

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1877

September Term, 2011

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JULIAN DOMINQUE FREEMAN

v.

STATE OF MARYLAND

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Woodward,  
Nazarian,  
Reed,

JJ.

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Opinion by Woodward, J.

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Filed: February 3, 2015

After a jury trial in the Circuit Court for Worcester County, Julian Freeman, appellant, was convicted of participation in a criminal gang and acquitted on two counts of first degree assault and two counts of second degree assault. Appellant, who was sentenced to five years, contends that there was insufficient evidence to support his conviction. We disagree and affirm the conviction.

### **FACTUAL BACKGROUND**

The State presented evidence that on Saturday, April 24, 2011, appellant and members of a gang from Dover, Delaware were involved in an early morning fight on the Ocean City boardwalk. Appellant admitted being a member of the gang. The central issue at trial was whether appellant participated, along with other members of a Dover gang, in assaulting two victims.

Around midnight that evening, Ocean City Police Officer Michael Richardson was patrolling in an unmarked vehicle when he noticed three cars traveling tightly together, nearly bumper to bumper. Officer Richardson followed behind as they drove around the downtown area, then parked on Talbot Street next to the boardwalk. At that point, several black males and females exited from the vehicles, and three of the men urinated behind an electrical box. Joined by Officer Sprague, Officer Richardson continued to follow the individuals on foot as they walked south on the boardwalk, but the officers eventually returned to their patrol cars without making any contact with the group.

Later that night, police communications received a call for a fight either at Worcester or Somerset Street. Responding to the area, Officer Richardson saw the same group of

males and females that he had just observed for 15 or 20 minutes walking quickly off the boardwalk and back to their cars. Officer Richardson continued to look for the fight until advised by Officer Justin Hoban that he had located one of the victims.

Officer Hoban testified that, when he responded to a fight in progress on the boardwalk, he found Jeremy Wilkerson walking in circles, “visibly bruised,” and reporting that his wallet had been stolen. Spencer Hopkins was also bruised and had an abrasion on his ear. Hopkins recounted that “two of the males from [a large] group ran up to him and started punching him in the face with closed fists” and continued “to viciously beat him,” and that the attackers then “went to his cousin, Jeremy Wilkerson, and formed a circle around him, who was lying on the ground, and were kicking him and beating him[.]”

After speaking with both victims, Officer Hoban put out a BOLO, or “[b]e on the lookout,” for the suspects, advising that the victims mentioned a handgun. Officer Richardson immediately responded that he recognized the description of the individuals. When Officer Richardson learned that the three vehicles he had observed earlier were no longer at Talbot Street, he put out a broadcast for them.

Between 1:30 and 1:45 a.m., Officer Richardson and other officers conducted a high-risk traffic stop of a minivan and a Nissan Altima. Appellant and Jamera Fisher were among the occupants of the Altima. When Officer Hoban brought Wilkerson and Hopkins for a show-up identification, both victims identified appellant “as being involved in the assault that took place.” At about 3:30 a.m., Officer Richardson stopped the third vehicle.

Appellant and eight other male occupants from the three vehicles were taken to the police station.

At trial, Wilkerson, who was a high school student at the time of the incident, testified that he came to Ocean City for the weekend with his cousins, Hopkins, Russ Wilkerson, and Derrek Wilkerson. After midnight, while walking on the boardwalk back to their car, the family members were assaulted by a group of “like 15 guys[.]”

[WILKERSON]: We were walking past them on the right side and they were walking up the left. And after we walked past them, one of the guys turned and yelled, “Hey, what are you looking at,” twice. And then we turned around. Somebody punched my cousin, Spencer, and that’s what pretty much started the fight.

[PROSECUTOR]: And describe the actual attack.

[WILKERSON]: After my cousin got punched, I turned around, got hit in the left ear. It kind of threw me back a little bit because I was a little surprised. My two other cousins I guess just -- from what they said, they walked away. I wasn’t really paying attention to them because there was four guys in front of me swinging at me and stuff.

After I turned and saw that they -- there was nobody beside him besides Spencer, I said, “Spencer, come on, let’s go. There’s nobody else here.” And I ran off the boardwalk.

As I was running off the boardwalk, two guys at the end of the boardwalk tried to pick me up and drop me on my back, but I landed on my feet. And tried to push him away from me, but – or them away from me, but I couldn't get past them. So the people that were behind me came down, started punching me, and they circled up around me and stole my wallet and my cell phone. They then broke my cell phone in half. And they were on the floor, and then ran up to where my cousin was at, I guess – I'm not sure if they swung at him anymore. But after that they walked away.

[PROSECUTOR]: Okay. And did you provoke these individuals at all?

[WILKERSON]: Uhn-uhn.

[PROSECUTOR]: How did you feel inside about what was going on?

\* \* \*

[WILKERSON]: I was terrified because, I mean, we just got jumped by 15 people. We didn't know if they were coming back or if they were going to come back and do more harm to us or anything like that.

Hopkins identified appellant as a member of the group who attacked his cousins and him on the Ocean City boardwalk. He described the assault as follows:

[HOPKINS]: Okay. We were -- just happened to be walking, and we walked by them twice. The first time we walked by nothing happened. The second time, they yelled at us, "What are you looking at?" I turned to

see what they were talking about to getting [sic] punched in the face twice by two different people.

From there it turned into a big fight. My two other cousins ran off, and then they proceeded to beat me up and chase down my other cousins while also beating up cousin Jeremy.

[PROSECUTOR]: Let's rewind this a little bit. Before you were struck, did you or any of your cousins say anything back to this group?

[WILKERSON]: No.

[PROSECUTOR]: And did you provoke them in any way?

[WILKERSON]: No.

[PROSECUTOR]: Did this attack come as a surprise?

[WILKERSON]: Yes.

[PROSECUTOR]: How did you feel?

[WILKERSON]: Like, what's going on? I was freaking out a little bit. I was scared.

\* \* \*

[PROSECUTOR]: What happened to you? Tell me about it.

[WILKERSON]: I still actually have a scar. I got cut on my ear. When I first got hit, I had a lot of bruising on my face. And then they beat – they knocked my glasses off. Luckily they didn't break them. I was able to bend them back into shape. They just beat the crap out of us.

\* \* \*

[PROSECUTOR]: Okay. Did – what did you tell the police officer?

[WILKERSON]: How we were attacked. Informed him how we were attacked, and the police were able to track them down,

[PROSECUTOR]: Did you tell them anything about conversations that may have occurred during the fight you may have overheard?

[WILKERSON]: We heard them talking about having a gun. I told the cops about that. The cops were able to track them down. The cops actually recovered the gun I believe.

[PROSECUTOR]: And did you ever see a gun?

[WILKERSON]: No. I just remember hearing about it.

According to Hopkins, some of the females in the group, but none of the males, tried to break up the fight.

When police showed him a group of people who were stopped on Coastal Highway, Hopkins identified two or three men as the individuals who actually hit him and identified other individuals as having also been involved. According to Hopkins, appellant did not hit him, and he did not see whether appellant hit Wilkerson. Nevertheless, Hopkins testified, “I do remember [appellant] being with the group and trying to chase down my cousins.”

Officer Hoban testified that, after appellant’s arrest, he admitted “that he was there and he knew what was going on,” but Officer Hoban did not recall whether he admitted

taking an active role in the fight. Appellant told the officer “that the group of individuals that he was out with and that he was [sic] with was part of a gang called the Iraq Gang.”

Corporal Scott Bernal of the Ocean City Police Department supervised the post-arrest interview of appellant, who had no visible injuries and was cooperative to an extent except for his involvement. According to Officer Bernal, appellant told him

[b]asically he was with [] the group he was with, he eventually identified as a gang called Iraq out of Dover, Delaware, and that they were involved in a fight prior to this at H20, outside H2O which is a underaged nightclub, under 21 I should say. And that fight was unprovoked. They were walking up the boardwalk. Two of his members that he validated were in a gang called Iraq called the two victims bitches and then attacked them. And that everybody was involved in this attack, and then a robbery also occurred out of this.

Officer Bernal testified that appellant “didn’t say specifically who hit who because there was [sic] two victims being beat on the boardwalk and then another one had fled. And some of his gang . . . chased, hoping to catch these young men.” Although appellant did not specifically describe his role in the altercation, Officer Bernal concluded that, based on what he told him, there was no other place he could have been but right there when it was happening. Appellant did not deny that he was involved in the fight and admitted that “[h]e was close enough to hear . . . somebody in his group call the two victims a bitch” and “then he also heard one of them yelling, telling the other one . . . ‘get his wallet, get his cell phone.’”



Appellant, whose moniker is “Free,” identified all the gang members and their monikers. He was the only one who informed Officer Bernal about the gang; but for appellant’s statement, Officer Bernal would not have known they were in a gang. Appellant admitted to being in the gang and reported that the individuals in lockup at the police station had been yelling back and forth about who was going to take the gun charge.

Dover Police Officer Christopher Bumgarner testified that, as a “Safe Streets officer” in a drugs, vice, and organized crime unit, he collects information on gang members and has specialized training in gang identification investigation. In the course of investigating whether appellant and others who were arrested in this incident were members of a gang, he reviewed validation worksheets that indicate whether, for each individual, there is evidence of about 11 different criteria of specific gang activity. Validation worksheets on four of the individuals arrested with appellant reflected Officer Bumgarner’s research on prior arrests, statements that had been made by the individuals as well as confidential informants, members of the community, and his review of social media such as YouTube and also articles that had been taken from people when they had been arrested suggesting gang involvement, and tattoo photos as well. To be validated as a gang member, the individual has to meet three or more of those criteria, or he has to admit to membership, and then police have to confirm it through another criteria.

Of the nine arrested in connection with the boardwalk assault, Officer Bumgarner did not know appellant but was familiar with four other arrestees, including Jamera Fisher, who

were validated members of the 8 Block or Iraq gang. Before the Ocean City assaults, Fisher told Officer Bumgarner that he was associated with 8 Block or Iraq gang and showed the officer a tattoo on his arm that says 800 Block.<sup>1</sup> According to Officer Bumgarner, this Dover neighborhood gang is very loosely structured and involved in small street level drug dealing, robberies, burglaries, and car break-ins. Following appellant's arrest, Officer Bumgarner validated appellant as a gang member based on his statements to the officers in Ocean City, his Ocean City arrest in the company of multiple validated gang members, and a previous arrest with another validated gang member.<sup>2</sup>

## DISCUSSION

Appellant was convicted of violating Md. Code (2002, 2012 Repl. Vol.) § 9-804(a) of the Criminal Law Article, which provides in pertinent part:

- (a) *Prohibited acts.* — A person may not:
- (1) participate in a criminal gang knowing that the members of the gang engage in a pattern of criminal gang activity; and

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<sup>1</sup> Officer Bumgarner explained that, in contrast to large and well-organized “nations gangs” that operate across state lines with loose territorial criteria, typically a neighborhood gang is smaller, with “an established territory” and members who “have grown up in that neighborhood or had family members grow up in that neighborhood.” It was Bumgarner’s understanding that the Dover gang known as 8 Block or Iraq got those names from the “two circles going through the neighborhood [that] kind of form[] what looks like an eight” and because according to members, “there’s so much shooting out there it’s like living in Iraq.”

<sup>2</sup> Fisher and another arrestee, D’Andre Chandler, had been previously involved in at least one shooting together. Bumgarner and “a state intelligence analyst” prepared a “flow chart . . . to help [] explain some of the connections amongst the members [arrested in] this case and amongst the members of . . . the gang itself,” showing “the crimes that have been committed that link the individuals of the gang together.”

(2) **knowingly and willfully direct or participate in an underlying crime**, or act by a juvenile that would be an underlying crime if committed by an adult, committed for the benefit of, at the direction of, or in association with a criminal gang.

(Emphasis added).

Appellant does not challenge the sufficiency of the evidence establishing the first element of this offense, *i.e.*, that he is a member of a criminal gang with knowledge of the gang's pattern of criminal activity. Instead, he contends that the State failed to prove the second element, because "there was simply no evidence, beyond a blanket statement by a witness that he was 'involved' in the assault, to establish that he *directed or participated* in the beating of Jeremy [Wilkerson] and/or [Spencer] Hopkins." (Emphasis in original.) Invoking the "universally accepted rule of law that mere presence of a person at the scene of the crime is not of itself sufficient to prove the guilt of that person," *Fleming v. State*, 373 Md. 426, 433 (2003), appellant argues that the evidence showed nothing more than that appellant was present to "watch a fight."

The State responds that the evidence was sufficient to establish appellant's participation in the assaults. Citing the testimony of Wilkerson and Hopkins, as well as appellant's admission to Officer Bernal that "everybody was involved in this attack[,]'" the State argues that the jury was entitled to infer that appellant "did more than just watch – that he actually participated" because he and his gang members "acted as a collective mob by targeting, attacking, and robbing the victims with ruthless rapidity."

We review a criminal conviction to determine whether, on the evidence presented, considered in the light most favorable to the State, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Smith*, 374 Md. 527, 533 (2003). “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 guilt of the offenses charged beyond a reasonable doubt[,]’ then we will affirm that conviction.” *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). This standard “gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Jackson*, 443 U.S. at 319.

“In construing a statute, we look first to the plain language of the statute, and if that language is clear and unambiguous, we look no further than the text of the statute.” *Bost v. State*, 406 Md. 341, 349-50 (2008). Although the phrase “directing or participating” is not defined in section 9-804 or the related statutory scheme, appellant concedes that it encompasses acts by a defendant to assist another member of his gang in committing the underlying offense. This construction is consistent with the established criminal law distinction between a mere witness to a crime and an accomplice who “‘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) (citations omitted). To prove appellant was an accomplice rather than a witness, therefore, the State was required to establish that he “actually participate[d]” by assisting, supporting, or supplementing the efforts of others who assaulted the victims. *See id.* We conclude that the evidence here is sufficient to establish such assistance, and therefore, to convict appellant of participating in the boardwalk assaults committed by fellow gang members.

Appellant cites the State’s closing argument, during which the prosecutor pointed out nine times that appellant “was there,” as evidence that the State invited the jury to convict appellant based solely on his presence at the fight. We do not agree that the State’s theory of the case was that appellant could be convicted for merely “being there” during the assaults, or that the jury found appellant guilty simply because he witnessed them. Before closing arguments began, the trial court instructed the jury that “the State must show that [] the defendant . . . knowingly and willfully direct[ed] or participate[d] in an underlying crime in association with a criminal gang.” In opposing appellant’s motion for a judgment of acquittal, the prosecutor argued that it was up to the jury to decide whether appellant was a principal or an aider and abetter in the assaults. During closing, the prosecutor argued that appellant’s statement to police showed he was a participant, pointing out that Hopkins “was adamant [appellant] was there,” as part of the group who jumped them and surrounded Wilkerson during the beating. The prosecutor focused on appellant’s

[o]wn admission, his own statement. State’s Exhibit 10.  
Question by Officer Bernal, “On line number ten of your

written statement you wrote, I didn't see them with it. I just heard them. What is it, and what did you hear them say?" The defendant's own response was, "I heard Craig say, go in his pocket, and I also heard him say, get the cell phone, and heard Tre say, go in his back pocket for money or a [wallet]." Well, if you're in the middle of a gang beat down, how are you going to hear this stuff if you're not standing right next to the two individuals that are robbing the victim? If you're not right there, participating, actively participating, you're not going to hear this. He could say maybe he was running down the boardwalk, but he wouldn't have heard this had he been running down the boardwalk chasing somebody else. Had he been sitting off to the side he wouldn't have heard that. He was right there. . . . Directing, participating. I don't know. That's up to you. But I would contend that he was there and he was part of that assault.

Defense counsel responded that "[t]here's nobody testifying that [appellant] touched anybody, that he placed anyone in fear with any type of threat or assaultive behavior, you know, like trying to square off with someone." She maintained that, although appellant "may have been at the boardwalk with some questionable individuals[,] [t]hat does not make him guilty. The people who are guilty are the ones that actually jumped Mr. Hopkins and Mr. Wilkerson, the ones that actually caused the bruising, . . . the ones that actually terrorized him."

In rebuttal, the prosecutor reemphasized appellant's role as a member of a "pack" that jumped the victims, again pointing out that appellant "was identified by both of the victims," who

were both beat down on the boardwalk like a pack of wolves attacking a couple of rabbits. And I'm sure the rabbits wouldn't be able to identify the wolves. They would just say, "Yeah,

there were a bunch of wolves, and they were attacking us, and all of them were participating. I can't tell you exactly which one hit me.”

These arguments presented the jury with a clear choice as to whether appellant took an active role in the assaults, short of actually striking the victims. The jury could infer from the testimony of Wilkerson and Hopkins, and from appellant's statements to police, that appellant was among the group who confronted the cousins, then surrounded Wilkerson while two gang members beat, kicked, and robbed him, and/or that he was one of the persons who chased the victims as they fled. Specifically, the inference that appellant participated in the assaults is supported by Wilkerson's account of being circled by a group of individuals while two men beat him; by Hopkins's testimony that he remembered appellant “being with the group and trying to chase down my cousins”; and by appellant's statements to police that his group initiated the fight, that he “knew what was going on,” that he heard his someone say “get his wallet, get his cell phone,” and that “everybody was involved in this attack.” Collectively, this evidence is sufficient to support appellant's conviction for knowingly participating in a gang assault.

**JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.**