COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1218

COMMONWEALTH

vs.

QWANDRE BATH.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

After a bench trial, the defendant, Qwandre Bath, was found guilty of vandalism.[1] G. L. c. 266, § 126A. On appeal, the defendant argues that there was insufficient evidence to support the conviction. We affirm.

Background. A store surveillance video recording entered in evidence showed both a young man (the victim) entering a convenience store and a car parked in the corner of the store's parking lot. Approximately ten seconds later, a red car pulled up next to the parked car. After the red car pulled up, occupants of both cars simultaneously got out, and the group, including the defendant, entered the store. One member of the group, identified as a juvenile, walked immediately to the back

[1] The defendant was found not guilty of assault and battery and assault and battery by means of a dangerous weapon. See G. L. c. 265, §§ 13A (a), 15A (b).

of the store where the victim was shopping. Within seconds of approaching the victim, the juvenile punched the victim, and a fight broke out between the juvenile, another group member identified as "Hammond," and the victim.

The defendant rushed toward the fight. He appeared to be smiling and was seen on the video recording reaching out and touching or grabbing Hammond before giving up and walking away. The fight continued throughout the store until the victim was able to escape. The group, including the defendant, ran back to the two cars. During the chaos of the fight, soda bottles were knocked to the floor and displays of merchandise were knocked over.

Discussion. To convict a defendant of vandalism pursuant to G. L. c. 266, § 126A, the Commonwealth was required to prove that the defendant "intentionally, willfully and maliciously or wantonly, paint[ed], mark[ed], scratche[d], etche[d] or otherwise mark[ed], injure[d], mar[red], deface[d] or destroy[ed] the real or personal property of another." We review the evidence to determine 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" (citation omitted). Commonwealth v. Latimore, 378 Mass. 671, 677 (1979).

The defendant argues that the Commonwealth failed to present any evidence that items were broken or otherwise injured, destroyed, marred, or defaced when they were knocked to the ground. The defendant asserts the Commonwealth cannot prevail because the items simply could have been picked up and returned to their shelves or displays with no lasting harm. We are not persuaded.

In construing the bounds of conduct that "destroys, defaces, mars, or injures" for purposes of religious vandalism pursuant to G. L. c. 266, § 127A, this court concluded that there was no requirement of substantial or permanent harm. Commonwealth v. DiPietro, 33 Mass. App. Ct. 776, 777 (1992). Specifically, the court determined that being able to completely wash off eggs that had been hurled at a temple did not preclude a finding of vandalism under that statute. Id. It is likewise irrelevant here that items on display could be returned to their original shelves or display units.

This is not a case in which a customer accidentally bumped into a display, requiring a store employee to clean up the items inadvertently knocked over. Nor is it a situation in which a customer moved an item or several items from one location to another. Rather, here the shelves and displays were completely knocked over, with items strewn on the floor during the course of an uncontrolled fight in a confined space.

In this context, recklessly reducing well-ordered displays to a disheveled scattering of items on the floor fits well within the definition of vandalism. To "mar" means "to detract from the good condition or perfection or wholeness or beauty" of something. Webster's Third New International Dictionary 1379 (2002). We are sufficiently convinced that the chaos created by knocking down shelves and orderly displays during a fight detracted from the store's good condition, perfection, or wholeness, and supported a finding that store property was marred.

The defendant next argues that there was insufficient evidence that he shared the requisite intent to commit vandalism as a joint venturer. In reviewing liability under a joint venture theory, the question is whether the evidence is sufficient to permit a conclusion that the "defendant knowingly participated in the commission of the crime charged, with the intent required to commit the crime." Commonwealth v. Zanetti, 454 Mass. 449, 468 (2009). To prove wanton marring of property, the Commonwealth had to prove that the defendant shared a general intent to do the act causing injury and that the act was done with an indifference to, or disregard for, the probable consequences. See Commonwealth v. Chambers, 90 Mass. App. Ct. 137, 142 n.4 (2016); Commonwealth v. McDowell, 62 Mass. App. Ct. 15, 24 (2004). These requirements can be proved by

circumstantial evidence. See Commonwealth v. Blake, 428 Mass. 57, 64 (1998).

Engaging in a physical fight in the narrow confines of a store shows an indifference to, or disregard for, the probable consequences of knocking over merchandise. Cf. Commonwealth v. Armand, 411 Mass. 167, 169 (1991) (noting that damage inflicted to control arm of car during "scuffle" inside car tended to show wanton, rather than willful and malicious, destruction). Viewing the evidence in the light most favorable to the Commonwealth, there was sufficient evidence that the defendant shared the intent to engage in a fight.

Only thirty-nine seconds elapsed between the time when the victim entered the store and when the juvenile first punched him. The victim walked well within sight of the occupants of the red car before he entered the store. As soon as the victim entered the store, the red car sped up and pulled into the parking lot. The juvenile immediately got out of the red car and walked straight to the back of the store to where the victim was standing. The victim was also seen repeatedly looking over his shoulder, as if to see whether he was being followed. Once the juvenile reached the victim, the juvenile immediately started to grab and to strike the victim. A reasonable trier of fact could conclude that the juvenile watched the victim enter

the store and followed him with the intent to engage in a fight with the victim.

Likewise, taking the evidence in the light most favorable to the Commonwealth, a rational trier of fact could conclude that the defendant knew of this plan and shared this intent. Members of the group in the parked car appeared to wait until the red car arrived with the juvenile. When the red car pulled up, Hammond immediately got out of the parked car and moved quickly toward the store with the juvenile. The defendant and other members of the group got out of the cars, followed shortly behind, and entered the store together. After the fight was over, the defendant rushed out of the store with the group and appeared to go to the red car -- to which the juvenile also returned. This evidence of arrival and flight together can be indicative of a joint venture. See Blake, 428 Mass. at 64; Commonwealth v. Williams, 422 Mass. 111, 121 (1996).

Moreover, the defendant was seen rushing to the fight and reaching out to grab Hammond while Hammond was assaulting the victim. While the defendant asserts that this showed that he intended to break up the fight, that view is not consistent with our obligation to view the evidence in the light most favorable to the Commonwealth. Another rational explanation, especially where the defendant was seen smiling while the victim was being beaten, is that the defendant intended to join or assist the

juvenile and Hammond in beating the victim. Because the vandalism charge required proof only of a general intent to engage in a fight -- not the intent to mar the property -- we are satisfied that a rational trier of fact could conclude that by engaging in the fight, however briefly, the defendant possessed the requisite intent to vandalize the property. We discern no error.

Judgment affirmed.

By the Court (Meade, Maldonado & Massing, JJ.[2]),

Joseph F. Stanton

Clerk

Entered: December 12, 2019.

[2] The panelists are listed in order of seniority.