain the suspects, but J was eventually able to escape and walk home. It's true that police ultimately arrested J at his house after being identified by his co-respondent, but his actions made it more difficult for police to carry out their duties, and frustrated and delayed the process of

apprehending him. The evidence sufficed to support the court's finding of J's involvement in obstructing or hindering a police officer in the performance of his duty.

C. The Evidence Was Sufficient To Support The Court's Finding That J Was Involved In Theft.

J contends *next* that the evidence was insufficient to support the court's finding that he was involved in theft because he "never possessed nor ever had control over the silver Volvo that [J.R.] drove; [he] was "a mere passenger."

Section 7-104 (c) of the Maryland Consolidated Theft Statute ("CR") defines three ways in which the possession of stolen property is a crime:

> A person may not possess stolen personal property knowing that it has been stolen, or believing that it probably has been stolen, if the person:
>
> (i) intends to deprive the owner of the property;
>
> (ii) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
>
> (iii) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

The crime of possessing stolen property under §7-104 (c) involves four elements: (1) the property must be stolen; (2) the defendant must be in possession of the stolen property; (3) the defendant must know that the property has been stolen or believe that it probably has been stolen; and (4) the defendant must intend or act to deprive the owner of the property in the manner described in §7-104 (c)(i), (ii), or (iii). *In re Landon G.*, 214

Md. App. 483, 493 (2013). J challenges the sufficiency of the evidence to prove the second element— possession of the vehicle.

Citing *In re Melvin M.*, 195 Md. App. 477 (2010), J argues that although he knew that the vehicle was stolen, his mere presence in the car was insufficient to prove that he was in possession of the vehicle. That is what *Melvin M.* held, but not what the record revealed here. In *Melvin M*., the defendant was a passenger in a stolen vehicle when the driver of the vehicle made an illegal turn. *Id.* at 479. A state trooper attempted to stop the vehicle, but the driver failed to yield and a chase ensued. *Id.* During the chase, the vehicle hit a curb, flipped onto its hood, and came to rest in the parking lot of a 7-11. *Id.* Coincidentally, several police officers were in a patrol vehicle in the parking lot at the time, and when the trooper arrived seconds later, he observed the defendant and a police officer standing about twenty to thirty feet from the stolen vehicle. *Id.* The defendant told the officer that he had been a passenger in the car and that he knew it was stolen. *Id.* The circuit court found the defendant involved in the delinquent act of possession of theft of property worth $500 or more, in violation of CR §7-104 (c). *Id.* On appeal, we reversed, holding that "mere presence" in a stolen vehicle without more is insufficient to show possession to sustain a conviction for the theft. *Id.* at 490. In other words, we concluded, "the State must present some evidence that the accused took some action which demonstrated his restraining or directing influence over the car." *Id.*

In discussing *Melvin M*. in *In re Landon G.*, 214 Md. App. 483 (2013), we noted that "the conceptual lynchpin underlying a finding of possession of a stolen vehicle by a

passenger is the presence of 'other incriminating evidence' that tends to show a joint enterprise or acting in concert by the driver and the defendant passenger." *Id.* at 496. We cited examples of "other incriminating evidence" such as "flight by the driver and the defendant passenger when approached by the police, the use of the vehicle in a crime or other joint activity, and a relationship between the driver and the defendant passenger." *Id.* We affirmed the circuit court's finding in that case that the defendant was involved in the theft, based on the presence of other incriminating evidence and the fact that the defendant was not merely present in the vehicle: the driver and defendant fled from the police, first in the vehicle and then on foot; the driver and defendant participated in the joint activity of picking up another friend and then planned to return the defendant to his house; and their families had been friends for "as long as [they] could remember." *Id.* at 497.

All three examples of "other incriminating evidence" we identified in *Landon* are present here. *First*, there is no question that J.R. and J fled from police: when Sheriff Williamson activated the emergency lights on his marked patrol car, J.R. led police on a high-speed chase for several miles, then drove through fields for at least another mile before both he and J jumped out of the stolen vehicle and fled on foot into the woods. *Second*, J.R. and J used the stolen Volvo in a joint activity, and J knew the vehicle had been stolen when he chose to get in it. In addition, J recorded a video on his cell phone of himself and J.R. in the vehicle, flying down the road at excessive speeds and appearing to be enjoying the vehicle. Moreover, when Sheriff Williamson activated the emergency lights, J.R. told J that he was "gonna get [them] out of this" and that "he had a plan." When

the vehicle finally stopped, both jumped out and ran in different directions. *Finally*, it is undisputed that J.R. and J knew each other: in his statement to police, J referred to J.R. as his "friend," although it's unclear from the record how long they had known each other. Unlike *Melvin M.*, then, there was ample evidence beyond J's presence in the stolen vehicle to support the conviction.

D. The Evidence Was Sufficient To Sustain The Court's Finding That J Was Involved In Conspiracy To Commit Theft.

Finally, J contends that the evidence was insufficient to sustain the court's finding that he was involved in the delinquent act of conspiracy to commit theft because J.R. was alone when he took the car, leaving no evidence of an agreement to commit theft. We disagree.

"A criminal conspiracy is the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means." *Savage v. State*, 212 Md. App. 1, 12 (2013) (internal quotations and citation omitted). A conspiracy may be shown through circumstantial evidence, from which a common scheme may be inferred. *Mitchell v. State*, 363 Md. 130, 145–46 (2001). And "[t]he agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Id.* at 145 (citations omitted).

The circuit court found J involved in the delinquent act of conspiracy to commit theft, noting specifically that the video recording showed J "enjoying the use of that car as a passenger, as a correspondent to [J.R.]. They are speeding up and down the road, and they are in tandem." The circuit court continued that J and J.R. were "riding the highways

in Calvert County after midnight on May 9 in a stolen vehicle and are purposely doing it" and that, even though J was not driving, "[h]e was participating and enjoying the stolen car[.]" Based on these facts, the court concluded, J and J.R. "entered into an agreement . . . with the intent that the crime be committed."

Viewing the evidence in the light most favorable to the State, the evidence supports a rational inference that J and J.R. agreed to commit theft by depriving the owner of the vehicle. Our courts have inferred the existence of a conspiracy when co-defendants engage in coordinated action:

> If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may, but need not, infer a prior agreement by them to act in such a way. From the concerted nature of the action itself, we may reasonably infer that such a concert of action was jointly intended. Coordinated action is seldom a random occurrence.

Jones v. State, 132 Md. App. 657, 660 (2000). Coordinated action may not always equal a conspiracy, but evidence of coordinated action can "giv[e] rise at least to a permitted inference" of a conspiracy. *Id.* at 661. Here, J and J.R.'s joint use and enjoyment of the vehicle and coordinated effort of fleeing in different directions readily supports the inference that they agreed to commit theft. And the answer doesn't change simply because there was no evidence that J was present when J.R. took the vehicle. The State was only required to prove that J and J.R. agreed to use the vehicle knowing that the use would likely deprive the owner of the property. CR §7-104 (c) (iii). "[T]he gravamen of the offense of theft is the depriving of the owner of his rightful possession of his property." *Cardin v. State*, 73 Md. App. 200, 211 (1987).

Theft is a continuing crime. *Acquah v. State*, 113 Md. App. 29, 53 (1996) (citation omitted). J.R. committed theft when he initially took the vehicle, and J committed theft as well when he "possessed" the vehicle for the purpose of wrongfully depriving the owner of the property. And given the evidence that he was a party to the agreement to deprive, the court did not err in finding that he entered into a conspiracy with J.R. *Id.*

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. APPELLANT TO PAY COSTS.