

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 803

September Term, 2018

RODNEY BRISCOE

v.

STATE OF MARYLAND

*Wright,
Kehoe,
Friedman,

JJ.

Opinion by Kehoe, J.

Filed: November 21, 2019

*Wright, J., now retired, participated in the hearing and conference of this case while an active member of the Court; after being recalled pursuant to Maryland Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this Opinion.

*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.

After a jury trial in the Circuit Court for Baltimore City, Rodney Briscoe was convicted of robbery with a deadly weapon, first-degree assault, use of a firearm in the commission of a crime of violence, motor-vehicle theft, conspiracy to commit each of those offenses, and theft. The court sentenced Briscoe to consecutive terms of twenty years' imprisonment for robbery with a deadly weapon; twenty years for conspiracy to commit robbery with a deadly weapon, all suspended; and ten years for use of a firearm in the commission of a crime of violence; to be followed by five years' supervised probation. He then noted this appeal, raising two questions, which we have reworded:

1. Did the trial court err by admitting a recording of a co-conspirator's jailhouse telephone conversation with her mother as a prior consistent statement under Md. Rule 5-802.1(b)?
2. Was the evidence sufficient to sustain the conspiracy convictions?

Mr. Briscoe's first question is not preserved for appellate review, so we will not consider it. And because our answer to the second question is yes, we will affirm the judgments.

Background

The evidence at trial established the following:

On the evening of April 7, 2017, Renard Wilson procured the services of a sex worker, known to Wilson as "Jewel" but whose actual name is Jennifer Byrd. On the night in question, Wilson sent a text message to Byrd, whom he knew from a prior encounter, and they agreed that he would pick her up in his car on a street several blocks from Wilson's home.

After Wilson picked up Byrd, they drove to a nearby Bank of America branch, where Wilson withdrew cash from the ATM. The pair then drove to his home, where Wilson noticed that Byrd had a gash on her head. Because Byrd previously had mentioned having a fight with her boyfriend and that she did not want to go back to that house, Wilson and Byrd discussed her options at the time. Byrd asked whether she could stay at Wilson's house for a couple of days, and they ultimately decided to go to her house to get her belongings.

Wilson and Byrd then left in his car and encountered Briscoe. Byrd told Wilson that Briscoe was her roommate. (In reality, as she would later testify, Briscoe was both Byrd's boyfriend and her procurer.) At that point, Byrd told Wilson that she "wanted a couple more dollars." Wilson then realized that he had forgotten his wallet and decided to drive back to his home, accompanied by Byrd and Briscoe.

Upon arriving at his home, Wilson, Byrd and Briscoe talked over drinks, marijuana, and cocaine. Briscoe asked questions that Wilson, in hindsight, acknowledged should have aroused his suspicion: Did he live alone? And were there any firearms in his home? Shortly thereafter, the three left in Wilson's car, with Wilson driving, and went back to the Bank of America ATM, where Wilson withdrew more cash.

Wilson next drove to the parking lot of a nearby bar, Dead Freddie's, and waited in the car with Byrd while Briscoe walked off, ostensibly to retrieve Byrd's belongings from her nearby residence. A short while later, Briscoe returned and asked Wilson to get out of his car. Wilson, thinking Briscoe just wanted his help loading up Byrd's belongings, complied

with the request. But it quickly became apparent that Briscoe wanted more than a helping hand. He brandished a long-barreled revolver and told Wilson that if he failed to comply with Briscoe's instructions, he "would be shot and killed."

Briscoe demanded that Wilson turn over his wallet and car keys, which he did. At Briscoe's command, Wilson got back inside his car and the three of them drove away together. Initially, Byrd was the driver, but she had trouble with the car's manual transmission and the engine repeatedly stalled. Briscoe told her to pull into the parking lot of a convenience store on Harford Road, where she parked and turned over the driving to Briscoe. Byrd then climbed into the back seat, next to Wilson, and Briscoe drove Wilson's car back to the Bank of America ATM.

Upon arriving at the bank, Byrd withdrew additional cash, using Wilson's debit card, which she had taken from his wallet, and his PIN, which Wilson had disclosed after Briscoe threatened him. The three then drove to Wilson's home. En route, Briscoe grabbed Wilson's wallet and warned him that if he "went to the cops at any point," he knew where Wilson lived and that he would kill Wilson.

Inside Wilson's home, Briscoe ordered Wilson to sit on a sofa while Briscoe and Byrd helped themselves to Wilson's valuables. Briscoe had been holding the revolver. But as he started unplugging cables from Wilson's television, he handed the gun to Byrd, who kept it pointed at Wilson. Byrd eventually placed the weapon on the floor, however, and Wilson lunged forward to grab it. Briscoe thwarted him, seizing the gun. Briscoe then turned to

Byrd and struck her, admonishing her that her carelessness “could have got [them] both killed.”

With Wilson at gunpoint, Briscoe and Byrd loaded Wilson’s belongings into Wilson’s car. Briscoe told Wilson that he would find his car in the Dead Freddie’s parking lot and warned, once more, that if Wilson ever informed the police about what had happened, Briscoe would kill him. Briscoe and Byrd then drove away in Wilson’s car. Among the items they took were a television set, a laptop computer, a tablet computer, Wilson’s wallet (with debit card, driver’s license, and cash), his car, and a pair of sneakers.

Briscoe and Byrd attempted to drive back to their home, just a short distance away. But when Wilson’s car stalled again, just a few blocks from Wilson’s home, they abandoned it. They took Wilson’s property and hauled it away into a nearby wooded area. Although police officers eventually found Wilson’s car, none of his other personal property was ever recovered.

Fifteen or twenty minutes after Briscoe and Byrd left, Wilson walked to Dead Freddie’s to retrieve his car, but it was nowhere to be found. He then walked back to his house, where he called Bank of America to report the theft of his debit card. He next called his brother and, finally, the police.

That same morning, police officers responded to Wilson’s home and recovered his car, just where Briscoe and Byrd had left it. The officers took Wilson to the citywide robbery unit, where he gave a statement. The statement was not entirely truthful, mainly because

Wilson feared being charged with soliciting a prostitute and possessing controlled dangerous substances. Moreover, he had been threatened at least twice by Briscoe.

Approximately one week later, on the night of April 15, 2017, police officers approached Byrd along Harford Road. Initially, when asked to identify herself, Byrd provided a false name. When asked about what happened on April 7, she told the officers that while on a “date” with someone, someone had broken into the house and robbed the person she “was on a date with.” Eventually, she told them the truth: that Wilson was a client and that she and Briscoe had robbed Wilson together. During her testimony at Briscoe’s trial, Byrd also acknowledged that, during this interaction with the police, she attempted to minimize her involvement in the robbery by telling police officers that she had been “basically forced to do it.”

Byrd was taken to the citywide robbery unit, where she was interrogated and ultimately charged with various offenses arising out of the armed robbery of Wilson. Byrd’s interrogation led police to focus on Briscoe as a suspect. They prepared a photographic array and, using a double-blind procedure, showed it to Wilson, who selected Briscoe’s photograph. Police then re-interrogated Wilson and thereafter got an arrest warrant for Briscoe. On May 4, 2017, a thirty-two-count indictment was issued, charging Briscoe with, among other things, robbery with a deadly weapon, first-degree assault, use of a firearm in the commission of a crime of violence, motor vehicle theft, conspiracy to commit each of those offenses, and theft.

While Byrd was incarcerated and awaiting trial, Briscoe sent her a letter, purporting to be from a “Bob Seymour,” at “1621 Baltimore, Maryland. Doright Street, 21223.” Addressing Byrd by her street name, “Jewel,” the letter urged Byrd to “reverse [her] statement saying that [she didn’t] want to follow through.” It further urged her to claim that she could not recall the events of the night of April 7 because she “was high and hallucinating.” At Briscoe’s trial, Byrd testified that she was “99.9 percent sure that” Briscoe had written the letter. Byrd additionally testified that she interpreted the letter as Briscoe urging her “to do right” by recanting the statement she had given to the police—hence, the return address on the nonexistent “Doright” street.

Also while Byrd was incarcerated and awaiting trial, but after she had received the letter from Briscoe, she called her mother. This call was recorded and later introduced into evidence at Briscoe’s trial, over Briscoe’s objection, as a prior consistent statement. In that call, Byrd admitted that she and Briscoe had taken Wilson’s property and had taken him to the bank too, although she sought to downplay her culpability, claiming that “it’s not like I wanted to do it” and that she had “just [been] doing what [she had been] told.”

Approximately one week before Briscoe’s trial, Byrd entered into a plea agreement with the State. In return for her promise to testify against Briscoe, she was permitted to plead guilty to a single count of conspiracy to use a firearm in the commission of a felony or crime of violence and to be sentenced to a term of fifteen years’ imprisonment, with all but three years suspended, followed by three years’ probation.

The jury found Briscoe guilty of robbery with a deadly weapon, first-degree assault, use of a firearm in the commission of a crime of violence, motor-vehicle theft, conspiracy to commit each of those offenses, and theft. Following imposition of sentence, Briscoe noted this appeal.

Analysis

1.

Briscoe contends that the circuit court erred in admitting a recording of the jailhouse telephone call between Byrd and her mother as a prior consistent statement under Md. Rule 5-802.1(b).¹ In support of this argument, Briscoe relies heavily upon *Thomas v. State*, 429 Md. 85 (2012). In that case, the Court first reiterated that Maryland followed the common-law rule that “if a witness is attacked by a charge of fabrication or improper influence or motive, the prior consistent statement is relevant only if it was made before the source of the fabrication or improper influence or motive originated.” *Id.* at 101–02 (citing *Holmes v. State*, 350 Md. 412, 417 (1998)). The Court then “adopt[ed] expressly the ‘view. . . that when the witness is obviously under investigation or has been arrested when the statements were made, the witness’s prior statements are generally inadmissible because the motive

¹ Rule 5–802.1(b) excepts from exclusion by the rule against hearsay certain statements made by testifying witnesses, including “[a] statement that is consistent with the declarant’s testimony, if the statement is offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive.”

to fabricate has already arisen.” *Thomas*, 429 Md. at 103 (quoting 2 *McCormick on Evidence* § 251, at 152 (Kenneth S. Brown ed., 6th ed. 2006)).

In response, the State asserts that Briscoe did not raise the issue at trial and, looking past preservation, there was no error on the part of the trial court.

We agree with the State that the argument is not preserved.

Upon the conclusion of the defense cross-examination of Byrd, the State moved to admit Byrd’s jailhouse call to her mother as a prior consistent statement under Rule 5-802.1(b). The State argued that the statement at issue had been made before the motive for fabrication explored in cross-examination, which was ensuring that Byrd would receive the benefit of a plea agreement. The State further asserted that defense counsel, both in opening statement and cross-examination, had “indicated either expressly or impliedly that . . . Ms. Byrd had tailored her testimony based on the plea agreement that was offered to her by the State.” Then, after the State elicited Byrd’s acknowledgment that the recorded call had been placed to her mother’s telephone number and that she would recognize the voices on the recording, the recording was played in open court, outside the presence of the jury.

After the recording had been played, defense counsel argued that it was inadmissible (emphasis added):

I mean there’s information in [the call] that’s inconsistent with what she said before. I don’t know how the State thinks that this can possibly come in. She’s already agreed that what she’s saying today is the truth and that she hasn’t been influenced by any kind of plea agreement. She initially stated in her statement . . . that the property was taken and it was taken to separate

addresses and she gave the detectives the information as to where the property ended up. *So I don't think that that's anything that I was contesting here on cross examination. She was consistent with that in her original statement and still on the stand, that property was taken and it ended up at various addresses and she gave those addresses to the detectives.*

. . . I'm not really challenging the fact that there was some incident where they went up to the ATM. I was asking her more about the number of times and her recollection about the number of times what she said in her initial statement and what she's saying now. *I just don't think that this fits that exception to play the prior consistent statement because she still basically is consistent with the parts the State is trying to play.* And as I said, there's other parts in there. I mean I guess it would be helpful for me, that are inconsistent with what she's testified here today, what she told her mom over the phone.

The court overruled the defense objection to the statement:

So as I took notes on the cross examination, there was some discussion about whether or not they were all in Mr. Wilson's home partying or smoking which is mentioned on that statement. Whether or not Mr. Wilson was setup or not was an area that you explored on cross examination. I think I heard a discussion of not those exact words, but that concept with her mother. I think you did suggest that her motive for her testimony today was for leniency. I think you did suggest that perhaps her testimony today wasn't truthful. And I can't imagine that you aren't going to argue that to the jury that her testimony isn't truthful.

The description of the statement is from May 5th, 2017. It is a prior statement. It is a consistent statement. It's clearly a voluntary statement in that she initiates the phone call to her mother and then begins to discuss it. It talks about which items are taken, what was taken and she uses the word [“we”] several times. So I'm going to allow it.

As the State points out in its brief, defense counsel made three arguments why the jailhouse call should not be admitted into evidence: first, that parts of the call were *inconsistent* with Byrd's testimony; second, that the recording was *cumulative* because Byrd had “already agreed that what she's saying today is the truth and that she hasn't been influenced by any kind of plea agreement”; and third, that parts of the call were *consistent*

with Byrd’s testimony. At no time did defense counsel raise the argument now raised on appeal: that the jailhouse call should have been excluded because the motive to fabricate had already arisen by the time that call was made.

“It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal.” *Klaunberg v. State*, 355 Md. 528, 541 (1999) (citations omitted); *accord Gutierrez v. State*, 423 Md. 476, 488 (2011); *Sifrit v. State*, 383 Md. 116, 136 (2004). A straightforward application of this principle to the instant case leads us to conclude that Briscoe’s appellate argument, that the jailhouse call should have been excluded because, at the time that call was made, Byrd already had a motive to fabricate, is not preserved. We thus will not consider Briscoe’s argument that the recording of the phone call did not satisfy the premotive requirement for the admission of prior consistent statements of a testifying witness.

2.

Briscoe’s second contention is that the evidence was insufficient to sustain any of his convictions for conspiracy because “the State failed to produce any evidence of an agreement between Byrd” and him. We disagree.

In determining whether evidence is sufficient to sustain a conviction, “the relevant question is 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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in

original). “Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.” *Smith v. State*, 415 Md. 174, 185 (2010). Instead, “[w]e defer to the jury’s inferences and determine whether they are supported by the evidence.” *Id.* “That standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone.” *Id.*

In *Khalifa v. State*, 382 Md. 400 (2004), we outlined the elements of a criminal conspiracy:

A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The essence of a criminal conspiracy is an unlawful agreement. The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design. In Maryland, the crime is complete when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown.

Id. at 436 (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). A conspiracy “may be shown by ‘circumstantial evidence from which an inference of common design may be drawn,’” *Armstead v. State*, 195 Md. App. 599, 646 (2010) (quoting *McMillan v. State*, 325 Md. 272, 292 (1992)), and therefore the State is “only required to present facts that would allow the jury to infer that the parties entered into an unlawful agreement,” *id.* (quoting *Acquah v. State*, 113 Md. App. 29, 50 (1996)).

In the instant case, the State presented more than enough evidence from which a jury could reasonably infer that Briscoe and Byrd were in cahoots. Although it was Briscoe who first held Wilson at gunpoint and who ordered Wilson around, it was Byrd who convinced Wilson to take her home to retrieve her belongings. She introduced Briscoe, not as her boyfriend, but as her roommate, in effect facilitating the ensuing ambush of Wilson. While Briscoe threatened Wilson, Byrd was the first of the pair to drive Wilson’s car. When the group got to the Bank of America ATM for the third time that night, it was Byrd who withdrew more cash—using a debit card she took from Wilson’s wallet. This was corroborated by the testimony of a Bank of America loss expert and a video recording introduced into evidence. Byrd also testified that, for a time, she was the one holding Wilson at gunpoint while Briscoe disconnected his TV set.

It is true that, at various points, Byrd sought to downplay her role in the commission of the crimes. She told police initially that she had been “basically forced to” participate in the robbery. But this does not render the evidence insufficient, because a jury may credit all, some, or none of a witness’s testimony. *Allen v. State*, 158 Md. App. 194, 251 (2004), *aff’d*, 387 Md. 389 (2005). The jury was not required to accept Byrd’s version of events. She herself acknowledged the story she first told police had been an attempt to minimize her criminal responsibility. The letter sent to Byrd while she was in jail reinforced the notion that Byrd was more involved in the crime than she told police. From this letter, in which Briscoe asked her to take back her statement that she had not wanted to “follow through” with the robbery, a jury could infer that there was some earlier agreement or plan

to follow through with. Even if the jury believed that Byrd was a reluctant conspirator, a reluctant agreement to commit a crime can be an element of a criminal conspiracy as long as both Briscoe and Byrd formed the requisite specific intent.²

In short, there was legally-sufficient evidence from which the jury could have reasonably inferred that Byrd and Briscoe had been acting according to a common plan. Therefore, the evidence was sufficient to sustain Briscoe’s conspiracy convictions.

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ARE AFFIRMED. COSTS ASSESSED TO APPELLANT.

² The record in this case supports the conclusion that Briscoe had both physically abused Byrd and attempted to intimidate her into denying his role in the robbery. Such dynamics are common in the type of relationship between Briscoe and Byrd. See U.S. Dep’t of Justice, *Attorney General’s Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons* 1 (2015) (“Human traffickers prey upon individuals who are vulnerable . . . and use a variety of means, including physical force, fraud, and coercion, to obtain and maintain control over their victims.”). But the issue in this case was *Briscoe’s* state of mind, and not Byrd’s.