UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1390

September Term, 2014

NICHOLAS AVASKIA SEIVWRIGHT

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: March 15, 2016

A jury sitting in the Circuit Court for Baltimore County found appellant, Nicholas Avaskia Seivwright, guilty of conspiracy to commit robbery with a dangerous and deadly weapon, first-degree burglary, first-degree assault, robbery with a dangerous and deadly weapon, and use of a handgun in the commission of a crime of violence. The court sentenced appellant to twenty years, all but fifteen suspended, on the conviction for robbery with a dangerous weapon,[1] five years, concurrent, to be served without the possibility of parole, on the conviction for use of a handgun in the commission of a felony or crime of violence, twenty years, concurrent, all but fifteen suspended, on the conviction for first-degree burglary. The remaining offenses merged for the purpose of sentencing.

On appeal,[2] appellant raises one issue for review:

Was the evidence sufficient to to support his convictions?

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

FACTUAL AND PROCEDURAL BACKGROUND

Background

On May 28, 2008, a home invasion robbery occurred at the home of Mr. Gary Guss in Owings Mills. Phyllis Murray worked for him as a caregiver.

In addition to her duties as a caregiver, Ms. Murray held Mr. Guss' power of attorney, and she paid his bills from his trust account. Mr. Guss received $800 per week as an

[1] Appellant also was ordered to pay Mr. Guss restitution in the amount of $101,000.

[2] Leave to file this belated appeal was granted following a post-conviction hearing.

allowance, which was paid from an account set up for him. Ms. Murray would cash the $800 checks and give Mr. Guss the money, part of which he spent, the other part he saved.

Mr. Guss placed the money he saved in bank envelopes and put those envelopes in a safe in his bedroom closet. The money usually was in fifty or hundred dollar bills, with some twenties, and it was put into bank envelopes containing $1,000. Ten envelopes were then bound together to create a $10,000 bundle. The envelopes were red, blue, or black, depending on the bank from which they were obtained. On the day of the robbery, there was $101,000 in the safe.

Facts of the Crime

On May 28, 2008, Ms. Murray woke up at approximately 5:30 a.m. It was a trash pickup day, and she prepared to take trash down to the road. Two masked gunmen approached her and pointed a gun at her face. They had black complexions and were wearing gloves and black hooded sweatshirts. They ordered her back into the house and asked about Mr. Guss' location. When she said that Mr. Guss was asleep, they ordered her to wake him. The men then asked Mr. Guss: "Where is the safe? You fat white bastard." Mr. Guss initially stated that there was no money.

The men then ordered Ms. Murray to lie down on the floor, and they bound her hands with telephone cords and removed multiple pieces of jewelry, including a diamond ring. The men kicked in the door of Mr. Guss' closet and found the safe where he stored his cash. At the demand of the men, Mr. Guss opened the safe with a key. The men took the cash,

which was packaged in envelopes as described above, as well as jewelry stored in the safe. The men then placed handcuffs on Mr. Guss, bound him with telephone cord, and exited the house. Mr. Guss was able to free himself from the handcuffs, as one did not lock properly, and Ms. Murray was able to work her way out of her bindings. Ms. Murray then went outside and called the police with her cell phone.

Investigation

Baltimore County Police detectives Stephen Duvall and Jennifer Bartfeld responded to the Guss residence approximately an hour after the robbery. Both detectives noticed that Ms. Murray did not have any ligature marks on her wrists. After investigating the scene and speaking to the victims, the detectives believed that the assailants had information about Mr. Guss and the location of his large amount of cash, given that the house was not ransacked, as in a typical robbery.

Ms. Murray's room was undisturbed, with the exception of some undergarments that had been taken out of her top left dresser drawer and neatly placed in front of the dresser. Ms. Murray was concerned about the checkbook she used to write checks to pay Mr. Guss' bills, which she claimed was in the top left drawer of her dresser. When Detective Duvall checked, he discovered that the checkbook was in the top right dresser drawer.

On her way to the police station, Ms. Murray told Detective Bartfeld that Mr. Guss could be mean and difficult to deal with at times, referring to him as a "miser." In an

interview conducted at the police station, Ms. Murray told the detectives that she talked to her family about her job and told the wrong person too much.

The detectives began to investigate Ms. Murray and her family more closely. Telephone records indicated that Vivian Maragh, Ms. Murray's daughter and the mother of appellant's children, was in contact with appellant several times on the day before and day of the robbery.[3] The records also indicated contact between appellant and Tyrone Wells, appellant's friend, on the day before and morning of the robbery.

On May 30, 2008, police set up surveillance of appellant's home and observed an individual, later identified as Mr. Wells. He drove away quickly in a Dodge Charger when he noticed them. The police followed Mr. Wells, but he was able to evade them. Officers then knocked on appellant's door, but instead of answering the door, appellant ran out of the back door of the house, where he was arrested.

Several hours after his arrest, Detectives Duvall and Bartfeld interviewed appellant.[4] Appellant knew that the Guss residence had been robbed, and he admitted telling Mr. Wells that Ms. Murray worked for a millionaire who kept money in the house, probably in a safe. Appellant stated that Mr. Wells suggested that they take the money, but appellant stated that

[3] Although appellant's telephone was not registered to him, testimony indicated that it was the phone he was using at the time of the robbery.

[4] Appellant was advised of his rights prior to the interview, and he signed and initialed a form indicating that he understood his rights. *See Miranda v. Arizona*, 384 U.S. 436 (1966).

he refused to participate because Ms. Murray and Mr. Guss would recognize him. Appellant then recounted a conversation he and Mr. Wells had on the Saturday before the robbery, where Mr. Wells inquired whether he was "going to do this house or what?" and "when are we going to see grandma [Ms. Murray]?" Appellant responded that, if Mr. Wells was going to do anything, he should not hurt anyone. Mr. Wells said that they needed to do something before the time changed so they would have the cover of early-morning darkness.

Detective Bartfeld testified that appellant indicated that he and Mr. Wells had discussed and planned what they were going to do, but appellant was not comfortable with it. Detective Duvall testified that appellant was interested in the proceeds from the crime, but did not want to take part in the crime. He also opined that there was no evidence of a meeting of the minds between appellant and Mr. Wells. Detective Bartfeld testified that there were thirteen contacts between appellant's phone and Mr. Wells' phone on May 27 through May 28, 2008.[5] One of those contacts was at 5:30 a.m. on the morning of the burglary.

Following the robbery, appellant spoke to Mr. Wells and asked "do I get my mansion now?" Mr. Wells replied "closed mouths don't get fed," meaning if someone does not participate in a crime, they do not get any of the proceeds. Appellant met Mr. Wells on the

[5] Phone records established contact between Mr. Wells' phone and Appellant's phone on May 27, 2008 at 9:54 p.m., 9:55 p.m., 10:01 p.m., 10:05 p.m., 12:27 a.m., 12:29 a.m. On May 28, 2008 contact was made at 5:25 a.m., 5:30a.m., 10:47 a.m., 10:48 a.m., 10:55 a.m., 11:26 a.m., and 11:28 a.m.

night of the burglary at the Rush Hour bar in Randallstown. Mr. Wells handed appellant $3,000 in three envelopes, each marked with the number $1,000, the same type of envelopes taken from Mr. Guss' residence.[6] Appellant admitted that he thought the money had come from the robbery.

Detectives Duvall and Bartfeld traveled from the area where Mr. Wells called appellant at 5:25 a.m. on the morning of the robbery to determine the time it would have taken him to travel to the Guss residence. On three different test runs, the times the detectives arrived at the Guss residence correlated to the time of the robbery.

Motions for Judgment of Acquittal

At the close of the State's case, appellant moved for judgment of acquittal:

> [DEFENSE COUNSEL]: I will make an appropriate motion at this time for judgment of acquittal.
>
> And I will argue on one thing that Detective Duvall testified on direct and on cross examination that based on his interview of the [appellant] there was no evidence of a meeting of the minds between Tyrone Wells and the [appellant] that he would in any way participate in this robbery.
>
> THE COURT: All right. [State].
>
> [THE STATE]: Well, Your Honor, I think that's what he said, but regardless, it's for a factfinder to decide whether there's evidence of it, and it's - based upon his interview there's certainly more than the interview.
>
> THE COURT: It says no - I actually wrote that down says, no information from the interview that he planned to rob.

[6] Mr. Wells was subsequently killed in an unrelated shooting in Baltimore City.

I'll deny the motion at this stage of the proceeding.

At the close of all evidence, defense counsel renewed its motion for judgment of acquittal, asserting that there was no meeting of the minds to establish a conspiracy or to support a conviction for accessary before the fact. The court denied the motion: "I think based on the evidence that a jury could conclude – could find the facts necessary to substantiate the elements of the crime charged, so I will deny your motion."

As indicated, the jury convicted appellant of conspiracy to commit robbery with a dangerous and deadly weapon, first-degree burglary, first-degree assault of Mr. Guss, robbery of Mr. Guss with a dangerous and deadly weapon, and use of a handgun in the commission of a crime of violence. This timely appeal followed.

DISCUSSION

Appellant contends that the evidence the State produced at trial was insufficient to support each of his convictions. We disagree.

We recently explained the test for appellate review of sufficiency of evidence:

> [W]hether, "'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)).

Beattie v. State, 216 Md. App. 667, 684 (2014) (quoting *Donati v. State*, 215 Md. App. 686, 718 (2014)).

Here, appellant was convicted of conspiracy to commit robbery with a dangerous and deadly weapon, and he was convicted, as an accessory before the fact, of first-degree burglary, first-degree assault of Mr. Guss, robbery of Mr. Guss with a dangerous and deadly weapon, and use of a handgun in the commission of a crime of violence. Before we address the evidence, we will set out the elements of the offenses, noting that there is no dispute that the burglary and robbery occurred, and the only issue is the evidence required to connect appellant to these offenses.

To connect a defendant as an accessory before the fact, the State must prove that appellant "aided, counseled, commanded, or encouraged" the perpetrator of the crime to commit the crime "without having been present either actually or constructively at the moment of perpetration." *Savage v. State*, 212 Md. App. 1, 32 (2013) (citation omitted). "Because accessoryship is a mechanism by which culpability for the substantive crime is incurred, a completed crime is a necessary element." *Id.* (citation and quotations omitted).

To sustain a conspiracy conviction, on the other hand,

> [The State must prove that two or more persons agreed to accomplish an unlawful purpose, or to achieve some lawful purpose by illegal means. *Townes v. State*, 314 Md. 71, 75 (1988). The crime of conspiracy is complete

> when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown. *Id.*

Jones v. State, 173 Md. App. 430, 447 (2007). "'The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design.'" *In re Gary T.*, 222 Md. App. 374, 381 (2015) (quoting *State v. Payne*, 440 Md. 680, 713 (2014)).

The Court of Appeals has discussed the minimum the State must show in order to prove a conspiracy:

> Although a conspiracy may be shown by circumstantial evidence, from which a common design may be inferred, *Seidman v. State,* 230 Md. 305, 322 (1962), *cert. denied*, 374 U.S. 807 (1963), the requirement that there must be a meeting of the minds-a unity of purpose and design-means that the parties to a conspiracy, at the very least, must (1) have given sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy-the objective to be achieved or the act to be committed, and (2) whether informed by words or by gesture, understand that another person also has achieved that conceptualization and agrees to cooperate in the achievement of that objective or the commission of that act. Absent that minimum level of understanding, there cannot be the required unity of purpose and design. As other courts have consistently held, therefore, conspiracy is necessarily a specific intent crime; there must exist the specific intent to join with another person in the accomplishment of an unlawful purpose or a lawful purpose by unlawful means.

Mitchell v. State, 363 Md. 130, 145-46 (2001).

Here, there was sufficient evidence to support appellant's convictions. With respect to the conspiracy charge, appellant admitted that he told Mr. Wells that Ms. Murray worked for a millionaire who probably kept his money in a safe. When Mr. Wells suggested that the

two rob Mr. Guss, they discussed what they would do, but appellant ultimately did not feel comfortable with it. Detective Duvall testified that appellant was interested in the proceeds of the crime, but he was not interested in physically taking part in it. The cell phone records showed that appellant had numerous calls with Mr. Wells phone the night before, and day of, the robbery. Appellant's comment to Mr. Wells after the robbery, "do I get my mansion now?," indicates that he expected to receive a share of the proceeds from the crime.

Indeed, appellant received $3,000 from Mr. Wells after the robbery, in envelopes that matched those taken from Mr. Guss' safe, and he admitted that he thought the money came from the robbery of Mr. Guss' home. Viewing the evidence in the light most favorable to the State, we are persuaded that there was sufficient evidence on which a jury could infer that appellant conspired with Mr. Wells to rob Mr. Guss.

This evidence similarly is sufficient to support appellant's convictions as an accessory before the fact. The police testified that the robbery indicated that it was committed by someone with inside knowledge, and appellant admitted giving Mr. Wells information about the safe in Mr. Guss' home.

Appellant's statements in this regard aided Mr. Wells in committing the robbery. Viewed in a light most favorable to the State, we are persuaded there was sufficient evidence upon which a jury could infer that appellant was guilty as an accessory before the fact of

first-degree burglary, first-degree assault, robbery with a dangerous and deadly weapon, and use of a handgun in the commission of a crime of violence.

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