UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0181

September Term, 2015

JEFFERY MATHIS

v.

STATE OF MARYLAND

Wright,
Graeff,
Eyler, James, R.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 16, 2016

Jeffery Mathis, appellant, was convicted of first and second-degree burglary after a court trial in the Circuit Court for Montgomery County. The court sentenced appellant to ten years for the first-degree burglary conviction, and it imposed a consecutive five year sentence for the conviction of second-degree burglary.

On appeal, appellant presents the following question for our review:

Did the State fail to present sufficient evidence to sustain the convictions?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The State charged appellant with the burglary of two homes in the Silver Spring area. Guilherme Roschke testified that he went on vacation from July 27, 2013, to August 2, 2013, and he returned to find that his home had been burglarized. Mr. Roschke reported several items missing from his home, including a television, an engagement ring, a necklace, and a bag containing a camera and lenses. Another homeowner, Kenneth Parker, testified that he went on vacation from July 25, 2013, to August 12, 2013, and he returned to find that his home had been burglarized. Mr. Parker testified that several items were missing from his garage, including a generator, a circular saw, a chainsaw, a hedge trimmer, and a tree trimmer.

Detective Rollins, a Montgomery County Police Officer in the Criminal Investigations Division, testified that he was assigned to investigate both cases. He began his investigation by checking the police department's database of transactions from various pawn shops in Maryland. Detective Rollins discovered that Mr. Parker's generator had been pawned by appellant at the King Pawn shop in Bladensburg, Maryland on July 31,

2013, at 3:36 p.m. Mr. Roschke's necklace and ring had been pawned by another man, Kenneth Strong, at the King Pawn shop on August 1, 2013, at 3:13 p.m. Mr. Strong also pawned Mr. Roschke's camera and lenses at the Top Dollar Pawn Shop in Oxon Hill, Maryland on August 2, 2013, at 3:49 p.m. The police arrested appellant and Mr. Strong, and Detective Rollins questioned them about the pawned items.

During his interview, appellant admitted to pawning jewelry, to knowing Mr. Strong (whom appellant referred to as "Kenny"), and to pawning other items with Mr. Strong, including a chainsaw. Appellant denied pawning any tools or a generator. Detective Rollins then showed appellant security footage from the two pawn shops, which depicted appellant, Mr. Strong, and a third man, Shawn Pittman, pawning or attempting to pawn various items.[1] Appellant finally admitted to pawning various items with Mr. Strong, but he denied any involvement in the burglaries. Appellant also admitted that he was a heroin dealer and that he helped people, including Mr. Strong and Mr. Pittman, pawn items so that they could buy heroin from him.

During Detective Rollins' testimony, the State played the security footage from the two pawn shops. In one of the videos, dated July 31, 2013, appellant was seen holding the door for Mr. Pittman as Mr. Pittman carried a Yamaha generator into the King Pawn shop, which was the same pawn shop where appellant pawned Mr. Parker's generator, that same

[1] Shawn Pittman subsequently was arrested for his alleged involvement in 40 to 50 burglaries, including the two burglaries for which appellant was charged. Upon his arrest, Mr. Pittman indicated that two individuals helped him during the burglaries, one was named "Kenny" and the other was named "Junior." The record does not reflect any reference to whether appellant had a nickname of "Junior."

day. In the same video, appellant was shown carrying two items, a tree trimmer and a circular saw, believed to be taken from Mr. Parker's home. In another video, also from King Pawn but dated August 1, 2013, appellant was shown in the company of Mr. Strong, who was pawning the necklace and ring stolen from Mr. Roschke's home. In a third video, dated August 2, 2013, appellant was shown in the company of Mr. Strong and Mr. Pittman, this time at the Top Dollar Pawn Shop, as Mr. Strong pawned the camera and lenses stolen from Mr. Roschke's home.

Detective Rollins testified that he acquired appellant's cell phone number, which was used to obtain appellant's subscriber and call records. This information was given to Detective Scott Sube, a member of the Montgomery County Police Electronic and Technical Surveillance Unit and an expert in geographical mapping of cell phone calls. Detective Sube analyzed appellant's call records in an attempt to determine appellant's approximate location at the time of the burglaries.

Detective Sube determined that, at approximately 12:30 p.m. on July 31, 2013, appellant's cell phone began moving away from his wife's apartment in Southeast D.C. toward the victims' homes in Silver Spring. At approximately 1:00 p.m., appellant's phone was in the vicinity of the victims' homes. At approximately 3:45 p.m., appellant's phone was in the vicinity of the King Pawn shop, where appellant and Mr. Pittman were captured by the security camera in possession of Mr. Parker's generator. At approximately 4:10 p.m., appellant's phone was back in the area of southeast D.C.

Detective Sube testified that, at approximately 1:30 p.m. on August 1, 2013, appellant's phone was again in the vicinity of the victims' homes. At approximately 3:00

p.m., appellant's phone was in the area of the King Pawn shop, where appellant and Mr. Strong were captured by the security camera in the process of pawning items stolen from the victims' homes. Appellant's phone was also found to be in the vicinity of the Top Dollar Pawn Shop on August 2, 2013, where appellant and Mr. Strong were again captured by the security camera in the process of pawning items stolen from the victims' homes.

STANDARD OF REVIEW

The applicable standard of review in addressing the sufficiency of the evidence is as follows:

> 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.'" *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, "but rather is only with whether the verdicts were supported with sufficient evidence -- that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt." *State v. Albrecht*, 336 Md. 475, 479 (1994). "We 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.'" *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)). 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.'" *Montgomery v. State*, 206 Md. App. 357, 385 (quoting *Morris v. State*, 192 Md. App. 1, 31 (2010)), *cert. denied*, 429 Md. 83 (2012).

Donati v. State, 215 Md. App. 686, 716, *cert. denied*, 438 Md. 143 (2014). "Moreover, when evaluating the sufficiency of the evidence in a non-jury trial, the judgment of the trial

court will not be set aside on the evidence unless clearly erroneous." *State v. Raines*, 326 Md. 582, 589 (1992).

DISCUSSION

Appellant contends that the evidence presented did not prove beyond a reasonable doubt that appellant was present at the time and place of either burglary. He asserts that the only evidence placing him at the scene was the testimony of Detective Sube, which merely established that appellant's cell phone initiated calls through cell phone towers in Silver Spring on two days that Mr. Roschke and Mr. Parker were on vacation. Appellant argues that the State failed to establish the relative distance between appellant's phone and the victims' homes, or whether appellant even had possession of his phone when the purported calls were made. Appellant also argues that the State failed to establish that he "aided, counseled, commanded, or encouraged the commission" of the burglaries or that he had the requisite intent, which were required elements of the crimes charged.

The State contends that there was ample evidence from which the trial court could infer that appellant was present at the time of the burglaries. Appellant was seen in possession of items stolen from the victims' homes and was actively engaged in the process of pawning those items. Appellant's phone was in the vicinity of the victims' homes at a time when the victims were on vacation, and the trial court made the reasonable inference that appellant was in possession of his own phone at those time. Moreover, appellant was, according to the State, found to be in exclusive possession of items recently stolen from the victims' homes, which allows for a rational inference that appellant was the one who stole the items. We agree with the State.

Under Maryland Code (2012 Repl. Vol.) § 6-202(a) of the Criminal Law Article ("CR"), a person is guilty of burglary in the first degree if he "break[s] and enter[s] the dwelling of another with the intent to commit a theft." A person is guilty of burglary in the second degree if he "break[s] and enter[s] the storehouse of another with the intent to commit a theft."[2] CR § 6-203(a). A defendant need not commit, or even be present during, the actual breaking and entering to be guilty of first or second-degree burglary; the defendant may be found guilty as a principal if he either aids in the commission of the crime or lends support at the scene of the crime. *Owens v. State*, 161 Md. App. 91, 99-100 (2005); CR § 4-204(b). Under both theories, the evidence must show, at a minimum, that the defendant aided, counseled, commanded, or encouraged the commission of the crime. *Owen*, 161 Md. App. at 105.

Here, appellant was found guilty by the trial court under both theories. The court found that appellant was not only present at the scene of the burglaries, but that he actively provided his accomplices with counsel and encouragement:

> The defendant, I find, is a dealer of heroin and has determined that a method of improving sales is to assist, facilitate his customers in acquiring and then dispossessing themselves of chattels, converting the chattels in to [sic] cash, and as a dealer in goods the defendant, if you will, then receives the cash. So at least in his mind, he's a receiver of cash. He's not the receiver of stolen property.
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> * * *
>
> I find that what happened here is that the defendant was approached by Mr. Strong and Mr. Pittman. Mr. Strong is the defendant's brother-in-law. The three of them on the dates in question went in a blue Jeep Cherokee

[2] Although referred to throughout as his "home," Mr. Parker's garage, from which the items were stolen, is considered a storehouse under the statute.

> to the two places where the breaking and entering occurred. Mr. Pittman and Mr. Strong were the muscle if you will, the breakers, and the enterers. The defendant remained in the car, I find, circumstantially he was there. And he was counseling Pittman and Strong as to what kinds of goods could be most easily liquidated in the correct amount of cash.
>
> The defendant was familiar with and conversant not only with the locations of the two pawn shops in question. . . . But based on my review of the tapes, very conversant and familiar with pawn shop procedures, even to a point where at one time, he looked impatient that he [had] to wait so long to liquidate the chattels.
>
> He was not only in the company of the breakers at the place of converting the chattels to cash, I find that he was with them in the car on the dates in question counseling, giving advice, encouraging and helping them commit the crimes by explaining to them what kinds of goods could be fenced or pawned as the case may be and bring sufficient cash.

The trial court's conclusions were supported adequately by the evidence presented at trial. Detective Sube testified that appellant's cell phone was in the area of the victims' homes at times when the burglaries could have been committed, and that, immediately following these times, appellant's cell phone was in the area of the two pawn shops. Although it was not definitively established that appellant was in actual possession of his phone at these times, it was reasonable for the trial court to conclude that appellant was in possession of his own phone, given that both appellant and appellant's phone were shown, by independent evidence, to be in the area of the pawn shops at approximately the same times.

Moreover, Mr. Pittman confessed to being aided in the burglaries by two men, and that one of the two men was named "Kenny." Although appellant was not directly identified by Mr. Pittman as the third man, a reasonable inference can be drawn that appellant was the other perpetrator, given that appellant was one of two men with Mr.

Pittman in each of the pawn shops, along with Mr. Strong, whom appellant also referred to as "Kenny." In fact, not only did the security footage show appellant in the presence of the other two perpetrators, but it also showed appellant in possession, either directly or by his involvement in their sale, of the items stolen from the victims' homes.

Regarding his role in the burglaries, appellant admitted, in his interview with police, that he was a heroin dealer, and he often pawned items for cash. Appellant's knowledge of and familiarity with the process of pawning property was further supported by the security footage, as noted by the trial court. Appellant also admitted that he helped his customers, including both Mr. Strong and Mr. Pittman, pawn items so that they could buy heroin from him. Therefore, it was reasonable for the finder of fact to infer that appellant's role in the burglaries went beyond mere presence, by counseling or encouraging Mr. Strong and Mr. Pittman regarding the "pawn value" of items in the burglarized homes.

Appellant's argument, that there was no direct evidence of appellant's counsel or encouragement during the burglaries or of his intent to commit the burglaries, is not persuasive. As appellant notes in his brief, counsel or encouragement need not be proven directly, but may be shown "by acts, words, signs, motions, or any conduct which unmistakably evinces a design to encourage, incite, or approve of the crime." *Pope v. State*, 284 Md. 309, 332 (1979). Similarly, whether an accomplice has the requisite intent can be inferred from circumstantial evidence, provided said evidence suggests that the accomplice knew or had reason to know of the criminal intention of the principal. *Raines*, 326 Md. at 594.

Here, in addition to finding that appellant was present during the commission of the burglaries, the trial court found that appellant was known to aid individuals, including Mr. Strong and Mr. Pittman, in pawning items to buy drugs. This, in conjunction with the fact that appellant was actively pawning the stolen items immediately after being in the vicinity of the victims' homes at a time when the burglaries could have taken place, creates a reasonable inference that appellant was more than a mere bystander during the commission of the burglaries. It also supported a finding that appellant acted with the intent to commit the burglaries, or at the very least, that appellant had reason to know of the criminal intent of his accomplices. *See e.g.*, *State v. Coleman*, 423 Md. 666, 674 (2011) ("Intent may be inferred from acts occurring subsequent to the commission of the alleged crime."); *Raines*, 326 Md. at 591 ("[I]ntent must be determined by a consideration of the accused's acts, conduct and words.").

Accordingly, we conclude that there was sufficient evidence to support appellant's convictions for first and second-degree burglary.

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