

Circuit Court for Baltimore City
Case No. 121280037

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 403

September Term, 2023

JAMEL PHILLIPS

v.

STATE OF MARYLAND

Reed,
Albright,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: December 23, 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 Rule 1-104(a)(2)(B).

A jury, in the Circuit Court for Baltimore City, convicted Jamel Phillips, appellant, of second-degree assault, reckless endangerment, robbery, and theft. The court sentenced Phillips to a total term of eight years’ imprisonment, with all but three years suspended. Phillips thereafter noted an appeal, presenting a single question for our review. For clarity, we have rephrased that question as¹:

Did the trial court abuse its discretion when, after giving its general instructions to the jury, the court gave an additional instruction on accomplice liability?

For reasons to follow, we hold that the court did not abuse its discretion. Accordingly, we affirm.

BACKGROUND

In the early morning hours of August 28, 2021, Alex Rivera was walking along the 3300 block of Bank Street in Baltimore when she observed a vehicle drive up and stop suddenly. An unidentified man then exited the vehicle, brandished a gun, approached Ms. Rivera, and demanded a bag she was carrying. Following a brief struggle, the man shot Ms. Rivera and took her bag, which contained some valuables and a bottle of prescription medication. The man then got back in the passenger side of the suspect vehicle, and the vehicle drove away. The police arrived at the scene a short time later, and Ms. Rivera was taken to the hospital for treatment.

¹ Phillips phrased the questions as: “Did the trial court abuse its discretion by providing an unduly prejudicial supplemental jury instruction on accomplice liability that was already covered by the instruction on conspiracy?”

Baltimore City Police Detective Stephen Romey responded to the scene and subsequently investigated the shooting. During that investigation, Detective Romey obtained video footage depicting the shooting and the suspect vehicle. In that video, the suspect vehicle's passenger can be seen exiting the vehicle, approaching the victim, and struggling with the victim. Upon reviewing that footage and other video evidence, Detective Romey learned that a vehicle registered to Phillips, which matched the description of the suspect vehicle, had been in the area around the time the shooting occurred. Detective Romey also learned that Phillips's vehicle had been at the Horseshoe Casino just prior to the shooting. Detective Romey then went to the Horseshoe Casino, reviewed the security footage, and identified Foster and Phillips, who were seen walking toward Phillips's vehicle several hours before the shooting. Detective Romey also observed that Foster was wearing clothes similar to the ones worn by the person who had been seen exiting the suspect vehicle and struggling with the victim, while Phillips was wearing a shirt that matched the one worn by the driver of the suspect vehicle. Detective Romey thereafter obtained a search warrant for Phillips's vehicle, and, upon executing that warrant, Detective Romey discovered ammunition and the victim's prescription bottle inside Phillips's vehicle.

Phillips and Foster were subsequently arrested, and each was charged with 18 counts: attempted first-degree murder, conspiracy to commit first-degree murder, attempted second-degree murder, first-degree assault, conspiracy to commit first-degree assault, second-degree assault, conspiracy to commit second-degree assault, reckless

endangerment, robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous weapon, robbery, conspiracy to commit robbery, theft, conspiracy to commit theft, use of a firearm in the commission of a crime of violence, conspiracy to use a firearm in the commission of a crime of violence, illegal possession of a handgun, and conspiracy to commit illegal possession of a handgun. Phillips and Foster were tried together.

At trial, the State’s theory of the case, as explained by the prosecutor in her opening argument, was that Foster was the individual who had exited the suspect vehicle and shot the victim, and that Phillips was the individual who had remained in the vehicle and subsequently drove away from the scene following the robbery. In response, Phillips’s counsel argued that the State would not be able to prove “that a crime was committed and that a particular individual committed that crime.”

At the conclusion of the State’s case-in-chief, and after the jury had been excused for the day, the court asked Phillips’ counsel if he intended to call any witnesses other than Phillips. Defense counsel responded in the negative, at which point Phillips was advised of his right to testify and to remain silent. At the conclusion of that advisement, Phillips stated that he was not planning on testifying. Before concluding the proceedings for the day, the court asked the prosecutor and the defendants’ counsels to remain in the courtroom to discuss jury instructions.

The following day, the parties returned to court, and the court began the proceedings by instructing the jury on the relevant law, which included instructions on the presumption

of innocence, the State’s burden of proof, and the elements of charged crimes. The court’s instruction as to the conspiracy charges read as follows:

The defendants are charged with eight counts of the crime of conspiracy to commit specified crimes. Conspiracy is an agreement between two or more persons to commit the specified crimes.

In order to convict the defendants of conspiracy, the State must prove that the defendants agreed with each other to commit the crimes, and that the defendants entered into the agreement with the intent that the crimes be committed.

In order for an agreement to exist, the parties to a conspiracy must come to an understanding to commit a crime. It is not necessary that an agreement be formal or that the agreement be expressed by formal words either written or spoken. If two or more persons act in what appears to be a coordinated manner to commit a crime, you may, but need not, infer an agreement by them to commit such a crime.

A defendant’s association with a conspirator is not by itself sufficient to prove this participation or membership in [a] conspiracy. The mere presence of the defendant at the time and place of the commission of a crime is not enough to prove that the defendant is a member of a conspiracy.

At the conclusion of its instructions, the court held a bench conference, and all parties stated that they had no objections to the instructions given and no requests for any additional instructions. The bench conference concluded a short time later, and the court took a brief recess before starting closing arguments. When the parties returned to court, but before the jury was brought back into the courtroom, the prosecutor noted that the State had inadvertently forgotten to request an instruction on accomplice liability:

[STATE]: Your Honor, I realized with the instruction that we – that the accomplice instruction was not given. And I would request that instruction –

THE COURT: It was requested?

[STATE]: I'm requesting it now.

THE COURT: I'm sorry?

[STATE]: I feel like the testimony of an accomplice was the one that we struck out but it hadn't been in the original one.

THE COURT: I think I actually asked you about that, didn't I? Or I had –

[STATE]: We had the testimony of the accomplice in there. But no one – neither testified. And so I didn't realize that the other accomplice instruction wasn't in there.

* * *

[FOSTER'S COUNSEL]: I object to that.

THE COURT: Well, let's look at it first. I was – I asked you about this because I thought that there would be. I thought that maybe you had all these conspiracy charges to take care of that.

[STATE]: It is number six.

THE COURT: So you are asking for the pattern jury instruction 6:00 accomplice liability?

[STATE]: Yes, Your Honor.

THE COURT: So what happened? You just overlooked this you're saying?

[STATE]: Yes, Your Honor. We had the testimony of an accomplice. And I believe that I had requested just the accomplice one. And I didn't realize that it wasn't included until I was going back through to find that in my closing arguments and it wasn't there.

[PHILLIPS'S COUNSEL]: I'm going to have to really object if you're going to add that now because that should be in the middle of everything else. And to now add that instruction separately it really puts a

lot of emphasis on that. And obviously my client is the only one that the instruction is geared to based on the State's –

THE COURT: You agree that it would have been appropriate?

[PHILLIPS'S COUNSEL]: I guess it could have been but it should have been done a long time ago. We went over these things twice last night and then again this morning.

THE COURT: I'm sorry?

[PHILLIPS'S COUNSEL]: We went over it twice last night and again this morning.

[FOSTER'S COUNSEL]: And [the prosecutor] typed them.

THE COURT: I'm sorry.

[FOSTER'S COUNSEL]: [The prosecutor] is the one that prepared the – the version that we were looking at this morning.

THE COURT: And the State's request for jury instruction that you filed before the trial started, she did request jury instruction 6:00. You called it accessory before the fact. I guess that is the same thing.

[STATE]: Yes, it is the same.

THE COURT: So the State did request it early on. But then you're right. [The prosecutor] prepared the jury instructions and overlooked it which, you know, can happen. So [Phillips's counsel], you don't have an objection based on the substance of the instruction?

[PHILLIPS'S COUNSEL]: Substance, not so much the substance.

THE COURT: But the timing.

[PHILLIPS'S COUNSEL]: But the fact that the timing –

THE COURT: The timing.

[PHILLIPS’S COUNSEL]: If you are to read that now, well ladies and gentlemen, I have another jury instruction for you. It is too much emphasis.

THE COURT: I think I can deal with that. [Foster’s counsel], do you have any objection to the substance of the accomplice instruction?

[FOSTER’S COUNSEL]: Not – not the word for word instruction. But I agree with [Phillips’s counsel] that giving an instruction now – there is no way that you can fix it by giving this at the last minute to the jury. And besides that, it is not like this is one of the crimes that was missed. This is just accomplice. This is covered by the conspiracy charges. It is not a real big problem for the State not have this instruction.

[PHILLIPS’S COUNSEL]: There was eight conspiracy counts.

[STATE]: And eight accomplice counts.

THE COURT: There are what?

[STATE]: And there are multiple accomplice counts for Mr. Phillips.

THE COURT: I mean it clearly applies.

[PHILLIPS’S COUNSEL]: But it is prejudicial timing.

[FOSTER’S COUNSEL]: Very prejudicial.

THE COURT: I heard you. Okay. I got that on the record. Okay. I’m going to give the instruction over the objection of both defendants. But I note that the defendants are not objecting to the substance or the applicability of the instruction, but to the timing. So your objection is certainly noted. And I will address the timing to the jury and tell them that this instruction is not being given at this point to overly emphasize it. It is just to be considered together with all the other instructions. It was just something that was overlooked when I gave the other instructions.

The parties then discussed the substance of the additional instruction and the manner in which the court could deliver it to the jury. After the parties came to an agreement on

the instruction, the jury returned to the courtroom, and the court instructed the jury as follows:

All right, ladies and gentlemen, there is one additional instruction that I want to read to you. I am not giving this instruction last or out of order in order to emphasize it. I merely – the Court merely overlooked it when giving the rest of the instructions. So you should consider this instruction in the same manner as all the other instructions that I gave you.

The defendant may be guilty of a crime as an accomplice even though the defendant did not personally commit the acts that constitute that crime.

In order to convict the defendant of a crime as an accomplice, the State must prove that the crime occurred, and that the defendant, with the intent to make the crime happened [sic], knowingly aided, counseled, commanded, or encouraged, the commission of the crime, or communicated to a participant in the crime that he was ready, willing and able to lend support if needed.

The mere presence of the defendant at the time and place of the commission of the crime is not enough to prove that the defendant is an accomplice. If the presence at the scene of the crime is proven, that fact may be considered along with all of the surrounding circumstances in determining whether the defendant intended to aid a participant and communicated that willingness to a participant.

Again, you are to consider that instruction in the same manner as all other instructions I gave you. I did not mean to over emphasize it by reading it last. I just overlooked it before.

The instruction continued with the court rereading to the jury the court's previous instructions regarding the presumption of innocence and the State's burden of proof. At the conclusion of that entire instruction, the court held a bench conference, and the following colloquy ensued:

THE COURT: [Phillips's counsel], do you have any objection to the instruction that I just gave?

[PHILLIPS'S COUNSEL]: The instruction no, but the timing, yes.

THE COURT: Okay. You still have the same objection that you noted earlier as to the timing.

[PHILLIPS’S COUNSEL]: Yes.

THE COURT: The instruction that I just gave, is there anything further you wish to –

[PHILLIPS’S COUNSEL]: No, Your Honor.

THE COURT: - add as an objection?

[PHILLIPS’S COUNSEL]: No, Your Honor.

The proceedings then continued with closing arguments. During the State’s closing argument, the prosecutor reiterated the State’s theory of the case, namely, that Foster was the shooter and that Phillips was the getaway driver. Phillips’s counsel argued that the State had failed to prove that Phillips had committed any of the charged crimes. Ultimately, the jury convicted Phillips of second-degree assault, reckless endangerment, robbery, and theft.

DISCUSSION

Parties’ contentions

Phillips argues that the trial court abused its discretion in instructing the jury on accomplice liability. Phillips contends that the additional instruction was unnecessary because it was already covered by the court’s instruction on the conspiracy charges. Phillips also contends that the timing of the instruction was prejudicial because it placed undue emphasis on the State’s theory that he was guilty as an accomplice. In support of his

latter contention, Phillips relies on *Stabb v. State*, 423 Md. 454 (2011) and Justice Watts’s dissent in *State v. Bircher*, 446 Md. 458 (2016).

The State contends that Phillips’s first claim – that the court’s accomplice liability instruction was already covered by the conspiracy instruction – was waived because Phillips’s trial objection was limited solely to the timing of the instruction. The State further contends that, even if Phillips’s claim was preserved, it is without merit because conspiracy and accomplice liability are distinct areas of law requiring separate instructions. As to Phillips’s claim regarding the timing of the instruction, the State contends that the court properly exercised its discretion and that Phillips was not prejudiced.

Standard of Review

An appellate court reviews “a trial court’s decision to propound or not propound a jury instruction under an abuse of discretion standard.” *Lawrence v. State*, 475 Md. 384, 397 (2021). Under that standard, we refrain from reversing unless the trial court’s decision is “‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Woodlin v. State*, 484 Md. 253, 277 (2023) (quoting *State v. Matthews*, 479 Md. 278, 305 (2022)). “In other words, an abuse of discretion occurs when ‘no reasonable person would take the view adopted by the [trial] court.’” *Id.* (quoting *Williams v. State*, 457 Md. 551, 563 (2018)).

Analysis

Maryland Rule 4-325 states, in relevant part, that a court “shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may

supplement them at a later time when appropriate.” Md. Rule 4-325(a). The Rule also states that a “court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding.” Md. Rule 4-325(c). Maryland Rule 4-325 “has been interpreted consistently as requiring the giving of a requested instruction when the following three-part test has been met: (1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given.” *Dickey v. State*, 404 Md. 187, 197-98 (2008).

Regarding supplemental instructions, the Supreme Court of Maryland has held that a trial court may abuse its discretion in giving a supplemental instruction if that instruction prejudices the defendant, even if the instruction otherwise satisfies the aforementioned three-part test.² In *Cruz v. State*, 407 Md. 202 (2009), the Court held that a trial court abused its discretion in giving an otherwise proper supplemental jury instruction on the different types of assault, where that instruction was given after closing arguments and interjected a new theory of culpability not argued during closing arguments. *Id.* As the Court later explained in *State v. Bircher*, 446 Md. 458 (2016), “a supplemental instruction

² The State insists that the instruction in the instant case was not a “supplemental instruction” because it was provided at the conclusion of all the evidence and before closing arguments. See *Sweeney v. State*, 242 Md. App. 160, 177 (2019) (“[S]upplemental instructions are, as the title suggests, supplemental, and are delivered after the parties have made closing arguments.”). Although the State’s argument has some superficial merit, we are not convinced that an instruction has to succeed closing arguments to be deemed “supplemental.” See *Hoffman v. Stamper*, 385 Md. 1, 40 (2005) (referring to an instruction, which was given in response to an objection to the court’s initial instructions, as a “supplemental instruction”). Nevertheless, because we hold that the trial court did not abuse its discretion, we need not decide that issue.

should not be given if the accused was unfairly prevented from arguing his or her defense to the jury or was substantially misled into formulating and presenting arguments.” *Id.* at 472 (citations and quotations omitted). “Factors considered in determining prejudice include: when the change in the instructions is substantial, when the judge’s instructions repudiate counsel’s argument, or when the judge’s instructions impair the effectiveness of the attorney’s argument.” *Id.* at 472-73 (citations and quotations omitted).

We hold that the trial court did not abuse its discretion in giving an instruction on accomplice liability. To begin with, we agree with the State that Phillips waived his claim that the trial court should not have given the accomplice instruction because it was fairly covered by the conspiracy instruction. Under Maryland Rule 4-325, “[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.” Md. Rule 4-325(f). In order to comply with that Rule, not only must a party object, but “the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record[,] and the circumstances must be such that renewal of the objection after the court instructs the jury would be futile or useless.” *Montague v. State*, 244 Md. App. 24, 60 (2019) (quoting *Bowman v. State*, 337 Md. 65, 69 (1994)). Here, although Phillips lodged a proper objection to the court’s instruction on accomplice liability, the ground for the objection was limited to the timing of the instruction. At no point did Phillips state that he was objecting because the instruction was fairly covered by the court’s other instructions.

Importantly, the court confirmed, repeatedly, that Phillips was objecting to the timing of the instruction only, and each time Phillips either remained silent or affirmatively agreed. If Phillips wanted to object on alternate grounds, including on the grounds he now raises, then he was required to bring that to the court’s attention. His failure to do so constitutes a waiver of that objection. *See Head v. State*, 171 Md. App. 642, 667 (2006).

Assuming, *arguendo*, that Phillips’s alternate claim was not waived, we find no merit to that claim. Conspiracy, which is essentially an agreement to commit an unlawful act, is a standalone crime with distinct elements, and the State need only satisfy those elements in order for a jury to find a defendant guilty. Accomplice liability, on the other hand, is not a crime but rather is a theory of liability under which a defendant may be found guilty, provided the defendant has been charged with an applicable crime. For a defendant to be guilty under that theory, the State must prove both the crime and the defendant’s role as an accomplice, and that showing would be separate from the showing required to prove a related conspiracy, assuming that such a conspiracy was in fact charged. Given those discrepancies, the trial court was correct in giving separate instructions.

As to Phillips’s claim that he was prejudiced by the timing of the instruction, we find no merit to that claim either. The State’s theory of the case, from the beginning of trial until the end, was that Phillips conspired with Foster to rob the victim and that he acted as Foster’s accomplice in the actual robbery. Phillips was therefore well aware of that theory, and there was virtually no risk that Phillips was substantially misled into formulating and presenting his defense. Moreover, the instruction came shortly after the

court’s general instructions and before closing argument, thereby ensuring that Phillips was not unfairly prevented from either responding to the State’s accomplice theory of liability or arguing his defense to the jury. Finally, in delivering the instruction to the jury, the trial court took great pains to lessen the potential for prejudice and ensure that the jury did not put undo focus on the instruction. The court told the jury, both before and after giving the instruction, that the court had simply overlooked the instruction and that the jury was to consider the instruction in the same manner as all the other instructions. Then, after delivering the instruction, the court reminded the jury that Phillips was presumed innocent of all charges and that the State bore the burden of proving Phillips’s guilty beyond a reasonable doubt. Given those circumstances, we cannot say that the court abused its discretion in instructing the jury on accomplice liability.

Lastly, we are not persuaded by Phillips’s reliance on *Stabb v. State* and the dissent in *State v. Bircher*. *Stabb* involved a trial court’s decision to include an “anti-CSI” instruction in the court’s general instructions to the jury, which the Supreme Court of Maryland later found to be improper because, under the facts of that case, the instruction invaded the province of the jury and relieved the State of its burden to prove the defendant’s guilt beyond a reasonable doubt. *Stabb*, 446 Md. at 470-73. None of those issues is germane to the instant appeal.

As for *Bircher*, although that case did involve an issue similar to the one presented here, *i.e.*, whether a defendant was prejudiced by a supplemental instruction on an alternate theory of liability, Phillips ignores the fact that the Supreme Court held in that case that the

defendant was *not* prejudiced by the instruction, even though the instruction succeeded closing arguments and interjected a new theory of liability. *Bircher*, 446 Md. at 479-82. Thus, *Bircher* actually supports our conclusion that Phillips was not prejudiced by the instruction on accomplice liability, given that the instruction was given prior to closing arguments and did not introduce a new theory of liability. Nevertheless, even if we were to ignore the majority’s holding and focus solely on the rationale of the dissent, we would remain unpersuaded. One of primary concerns raised by Justice Watts in her dissent was that the defendant never knew that the State would be pursuing an alternate theory of liability, which was then interjected into the case at the eleventh hour, thereby undermining the defendant’s theory of the case without providing him the opportunity to present evidence or argument in response. *Id.* at 481-90. Here, by contrast, the State’s theory of the case was always rooted in the concept of accomplice liability, and Phillips had ample opportunity to present evidence and argument in response to that theory.

In sum, we hold that the trial court did not abuse its discretion in supplementing its general instructions with an instruction on accomplice liability. The instruction was a correct statement of law and applicable to the facts of the case, and Phillips was not prejudiced by the timing of the instruction.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**