Circuit Court for Baltimore City
Case No. 118302022

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 709

September Term, 2022

DEANDRE SLEET

v.

STATE OF MARYLAND

Reed,
Tang,
Albright,
JJ.

Opinion by Tang, J.

Filed: May 22, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Deandre Sleet, appellant, was indicted in the Circuit Court for Baltimore City for various offenses stemming from the non-fatal shooting of Hanara Sanchez ("Sanchez") in 2018.[1] When the jury trial began in 2022, Sanchez was unavailable to testify. Over objection, the court admitted a video recording of Sanchez's former testimony from a separate proceeding held in 2019. Sanchez had testified that appellant approached him, wielded a gun, and shot him. Sanchez did not know appellant or why appellant approached him with a gun, but he guessed that appellant was attempting to rob him.

The jury convicted appellant of attempted armed robbery and conspiracy to commit robbery with a dangerous weapon, among other related offenses. On appeal, appellant presents the following questions for our review, which we have consolidated and rephrased:[2]

1. Did the court err in admitting Sanchez's former testimony?

[1] The record reflects different spellings of Mr. Sanchez's first name to include "Janero," "Jenero," and "Janaro."

[2] The questions presented in appellant's brief are as follows:

1. Did the lower court err when it admitted the videotaped former testimony of the complaining witness where the motives for eliciting the testimony were dissimilar and defense counsel lacked a full and fair opportunity to cross examine the complaining witness?

2. Is the evidence sufficient to support an attempted armed robbery conviction where the victim "guessed" he was about to get robbed?

3. Is the evidence sufficient to support Appellant's conspiracy to commit armed robbery with a deadly weapon conviction where there was no meeting of the minds?

2. Was the evidence sufficient to sustain appellant's convictions for attempted armed robbery and conspiracy to commit armed robbery?

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

BACKGROUND

The jury trial began in April 2022. The evidence presented at trial included, *inter alia*, the video recording of Sanchez's former testimony, surveillance footage (without audio) from a residential camera and Pratt Street Liquor Store, and testimony from Kiara Wesley ("Wesley") and members of law enforcement.

Evidence Adduced at Trial

On September 19, 2018, Wesley and appellant were "driving around" as they "common[ly]" did. At around 3:00 a.m., Sanchez, who was wearing a backpack, was walking alone in the 1800 block of E. Pratt Street when Wesley circled the block twice. Appellant, who was riding in the passenger seat, told Wesley to "pull over."

Appellant got out and walked down the street past the liquor store towards Sanchez. An officer testified, based on his review of the footage, that appellant displayed "characteristics of an armed person" as he walked down the street. The footage showed appellant "engag[ing]" with Sanchez "slightly off camera" and brandishing a gun, and Sanchez "backing up, backing up" into the camera's view. By this time, Sanchez had removed his backpack, and then he reached into it. Appellant shot Sanchez and fled back toward the location where Wesley had pulled over. Sanchez called 911 and was taken to the hospital for treatment of his injuries.

A few weeks later, police arrested Wesley and appellant while they were in the vehicle. Police recovered a Hi-Point .380 semiautomatic handgun from the glove compartment. Wesley testified that the gun belonged to appellant. Comparison testing established that the single cartridge casing recovered from the scene of Sanchez's shooting was fired from the recovered gun.

Wesley testified that she was arrested for "the crime I'm here for today," explaining that she pleaded guilty and was being held in a pretrial facility for "armed robbery" while awaiting sentencing. As part of the plea, Wesley agreed to testify in the instant case. She did not know Sanchez and denied witnessing his encounter with appellant after appellant alighted from her car.

As mentioned, Sanchez was unavailable to testify at trial, and the court admitted, over objection, the video recording of his former testimony from a 2019 proceeding.[3] He had testified, in pertinent part, that he "was alone on the street at 3:00 in the morning waiting for a cab" when appellant approached him:

> [PROSECUTOR]: When the man approached you, what if anything happened?
>
> [SANCHEZ]: Nothing happened. He just shot and left.
>
> [PROSECUTOR]: Do you know why he approached you?
>
> [SANCHEZ]: No.
>
> [PROSECUTOR]: When the man approached you, why did you think he approached you?

[3] The video recording, which was played for the jury, depicted Sanchez testifying with the assistance of a Spanish interpreter.

> [SANCHEZ]: *He wanted to rob me, I guess*.
>
> * * *
>
> [PROSECUTOR]: When he approached you with the gun, did he say anything?
>
> [SANCHEZ]: No.
>
> [PROSECUTOR]: *Why did you believe he was going to rob you*?
>
> [SANCHEZ]: *I don't know.* When he was there, *I suppose that's what he wanted. I don't know.*

(Emphasis added). Acting on this assumption, Sanchez reached into his backpack to give appellant money, but appellant shot him and ran away. Following the incident, Sanchez met with police and identified appellant in a photo array.

After the State rested, the defense moved for judgment of acquittal on attempted armed robbery and conspiracy to commit robbery with a dangerous weapon, among other counts. With respect to attempted armed robbery, the defense argued that appellant had not taken Sanchez's property, nor had he demanded any property. With respect to conspiracy, the defense argued that there was no express agreement to commit a robbery. The court denied the motion. Appellant did not testify or present any evidence.

The jury found appellant guilty of attempted armed robbery; conspiracy to commit robbery with a dangerous weapon; first-degree assault; wear, carry, and transport of a loaded handgun; transporting a loaded gun in a vehicle; illegal possession of a regulated

firearm; and the use of a firearm in the commission of a crime of violence.[4] The court sentenced appellant to an aggregate of fifty-five years of incarceration.

Additional facts will be introduced later in this opinion, as they become relevant.

DISCUSSION

I.

Sanchez's Former Testimony

Appellant argues that the trial court erred in admitting Sanchez's former testimony because, in the 2019 proceeding, the defense did not have an adequate opportunity and similar motive to cross-examine Sanchez on his subjective belief that appellant had tried to rob him. The State contends that this specific argument is not preserved. Even if preserved, the State argues that the former testimony was properly admitted. Assuming without deciding that appellant preserved the argument, we conclude that the court did not err in admitting Sanchez's former testimony.

A.

Proceedings Below

In December 2019, Sanchez testified as a witness for the State in appellant's trial for the murder of Timothy Moriconi ("Moriconi"). There, the court admitted Sanchez's testimony under the identity exception set forth in Maryland Rule 5-404(b).[5] Specifically,

[4] The jury acquitted appellant of attempted first- and second-degree murder.

[5] Evidence of other offenses may be received under the identity exception set forth in Maryland Rule 5-404(b) if it shows, for instance, that "a peculiar *modus operandi*" used

the State offered the testimony to establish a specific *modus operandi* used by the assailant in the Sanchez and Moriconi shootings, involving a similar claim of attempted armed robbery. The testimony was also used to connect a shell casing found at the scene of Moriconi's murder to the shell casing found at the scene of Sanchez's shooting. Prior defense counsel cross-examined Sanchez about certain aspects of his identification of appellant but did not cross-examine Sanchez on his claim that appellant had tried to rob him.

Prior to jury selection in the instant trial, the parties addressed the State's motion to admit Sanchez's former testimony, pursuant to the hearsay exception under Rule 5-804(b)(1), which applies to certain statements made by an unavailable witness:[6]

> Testimony given as a witness in any action or proceeding . . . if the party against whom the testimony is now offered . . . had an *opportunity and similar motive to develop the testimony* by direct, cross, or redirect examination.

by a defendant on another occasion was used by the perpetrator of the present crime. *State v. Faulkner*, 314 Md. 630, 638 (1989). In order to establish *modus operandi*, the other crimes must be "so nearly identical in method as to earmark them as the handiwork of the accused. . . . The device [used to commit the crime] must be *so unusual and distinctive* as to be like a signature." *Id*. (citation omitted). Other means of establishing identity are through a ballistics test of a cartridge collected from an earlier crime that connects it to the present crime and/or the witness's view of the defendant at the other crime enabled him to identify the defendant as a person who committed the crime on trial. *Id*.

[6] There was no dispute that Sanchez was unavailable under Rule 5-804(b).

Md. Rule 5-804(b)(1) (emphasis added). The State argued that "even though [Sanchez's] testimony wasn't offered for guilt or innocence" in the 2019 trial, "it was a similar motive under 5-804(b)(1)."

The defense disagreed, objecting to the admission of the former testimony in the instant trial because Sanchez was a mere witness at the 2019 trial, not the victim:

> [DEFENSE COUNSEL]: [O]bviously the focus in that case . . . would be on the person [Moriconi] who was murdered in that particular case. [T]he real focus in that case was trying to convince the jury and in handling things and using [prior defense counsel's] efforts in the case, and using his energy in the case, it would be trying to convince the jury that [appellant] didn't murder the person who he was charged with. The prime focus was not the attempted murder of Mr. Sanchez. I'm sure it wasn't. That wasn't his prime focus. I'm sure he tried to cross-examine as best he could. But that wasn't the meat . . . of the case. So probably my guess [is that] the cross-examination would not have been as intense as it would have been trying to prove that [appellant] didn't murder [Moriconi].
>
> * * *
>
> THE COURT: *[C]ertainly he would have been trying to disprove Mr. Sanchez's identification of your client.*
>
> [DEFENSE COUNSEL]: *I'm sure, I would hope. Yeah, I'm sure he probably did.*
>
> THE COURT: *Right*.
>
> [DEFENSE COUNSEL]: But [prior defense counsel's] . . . real efforts obviously was because what [appellant was] being charged with is the murder of [Moriconi]. That's where he would be concentrating his efforts . . . . I'm not saying Mr. Sanchez is a piece of meat, but I'm just saying, the main meal in this case is Mr. Sanchez. And Mr. Sanchez's availability and things sometimes look a little bit different. I know they took a video of it, but you know, when somebody is actually sitting here, you can see them, the jury can sit in that box and . . . [t]hey can look at his body language and get a live

> appearance[.] I don't think the jury would get the proper, you know, viewing of Mr. Sanchez to determine his credibility *because, obviously, he's making, you know, he's making an identification.* He picked a photo array and he picked my client as the person who you know shot the gun at him. So I, I think by allowing, you know that prejudice would outweigh any probative value.

(Emphasis added).

The trial court granted the State's motion to admit Sanchez's former testimony, explaining:

> I certainly appreciate your arguments regarding the opportunity and similar motive to . . . develop the testimony. That said, [prior defense counsel] certainly had a similar motive to discredit the identification of Mr. Sanchez[7] even though it was in the trial of a different crime.

Thereafter, the video recording of Sanchez's former testimony was admitted. Before its admission, the trial court asked defense counsel if he had any other basis for objecting to its admission, and defense counsel stated that he did not.

B.

Applicable Law and Standard of Review

Maryland Rule 5-801(c) defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 5-802 prohibits admission of hearsay statements into evidence unless the hearsay statement falls under an applicable exception.

[7] According to appellant, the court was referring to Sanchez's identification of appellant based, in part, on *modus operandi*—the court's ruling demonstrated that it considered appellant's argument that "when the former testimony was given[,] the prime focus of questioning was identification based on *modus operandi* and disproving [a]ppellant's guilt as to acts against [Moriconi, not Sanchez]."

As noted, Rule 5-804(b)(1) provides an exception to the hearsay prohibition, "allow[ing] for the admission of a prior statement made under oath by an unavailable witness so long as the party against whom the statement is offered had an '*opportunity*' and '*similar motive*' to develop the testimony of the witness when the prior statement was made, by direct, cross- or redirect examination." *Dulyx v. State*, 425 Md. 273, 284-85 (2012) (quoting Md. Rule 5-804(b)(1)) (emphasis added).

An opportunity to develop the testimony is "generally satisfied when the defense [was] given a full and fair opportunity to probe and expose [the] infirmities [of the testimony] through cross-examination." *Williams v. State*, 416 Md. 670, 696 (2010) (quoting *United States v. Salim*, 855 F.2d 944, 954 (2d Cir. 1988)) (alterations in original).

"A motive to develop testimony is sufficiently similar for purposes of Rule 804(b)(1) when the party now opposing the testimony would have had, at the time the testimony was given, 'an interest of substantially similar intensity to prove (or disprove) the same side of a substantially similar issue' now before the court." *Id.* (citing *United States v. Carneglia*, 256 F.R.D. 366, 372 (E.D.N.Y. 2009) (quoting *United States v. DiNapoli*, 8 F.3d 909, 914-15 (2d Cir. 1993))).

"We review the admissibility of a hearsay statement under a different standard than the admissibility of some other evidence[.]" *Dulyx*, 425 Md. at 285. Because hearsay must be excluded at trial unless it falls within an exception or is otherwise permitted by applicable constitutional provisions or statutes, a trial court has no discretion to admit it absent a provision providing for its admissibility. *See Bernadyn v. State*, 390 Md. 1, 7-8

(2005); Md. Rule 5-802. Whether evidence is hearsay is an issue of law we review *de novo*. *Bernadyn*, 390 Md. at 8.

C.

Opportunity

In assessing opportunity, the "crucial question is whether, given that the opponent can not now cross-examine the witness, the examination on the prior occasion was *fairly equivalent* to cross-examination in the present situation." *Huffington v. State*, 304 Md. 559, 569 (1985) (citation omitted and emphasis added). A prior occasion to cross-examine is "fairly equivalent," "when the objecting party has enjoyed a full and fair opportunity to probe and expose the infirmities of the testimony through cross-examination." *Dulyx*, 425 Md. at 287 (cleaned up). In other words, when the objecting party

> was able to effectuate the principal purpose of cross-examination—to challenge whether the declarant was sincerely telling what he believed to be the truth, whether the declarant accurately perceived and remembered the matter he related, and whether the declarant's intended meaning is adequately conveyed by the language he employed—then that party has enjoyed an "opportunity" under 5-804(b)(1).

Id. (cleaned up).

Appellant acknowledges that prior defense counsel, in the 2019 trial, "had an opportunity to cross examine Sanchez concerning the veracity of his belief that he was about to be robbed" and the trial judge did not curtail such cross-examination. Rather, he contends that any cross-examination in that regard was essentially irrelevant because the defense was focused on acquitting appellant of the Moriconi murder charges. According to appellant, any relevant cross-examination would have related to identity, not whether

appellant committed the attempted armed robbery of Sanchez. Therefore, he argues, relevancy (or lack thereof) functioned to foreclose his opportunity to exercise a full and fair cross-examination as Rule 5-804 requires.

Appellant's relevancy argument is premised on a flawed distinction between the issue of identity and the claim of attempted armed robbery. The claim of attempted armed robbery was an issue of identity because it was offered, and admitted, to identify appellant as Moriconi's shooter under the *modus operandi* facet of the identity exception. Thus, relevancy could not have foreclosed the defense from cross-examining Sanchez on the claim of attempted armed robbery. *See, e.g.*, *DeLilly v. State*, 11 Md. App. 676, 681 (1971) (reversing court's refusal to permit defendant to adduce evidence undermining credibility of witnesses' identifications because jury's assessment of weight and credibility of identifications was unquestionably significant).

Appellant relies on *Dulyx v. State*, 425 Md. 273 (2012), and *Williams v. State*, 416 Md. 670 (2010), for the proposition that the opportunity to cross-examine may be inadequate if it has, in some way, been foreclosed. His reliance on these cases, however, is misplaced. In *Dulyx*, the defendant was not afforded a meaningful opportunity to cross-examine the State's witness at the prior proceeding because the court explicitly limited the scope of the defendant's inquiry by permitting the defense only "a single question testing [the witness's] ability to recall details[.]" 425 Md. at 289-90. Similarly, in *Williams*, the defendant's opportunity for cross-examination was inadequate because the State failed to disclose that, prior to her death, the witness was legally blind and, absent this information,

the defendant, while incentivized to question the witness's perception generally at the first hearing, "would have had no reason to believe that [the witness] was 'legally blind.'" 416 Md. at 698. By contrast, prior defense counsel, in 2019, had the opportunity to cross-examine Sanchez on the attempted armed robbery claim without limitation by the trial judge. Nor was any information about Sanchez withheld from appellant such that his ability to conduct cross-examination was impeded.

Appellant acknowledges that he decided not to probe Sanchez's attempted armed robbery claim because he was focused on defending against the Moriconi murder charges. The record demonstrates that the defense nonetheless pursued a line of cross-examination into other aspects of identity, specifically, Sanchez's ability to view appellant at the time of the incident and inconsistencies in identifying appellant in the photo array. Thus, the decision to forego the opportunity to cross-examine Sanchez about his subjective belief that appellant had tried to rob him was seemingly a matter of tactics or strategy rather than a lack of opportunity under Rule 5-804(b)(1). *See Huffington*, 304 Md. at 568 (quoting E. Clearly, *McCormick's Handbook on the Law of Evidence*, § 255 (3d ed. 1984) ("Actual cross-examination" "is not essential, if the opportunity was afforded and waived.")); 6A Lynn McLain, *Maryland Evidence State and Federal* § 804(1):1 (3d ed. 2013) ("The fact that a party, including an accused, for reasons of strategy chose not to examine fully on the earlier occasion, despite an opportunity to do so, has been held not to preclude admission

of the prior testimony.").[8] For the reasons stated, we conclude that appellant had a full and fair opportunity to develop Sanchez's former testimony.

D.

Similar Motive

Appellant argues that there was no similar motive for cross-examining Sanchez because his former testimony was offered as peripheral testimony by the State to identify appellant as Moriconi's shooter in the 2019 trial. He contends that the motives for developing testimony in the two trials were different: they involved different crimes, different victims, and proof of different facts. He adds that, in the 2019 trial, the State did not have to prove that he was guilty of attempted armed robbery of Sanchez.

"Similar motive" does not mean "identical motive." *U.S. v. Salerno*, 505 U.S. 317, 326 (1992) (Blackmun, J., concurring). Determining similarity of motive is a "factual inquiry, depending in part on the similarity of the underlying issues and on the context[.]" *Id*. "Similarity of motive does not imply that the charges facing the defendant at the prior and current proceedings must be identical." *Carneglia*, 256 F.R.D. at 372. Likewise, the

[8] *See also United States v. Bartelho*, 129 F.3d 663, 672 n.9 (1st Cir. 1997) ("A *purely* tactical decision not to develop particular testimony despite the same issue and level of interest at each proceeding does not constitute a lack of opportunity or a dissimilar motive for purposes of Rule 804(b)(1)."); *O'Neal v. Johnson*, 54 F. Supp. 2d 695, 698 (S.D. Tex. 1999) (the "strategic choice to forego more strenuous cross-examination of [the witness] at the prior hearing does not alter the fact that it had the opportunity and motive to do so.") (citation omitted); *State v. Ricks*, 840 P.2d 400, 406 (Idaho Ct. App. 1992) ("Whether counsel chose to utilize that opportunity fully is more a matter of tactics or strategy than opportunity.").

different burdens of proof between the two proceedings are just one factor to consider and are not dispositive. *See DiNapoli*, 8 F.3d at 913.

"The way to determine whether or not motives are similar is to look at the issues and the context in which the opportunity for examination previously arose, and compare that to the issues and context in which the testimony is currently proffered." *Williams*, 416 Md. at 697 (quoting Stephen A. Saltzburg, et al., *Commentary to Federal Rule of Evidence 804*). "The similar motive inquiry is essentially a hypothetical one: is the motive to develop the testimony at the prior time similar to the motive that would exist if the declarant were produced (which of course he is not) at the current trial or hearing?" *Id*.

In evaluating the comparison in the instant matter, we conclude that the motives were similar. First, the former testimony in both trials accused appellant of attempting to rob Sanchez. Although its admission did not serve the same purpose in both trials, the defense had a similar motive in the first proceeding to develop Sanchez's testimony on that subject, discredit his perception of the incident, and impugn his credibility.

Second, appellant had a motive to dispute Sanchez's attempted armed robbery claim in seeking an acquittal of the Moriconi murder charges. As noted, the State introduced, in 2019, the attempted armed robbery claim under the *modus operandi* facet of the identity exception. It sought to establish that the assailant's method of committing the offense against Sanchez—which implicated a claim of attempted armed robbery—was so nearly identical to the offense committed against Moriconi—which implicated a similar claim of

attempted armed robbery—so as to earmark the method as appellant's handiwork or signature and therefore prove that appellant shot Moriconi.

Without knowing how much weight Sanchez's attempted armed robbery claim would have had with the jury in the sum of all the evidence, prior defense counsel had a motive to challenge all facets of identity including Sanchez's attempted armed robbery claim. *See DiNapoli*, 8 F.3d at 913 (the opponent in the first trial normally has a motive to dispute the witness's version because, in "resisting the adversary's effort to sustain its burden of proof, [the opponent] usually cannot tell how much weight the witness's version will have with the fact-finder in the total mix of all the evidence."). Defense counsel conceded as much when he agreed with the court's observation that prior defense counsel "would have been trying to disprove Mr. Sanchez's identification" of appellant. Thus, seeking an acquittal of the Moriconi murder charges was appellant's motivation to assail Sanchez's attempted armed robbery claim and break at least one link in the chain of evidence identifying appellant as Moriconi's shooter. *See, e.g., United States v. Ozsusamlar*, 428 F. Supp. 2d 161, 180 (S.D.N.Y. 2006) (in the second trial involving whether defendant threatened victim with violence to collect a debt, witness's former testimony about a claim of a similar threat was admissible because the defense's motivation in attacking the claim in the prior trial lay in the desire to acquit defendant of the substantive charges).

We are satisfied that the defense had a similar motive and interest of substantially similar intensity to challenge Sanchez's attempted armed robbery claim and discredit him

on all facets of identity in the 2019 trial as would have existed at the instant trial.[9] Accordingly, the trial court did not err in admitting Sanchez's former testimony under Rule 5-804(b)(1).

II.

Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to support his convictions for attempted armed robbery and conspiracy to commit armed robbery. The State argues that a rational juror, viewing the evidence in the light most favorable to the prosecution, could find appellant guilty of both charges beyond a reasonable doubt. We agree with the State.

A.

Standard of Review

In reviewing a claim regarding the sufficiency of the evidence, an appellate court must 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." *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Making this determination "does not require [the

[9] Appellant claims that cross-examination of Sanchez would have been "more intense" at the instant trial had he appeared, implying that the defense would have actually probed the infirmities of Sanchez's attempted armed robbery claim that he forwent in the 2019 trial. Forgone opportunities for cross-examination at the prior proceeding, however, do not conclusively establish a lack of similar motive. *See DiNapoli*, 8 F.3d at 915 (The "relevant though not conclusive" factors for comparing "similarity of motive" include "to a lesser extent, the cross-examination at the prior proceeding—both what was undertaken and what was available but forgone[.]"); *see also* n.8.

appellate] court to 'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *State v. Manion*, 442 Md. 419, 431 (2015) (quoting *Dawson v. State*, 329 Md. 275, 281 (1993)). Thus, this Court defers to the jury's resolution of "any conflicts in the evidence" as well as the "jury's inferences and determine[s] whether they are supported by the evidence." *Smith*, 415 Md. at 185 (citations omitted).

B.

Attempted Armed Robbery

Robbery is defined as "the felonious taking and carrying away of the personal property of another from his person by the use of violence or by putting in fear." *Metheny v. State*, 359 Md. 576, 605 (2000) (citation omitted). Armed robbery requires "the taking of property of any value, by force, with a dangerous or deadly weapon." *Bellamy v. State*, 119 Md. App. 296, 306 (1998). "A person is guilty of an attempt when, with intent to commit a crime, he engages in conduct which constitutes a substantial step toward the commission of that crime[.]" *Townes v. State*, 314 Md. 71, 75 (1988) (citations omitted).

Accordingly, "[a] defendant is guilty of an attempted armed robbery if, 'with intent to commit [armed robbery], he engages in conduct which constitutes a substantial step toward the commission of that crime whether or not his intention is accomplished.'" *Bates v. State*, 127 Md. App. 678, 688 (1999) (citation omitted). "Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." *Spencer v. State*, 450 Md. 530, 568 (2016) (citation omitted).

Appellant argues that he never attempted to take anything from Sanchez, nor did he ask Sanchez for anything. Appellant further contends that Sanchez, as sole eyewitness to the shooting, provided only subjective assumptions regarding an intent to rob, and such assumptions are not enough to sustain a conviction for attempted armed robbery.

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to sustain the conviction for attempted armed robbery. A reasonable juror could infer that appellant reconnoitered the block by circling the area twice as a passenger in Wesley's vehicle. When he and/or Wesley spotted Sanchez walking alone, wearing a backpack, appellant told Wesley to pull over, exited the car, and walked directly to Sanchez, while brandishing a handgun. Sanchez then began retreating backwards away from appellant, who continued to advance with the handgun raised. When Sanchez reached into his backpack, appellant shot him.

Although appellant did not indicate an expressed intention to rob Sanchez or demand Sanchez's property, such evidence was not required. *See Davis v. State*, 204 Md. 44, 51 (1954) (specific intent to commit a particular offense "may be inferred as a matter of fact from the actor's conduct and the attendant circumstances"). While Sanchez may have been the only eyewitness to his encounter with appellant, the footage presented a compelling, visual depiction of the incident. Wesley's testimony gave appellant's conduct, captured on the footage, greater context. The totality of the evidence supported a finding that appellant's use of a gun and targeted advancement towards Sanchez demonstrated his intent to commit armed robbery.

C.

Conspiracy to Commit Armed Robbery

"A criminal conspiracy is the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means." *Savage v. State*, 212 Md. App. 1, 12 (2013) (internal quotations and citation omitted). Because "there is frequently no direct testimony, from either a co-conspirator or other witness, as to an express oral contract or an express agreement to carry out a crime[,]" the factfinder "may infer the existence of a conspiracy from circumstantial evidence." *Jones v. State*, 132 Md. App. 657, 660 (2000). "If two or more persons act in what appears to be a concerted way to perpetrate a crime," the factfinder "may reasonably infer that such a concert of action was jointly intended." *Id*.

Appellant argues that while Wesley testified that appellant told her to "pull over," this does not show a meeting of the minds to commit a crime. We disagree. The evidence presented at trial, viewed in the light most favorable to the prosecution, established that Wesley, as the driver, and appellant, as the assailant, engaged in a concerted action to locate an individual (Sanchez) whom they could rob. As mentioned, Wesley and appellant drove around (as they commonly did); at approximately 3:00 a.m., after circling the block twice, one or both spotted Sanchez, who was alone with a backpack; appellant told Wesley to pull over; appellant got out of the car and approached Sanchez while brandishing his gun; Sanchez reached into his backpack, then appellant shot him; and immediately after shooting Sanchez, appellant ran back towards Wesley's car.

Evidence of an express agreement to rob Sanchez was not required. *See Carroll v. State*, 202 Md. App. 487, 505 (2011) (for conspiracy, "it is sufficient if the parties tacitly come to an understanding regarding the unlawful purpose.") (citation omitted). The jury could infer the existence of a conspiracy from circumstantial evidence. There was sufficient evidence to sustain the conviction for conspiracy to commit armed robbery.

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