

Circuit Court for Baltimore County
Case No. 03-K-17-003945

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2532

September Term, 2017

TERREL DURAN DANIELS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: December 11, 2018

*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.

Appellant, Terrel Duran Daniels (“Daniels”), was charged in the Circuit Court for Baltimore County with several crimes: (1) theft of property with a value between \$1,000 and \$10,000; (2) motor vehicle theft; (3) unauthorized use of a motor vehicle as a conspirator; (4) assault in the second degree; and, (5) conspiracy to commit theft. He waived a jury and consequently was tried in a bench trial. The trial judge found Daniels guilty on all counts, but reduced the monetary theft conviction from a range of between \$1,000 and \$10,000 to theft of property with a value of less than \$1,000. Daniels, who was incarcerated from 13 July 2017 until 14 December 2017, was sentenced to time served. This timely appeal ensued.

We shall affirm the judgment of the circuit court, in the face of Appellant’s insufficiency of the evidence appellate challenge, for reasons to be explained.

FACTUAL BACKGROUND

The State’s case at trial revealed the following. On 12 July 2017, Edward Partlow (“Partlow”) drove a 2011 Honda Accord automobile, belonging to his wife’s grandmother, to a 7-Eleven store located at 7201 North Rolling Road, Windsor Mill, Maryland. He had permission to use the vehicle. Partlow’s nephew, a minor, accompanied him. Arriving at the store, Partlow parked, left the keys in the ignition in the “turned-off position,” and the child in the front seat. Partlow walked towards the 7-Eleven. As he did, he was approached by Appellant, who was standing in front of the 7-Eleven. Daniels asked Partlow for some change, but Partlow ignored him and entered the store. Partlow was in the 7-Eleven for approximately five minutes.

When Partlow exited the store, he discovered his nephew sitting on the curb and the Honda Accord missing. Because Daniels was still standing outside of the store at that time, Partlow questioned him if he saw anybody take the vehicle. Daniels did not volunteer any description of the person who drove off with the automobile, but did tell Partlow that a man took the automobile and “went down the street,” pointing in the direction of its travel.

Baltimore County Police Officer Brett Randall (“Officer Randall”) responded to the 9-1-1 call of vehicle theft placed from the 7-Eleven by Partlow. When Officer Randall arrived, Daniels asked him also for spare change, a request declined for lack of same. Officer Randall questioned Daniels, asking what, if anything, he saw happen in the 7-Eleven parking lot regarding the stolen vehicle. Daniels responded that he knew nothing. Officer Randall went inside to see if the surveillance cameras mounted outside the 7-Eleven to observe the parking area were operational. The cameras were functional. Officer Randall retrieved for review the surveillance tapes for the relevant times. Daniels was arrested the following day, 13 July 2017.

The 7-Eleven surveillance tape retrieved by Officer Randall was shown at trial. The tape did not contain audio, but Partlow supplied narration. The opening scene showed the Honda Accord being driven into the parking lot, followed by Partlow exiting the automobile. Daniels (identified by Partlow as the person with whom he spoke before entering the store) approached and appeared to speak to Partlow before the latter entered the 7-Eleven. During the time Partlow was in the store, the surveillance tape depicted further an unidentified man enter the camera’s range. Daniels was shown talking to the unidentified man. Daniels then turned and looked through the front windows of the 7-

Eleven into the store's interior. The tape showed him looking initially into the store's interior, looking back at the crime scene, and then looking back into the store. Daniels departed the scene, by walking around the corner of the 7-Eleven, after witnessing the thief remove the nephew from the car (through an open window) and driving off with the automobile.

Daniels testified at trial in his defense. He denied any participation in or knowledge of the vehicle theft. He stated that he was at the 7-Eleven to ask customers for money to buy a pack of cigarettes. Regarding the car thief, Daniels testified that, after Partlow entered the store, a man unknown to him, wearing a hooded sweatshirt and jeans, approached him and asked if the Honda Accord was his. Daniels denied ownership and volunteered that he did not know who the owner was. According to Daniels, the mystery man continued to interrogate him, asking if he saw who drove the automobile to the 7-Eleven, to which Daniels claimed to respond "I didn't see nobody." Daniels acknowledged seeing the unidentified man remove the child from the vehicle, after which Daniels asserted that he walked away because he "didn't want nothing to do with it." After the automobile was purloined, but before Partlow exited the 7-Eleven, Daniels returned to the front of the store.

Daniels, on direct examination, was questioned specifically regarding the surveillance video showing him turning and looking into the store. He explained (without apparent logic) that he looked into the store because: "the guy asked me, you ain't seen . . . who went in the store, walk in the store? I said no, I didn't. I didn't know who got out of that car." Daniels admitted that, at the time of his arrest, he gave the police a description

of the man who took the automobile. According to that statement, he told police that the man was “wearing a hooded sweatshirt, jeans, and boots, he did not know the man, and the man looked like he was armed.”

The trial judge’s verdict seemed to hinge on his interpretation of the surveillance video showing Daniels looking back and forth between the interior of the 7-Eleven and the crime as it unfolded. The court, in finding Daniels guilty, explained:

In this case, you know, in any conspiracy absent the spoken word, you know, must look at the actions of the participants. And, as we all know . . . there is no particular length of time that a conspiracy must take place. It could be a spur of the moment, it could be a long, planned out thing. I think what is clear is that this was not a planned encounter.

...

And what’s curious, and, really, dispositive, to me is what [Daniels] did after he encountered the person who, actually, stole the vehicle and removed that child from the car. [Daniels’] attention completely turned toward the inside of the 7-Eleven. . . . Don’t know what was said, but we can interpret, I can interpret what was being said. And [Daniels] has said some of it. He asked who owned the car, which person it was.

[B]ased on what happened, I’m inferring that [Daniels] acted as a lookout for just that very short period of time. He does not need to profit from the conspiracy. He does not need to really have . . . intended, prior to that situation, for what happened to him happened, but he participated in the completion of the act.

[Daniels] didn’t take the opportunity to walk away. He decides he’s going to walk away after the car is stolen . . . the court interprets that as him trying to show that he was not involved, the guilty conscience as to what happened. His attention was completely directed toward the inside of that 7-Eleven to see where Mr. Partlow was while this crime was being committed giving cover to the assailant car thief.

QUESTION PRESENTED

Daniels poses a single inquiry for our review:

Was the evidence sufficient to support Appellant’s conviction of theft, motor vehicle theft, unauthorized use of a motor vehicle, assault in the second

degree, and conspiracy to commit theft as a principal in the second degree?

STANDARD OF REVIEW

Regarding appellate review of the sufficiency of the evidence, the “test of the legal sufficiency of the evidence to support the conviction is the same in a jury trial and in a bench trial.” *Chisum v. State*, 227 Md. App. 118, 131, 132 A.3d 882, 889 (2016). “When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence.” MD. RULE 8-131(c). Thus, the appropriate inquiry 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.” *Titus v. State*, 423 Md. 548, 557, 32 A.3d 44, 50 (2011). Because the finder-of-fact is in the best position to choose among possible inferences that might be drawn from fact evidence, we “defer to any possible reasonable inferences the [trier-of-fact] could have drawn from the admitted evidence and need not decide whether the [trier-of-fact] could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence.” *Id.* at 557-58, A.3d 50. Regarding the credibility of witnesses, “[w]eighing 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.” *State v. Smith*, 374 Md. 527, 533-34, 823 A.2d 664, 668 (2003) (internal citations omitted).

DISCUSSION

In Maryland, one may commit a crime as either a principal in the first degree, or a principal in the second degree. “A principal in the first degree is the one who actually commits a crime. . . . A principal in the second degree is one who is actually or constructively present when a felony is committed, and who aids or abets in its commission.” *Pope v. State*, 284 Md. 309, 326, 396 A.2d 1054, 1064-65 (1979). A principal in the second degree is someone “who knowingly, voluntarily, and with common interest with the principal offender, participates in the commission of a crime. . . . is a guilty participant, and in the eye of the law is equally culpable with the one who does the act.” *Owens v. State*, 161 Md. App. 91, 99, 867 A.2d 334, 339 (2005).

If a principal in the second degree is standing by for the purpose of giving aid to the criminal perpetrator, the principal in the first degree must be aware of the that purpose. *Pope*, 284 Md. 309, 332, A.2d 1054, 1068. If a person only witnesses a crime, does not object to the crime, and/or does not notify the police of the crime, then that person is not an accomplice in the eyes of the law.

To prove a conspiracy, an agreement among two or more people to accomplish an unlawful act must be proved. *Khalifa v. State*, 382 Md. 400, 436, 855 A.2d 1175, 1196 (2004). The agreement need not be explicit; a tacit agreement for some unlawful purpose may establish a conspiracy. *Id.*

Daniels urges us to overturn his convictions because, in his view, the evidence was insufficient to show that he was a principal in the second degree. He acquiesces that he was present at the scene, talking to the thief as he removed the child from the Honda

Accord. Daniels admitted additionally that he peered on multiple occasions into the 7-Eleven and back to the crime scene during the time the theft was being committed. In Daniels' view, however, there was no evidence that the thief was aware that Daniels was keeping an eye on Partlow in the 7-Eleven (while keeping tabs also on how the theft progressed) in order to facilitate the automobile theft. Rather, Daniels claims that he merely witnessed a crime and did nothing to facilitate or prevent it, which is not a crime in and of itself.

The State argues that the surveillance video was dispositive, making Daniels as culpable as if he committed the theft personally. The State iterates how the judge drew several permissible inferences against Daniels from the surveillance video. First, the judge observed that Daniels turned his attention to surveilling the inside of the 7-Eleven after he interacted with the automobile thief, looking back and forth multiple times. Second, the judge interpreted Daniels walking away, after the child was removed and the automobile drove-off, as evincing a guilty conscience and an attempt to manufacture a pretext supporting his non-involvement in the commission of the crimes. The State points also to Daniels' on-the-scene response to Officer Randall, indicating that he did not see anything relating to the automobile theft, which contradicts not only the video evidence that showed Daniels interacting with the thief as the mischief occurred, but also his July 13 statements to police regarding the thief's description and Partlow's testimony that Daniels pointed in the direction the thief drove-off on July 12.

We conclude that sufficient evidence existed to support Daniels' convictions. The trial judge was in the best position to choose among differing reasonable inferences that

might be drawn from the evidence, and especially the surveillance tape. We defer to the choice of the inferences drawn here. *Titus*, 423 Md. at 557-58, 32 A.3d at 50. A reasonable factfinder could infer, from Daniels' actions on the video and testimony, that he aided and abetted the theft by turning and looking back and forth between the removal of the child from the automobile and vehicle theft and the inside of the 7-Eleven. Even without audio on the 7-Eleven surveillance tapes indicating what was said between Daniels and the thief, the trial judge drew a reasonable inference, based on Daniels' physical actions on the surveillance footage, that he served as a lookout for the actual thief. It is reasonable also to infer that Daniels walked away from the front of the store, after the child was removed from the vehicle and the car was stolen, to appear as if he was uninvolved in the crime in any respect. Further, it is irrelevant that no evidence was adduced as to how Daniels profited from the car theft. No profit requirement exists to hold a person liable as a principal in the second degree.

Although not a major factor in testing the sufficiency of the State's evidence, Daniels' testimony was, in many respects, rife with inherent contradictions. For example, his denial to Officer Randall's query whether he saw anything in the parking lot relative to the missing car (albeit Daniels claimed he did not recall speaking with police on July 12) belied Daniels' conduct on the video and his testimony at trial that he saw the thief take the boy from the car. Partlow testified that Daniels told him some man took the car and pointed in the direction the man drove off. It appears that the trial judge placed greater weight in drawing inferences on the surveillance video and Partlow's testimony than on Daniels' testimony. We cannot say that he erred or the State's evidence was lacking.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**