

Circuit Court for Harford County
Case No. C-12-CR-23-000367

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1381

September Term, 2023

DONTE DEMONT STRAND

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Zic,

JJ.

Opinion by Friedman, J.

Filed: March 21, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

Appellant Donte Strand appeals from a theft conviction in the Circuit Court for Harford County. The State alleged in its indictment that Strand stole “medical cards” with a value of less than \$100. The State’s theory of the case was that Strand and a confederate, De’Andre Peaker, stalked their victim, Terry Hill, at the Aberdeen Amtrak Station. Peaker, the State asserts, stole Hill’s medical cards, and Hill unsuccessfully attempted to recover them from Peaker while Strand looked on and stood watch. Strand and Peaker then fled the scene.

At trial, the State introduced two security camera videos depicting the theft: one showing Peaker and Strand in the train station parking lot and the other displaying the two at the train station stairwell seconds later. In the train station stairwell video, Peaker is seen taking white, card-sized objects away from Hill before fleeing. The State attempted to prove at trial that these white, card-sized objects were, in fact, medical cards.

Strand was convicted of theft less than \$100, and the circuit court sentenced him to 90 days incarceration, suspended all but 11 of those 90 days, and placed Strand on 2 years of supervised probation. Strand noted this timely appeal.

DISCUSSION

Strand argues that his theft conviction should be reversed for two reasons. *First*, Strand claims that his conviction violates the so-called “material variance rule” because the State charged that Strand stole “medical cards” but failed to prove that the white, card-sized objects were, in fact, medical cards. *Second*, Strand alleges that the jury lacked sufficient evidence to find him guilty of being an accomplice to Peaker.

We review each of Strand’s arguments on the sufficiency of the evidence standard, which asks 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. *Scriber v. State*, 236 Md. App. 332, 344 (2018) (emphasis in original) (citation omitted). Under the sufficiency of the evidence standard, “the limited question before an appellate court 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.” *Id.* at 344 (emphasis in original) (citation omitted). “We defer to any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence.” *Fuentes v. State*, 454 Md. 296, 308 (2017).

We hold, *first*, that there was no material variance, as that term is defined in the cases, between what the State alleged and what it proved. We hold, *second*, that there was sufficient evidence from which a rational jury could infer that Strand was Peaker’s accomplice. As a result, for the reasons that follow, we affirm.

I. THE “MATERIAL VARIANCE RULE”

Strand argues that there was a material variance between the State’s allegation that medical cards were stolen and the proof that the State presented at trial. Under the material variance rule, “[t]he evidence in a criminal trial must not vary from those allegations in the indictment which are essential and material to the offense charged.” *Smith v. State*, 232

Md. App. 583, 594 (2017) (citation omitted).¹ A court must reverse a conviction under the material variance rule if a defendant proves three elements:

- (1) that a **variance** exists between what was alleged in the charging document and what was proven at trial;
- (2) that the allegation in the charging document is an **essential element** of the offense; and
- (3) that the variance was **material**.

Id. As to the first of these three elements—**variance**—Strand argues, as we have described above, that although the State alleged that he had stolen “medical cards,” the evidence adduced at trial only established that the items were white, card-sized objects. The State argues that a police officer’s reference to “medical cards” during Strand’s police interrogation combined with the security camera videos was sufficient evidence from which a jury could infer that the objects stolen were, in fact, medical cards.

As to the second of these three elements—whether the particular property alleged in a charging document is an **essential element** to be proven at trial—Strand cites to cases that he argues establish that the identity of the property stolen is an essential element of the State’s burden of proof, and the State does not contest his argument.

¹ The purposes served by the “material variance rule” correspond with the guarantees of Article 21 of the Maryland Declaration of Rights:

- (i) to put the accused on notice of what [the defendant] is called upon to defend by characterizing and describing the crime and conduct; (ii) to protect the accused from a future prosecution for the same offense; [and] (iii) to enable the defendant to prepare for ... trial.

Counts v. State, 444 Md. 52, 57-58 (2015) (citation omitted).

On the facts of this case, each of these two elements presents a close question. We need not resolve either of those close questions, however, because the third element—concerning the **materiality** of the variance, if any—is not close.

The purpose of the materiality element is to verify that a variance actually “prejudiced [a defendant’s] defense.” *Dotson v. State*, 234 Md. 333, 336 (1964). Maryland courts define a material variance as one that either “[1] mislead[s] the defendant so that [the defendant] cannot make an intelligent defense, or [2] expose[s] [the defendant] to double jeopardy.” *Id.* (finding that a variance in the victim’s name listed in the indictment was immaterial). The alleged variance in this case neither misled Strand in his defense against the theft charge nor exposed him to double jeopardy.

First, the alleged variance here did not mislead Strand in his defense against the theft charge. Because there does not seem to be a Maryland case exploring when a variance may or may not materially mislead a defendant, Strand relies on an out-of-state case decided by the Alabama Court of Criminal Appeals, one of that State’s two intermediate appellate courts. As a result, we will consider that case carefully.

In *Cubitt v. State*, the State’s description of the property that Cubitt had stolen had repeatedly changed. 261 So. 3d 496 (Ala. Crim. App. 2016). In the indictment, the State alleged that Cubitt, an employee of Best Buy, stole U.S. Currency. *Id.* at 497. In a pre-trial brief, the State argued, however, that Cubitt had stolen Best Buy reward points. *Id.* at 498. During the evidentiary portion of the trial, the State’s evidence was that Cubitt had stolen reward points. *Id.* In a post-trial brief, however, the State changed its tune again, arguing

that Cubitt had stolen Best Buy discount certificates. *Id.*² Cubitt was convicted of theft. *Id.* On appeal, the appellate court reversed, holding that the variances between what the State alleged in its indictment (U.S. Currency), what it proved at trial (reward points), and what it argued after resting its case (discount certificates), were so different that it misled the defendant and prevented him from defending himself at trial. *Id.* at 500.

We think the *Cubitt* case is well considered and adopt its method of analysis. We hold, however, that the circumstances of Strand’s case are sufficiently distinct from those of Cubitt’s case to compel the opposite result. Here, Strand was sufficiently apprised by the indictment that he was charged with stealing medical cards, and the State did not attempt to prove that the property stolen was anything other than medical cards. At trial, the State made three attempts to introduce evidence that the property Strand had stolen was medical cards: one attempt through the testimony of the lead detective on the case; a second attempt through a statement the lead detective had made during Strand’s police interrogation; and a third attempt through a statement Strand had made during that same interrogation. At no point did the State attempt to introduce evidence that the property shown being stolen in the video were *not* medical cards. Because Strand received proper notice of the charge through the indictment and because the State did not mislead Strand

² The Alabama court explained the intricacies of the Best Buy rewards program. A “reward point” is an intangible reward that is part of Best Buy’s Reward Zone Program. *Cubitt*, 261 So. 3d at 497. A reward point has no cash value. *Id.* To get any use out of reward points, a Best Buy customer must redeem them for a “discount certificate.” *Id.* A discount certificate entitles a customer to discounts on purchases at Best Buy. *Id.*

about the property that it attempted to prove Strand had stolen, Strand was not misled and could—and did—mount an intelligent defense.

Second, the variance between the medical cards stolen in the indictment and the evidence at trial did not expose Strand to double jeopardy. “The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and the common law of Maryland guard against ‘multiple punishments for the same conduct.’” *Morris v. State*, 192 Md. App. 1, 39 (2010) (citation omitted). Imposing separate sentences for the same act is impermissible if the charges “arose out of the same act or transaction.” *Id.* (citation omitted). When analyzing double jeopardy under the material variance rule, courts hold that a defendant is not exposed to double jeopardy if the charging document identifies the crime and the transaction involved. *See Mazer v. State*, 231 Md. 40, 51 (1963) (“[T]he indictment ... clearly identifies the offense involved and hence this prosecution will be an effective bar to any subsequent prosecution for that offense.”). The indictment charged Strand with theft as follows:

AND, the jurors aforesaid, upon their oath aforesaid do further present that DONTE DEMONT STRAND, on or about February 10, 2023, located at 18 E. Bel Air Avenue, Aberdeen,³ in the County aforesaid, unlawfully did steal a wallet, U.S. Currency, and medical cards, property of Terry Hill having a value of less than \$100.00[.]

The indictment specifies the date, the place, the items allegedly stolen, the value, the crime committed, and the owner of the property. The indictment provides sufficient detail to identify the transaction at issue and thus prevents a future prosecution for the same

³ This is the address of the Aberdeen Amtrak Station.

transaction. Therefore, any variance would not expose Strand to double jeopardy, and, as a result, is not material.

Because Strand was neither misled about the property that the State claimed that he stole nor exposed to double jeopardy by the variance, the variance is immaterial and thus is not reversible error. *See Dotson*, 234 Md. at 336; *see also* 41 AM. JUR. 2D *Indictments and Informations* § 244 (2025) (“[I]mmaterial variances between the allegations in the indictment and the evidence introduced are to be disregarded when considering the sufficiency of the evidence to support a conviction.”). We, therefore, affirm that the State’s evidence was sufficient to sustain Strand’s theft conviction.⁴

⁴ Although we have dispensed with Strand’s material variance rule argument, we must still determine whether there was sufficient evidence to convict Strand with theft of “property” less than \$100. *See Prior v. State*, 10 Md. App. 161, 167-68 (1970) (rejecting material variance argument involving the ownership of the property that defendant had broken into but nevertheless still analyzing and determining that the evidence was otherwise sufficient to convict defendant of breaking and entering). The consolidated theft statute defines property as “anything of value.” MD. CODE, CRIMINAL LAW (“CR”) § 7-101(i)(1). Value is determined by either the market value of the property or the cost of the replacement of the property. CR § 7-103(a). Though a thing must have some value to be property, “[q]uantifying the value is not important to whether a theft was committed.... The requirement [of value] merely ensures that the defendant’s conduct constitutes a crime against property.” *Jupiter v. State*, 328 Md. 635, 640 (1992). The statute provides a broad, non-exhaustive list of 14 things that are property, including tickets, animals, food, water, things growing on land, and “written instrument[s] representing ... anything otherwise of value to the owner.” CR § 7-101(i)(2). Here, the jury could rationally infer that the white, card-sized objects seen in the train station stairwell video met this broad definition of property. The objects, even if they are blank, have a market value or replacement cost that can be ascertained. A jury could thus reasonably infer that the white, card-sized objects had some market value. Accordingly, there was sufficient evidence from which a jury could infer that Strand stole property with a value of less than \$100.

II. ACCOMPLICE LIABILITY

Strand argues that there was insufficient evidence for a rational jury to find him to have been an accomplice to Peaker's theft. Specifically, Strand claims that the evidence only established Strand's "mere presence." *Coleman-Fuller v. State*, 192 Md. App. 577, 594 (2010) ("[M]ere presence of a person at the scene of the crime is not of itself sufficient to prove the guilt of that person." (citation omitted)). We disagree. "To 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." *Silva v. State*, 422 Md. 17, 28 (2011) (citation omitted). A defendant can encourage the commission of a crime through "acts, words, signs, motions, or any conduct which unmistakably evinces a design to encourage, incite, or approve of the crime.... One may also encourage a crime by merely standing by for the purpose of giving aid to the perpetrator if necessary, provided the latter is aware of this purpose." *State v. Raines*, 326 Md. 582, 596 (1992) (citation omitted); *see also Flores v. State*, 120 Md. App. 171, 193 (1998) ("Presence near the scene of a crime 'when coupled with other suspicious circumstances may be enough to base a conviction upon circumstantial evidence.'" (citation omitted)). To begin, we recount the evidence that touches on whether Strand was Peaker's accomplice.

Prior to their encounter with Hill, Strand and Peaker met at the train station. At the time, Strand was wearing a bright yellow work uniform. Strand then left the train station, changed into a grey hoodie and balaclava that covered his face, and then met back up with Peaker at the train station.

At the train station parking lot, Strand and Peaker are seen in a surveillance video standing behind Hill. For about six minutes, the two followed Hill as he walked through the parking lot. During this time, Strand and Peaker walked side by side. At moments when Hill stood in place, the two paced behind Hill but never stopped looking in his direction. At one point, when Strand looked over at Peaker, Peaker pointed at Hill. For the final ninety seconds in which Strand and Peaker followed Hill, they stood about ten feet behind him. Peaker, while looking at Strand, nodded his head aggressively in the direction of Hill several times. The two, in unison, then approached Hill, stopped immediately behind him, and walked backwards. Finally, Peaker lunged toward Hill, wrapped his arms around him, and pushed him out of the frame. Strand did not touch Hill but continued to follow behind both of them.

In a second surveillance video, Peaker is seen descending the train station stairwell while Hill pursues him. In his hand, Peaker carried square, white objects the size of playing cards. Peaker and Hill wrestled each other to gain control of the white objects, and Peaker dug through Hill's pockets. From only a few feet away, Strand watched the entire scuffle and was the only other person present on the stairwell. Just as Peaker stood up and finished digging through Hill's pockets, Strand fled the scene. Peaker followed closely behind.

A rational jury could well infer that Strand was Peaker's accomplice based on this evidence. In particular, a rational jury could infer that Strand was encouraging, approving of, or standing by to aid Peaker while he stole from Hill, and that Peaker was aware of Strand's aid. We hold that a rational jury could have made these inferences based on three constellations of evidence:

- A rational jury could infer Strand was encouraging Peaker's theft based on Strand changing his clothes before the theft. Prior to the theft, Strand met with Peaker at the train station, then left and changed into dark, less visible clothes and covered his face with a balaclava. A jury could infer that Strand did so to appear less conspicuous so that he could help Peaker steal from Hill.
- A rational jury could infer Strand was encouraging Peaker based on his conduct during the theft. Strand walked in unison with Peaker while they followed Hill for six minutes. Strand was the only one to follow close behind Peaker and Hill while they wrestled over the white, card-sized objects, and he fled immediately after he saw Peaker take control of the objects. Based on this evidence, a jury could rationally infer that Strand was complicit in planning or actively supporting Peaker's theft.
- Finally, a rational jury could infer that Strand was standing by to aid Peaker in case he needed help, and it could infer that Peaker was aware of Strand's aid. Peaker pointed at Hill as he and Strand approached Hill, and Peaker, while looking directly at Strand, urgently nodded his head toward Hill while the two stood a few feet behind him. Based on these circumstances, a jury could infer that Peaker was directing Strand to steal from Hill or that Peaker was marking Hill as the person that he and Strand would steal from. A rational jury could conclude from these inferences that Strand was standing by Peaker to aid him while he stole from Hill, and that Peaker understood that Strand was aiding him.

Based on this evidence, we are persuaded that a jury could rationally infer that Strand encouraged Peaker to steal from Hill or stood by to aid Peaker while he did so. Accordingly, viewing the evidence in the light most favorable to the State, we hold that there was sufficient evidence from which a rational jury could infer that Strand was Peaker's accomplice.

There was not a material variance between what Strand was charged with and what was proven at trial. Additionally, there was sufficient evidence from which a jury could infer that Strand was Peaker's accomplice. As a result, we affirm Strand's conviction.

**JUDGMENT OF THE CIRCUIT
COURT FOR HARFORD COUNTY
AFFIRMED. COSTS ASSESSED TO
THE APPELLANT.**