Circuit Court for Wicomico County
Case No. C22-CR-17-000551

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 930

September Term, 2018

RAYMOND JACOB MURRAY

v.

STATE OF MARYLAND

Wright,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 26, 2019

*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.

Following a jury trial in the Circuit Court for Wicomico County, Raymond Jacob Murray, appellant, was convicted of first-degree murder, second-degree murder, first-degree assault, two counts of conspiracy to commit first-degree assault, armed robbery, two counts of conspiracy to commit armed robbery, two counts of conspiracy to commit robbery, second-degree assault, six counts of conspiracy to commit second-degree assault, reckless endangerment, two counts of wearing and carrying a dangerous weapon with the intent to injure, and theft of property less than $1,000. He raises three issues on appeal: (1) whether the jury unanimously convicted him of first-degree murder; (2) whether the trial court erred in admitting inadmissible hearsay; and (3) whether there was sufficient evidence to sustain his convictions. For the reasons that follow, we affirm.

I.

Mr. Murray first contends that the jury might not have reached a unanimous verdict as to the charge of first-degree murder because his indictment did not specify whether he was being charged with premeditated murder or felony murder and the court provided the "jury with two alternatives to reach first-degree murder[.]" However, the verdict sheet indicates that the jury separately found Mr. Murray guilty of both premeditated murder and felony murder. Therefore, even if we assume that the jury was required to unanimously agree on the theory of first-degree murder, the record demonstrates that it did so in this case. Moreover, to the extent that Mr. Murray is asserting that the State was required to either proceed on a single theory of first-degree murder or to charge first-degree premeditated murder and first-degree felony murder in separate charging documents, that claim has been rejected by the Court of Appeals. *See Ross v. State*, 308 Md. 337, 341-42

(1987) (holding that the statutory short form indictment for murder is sufficient to charge a defendant with first-degree premediated murder and felony murder).

II.

At trial, the State introduced evidence that, immediately prior to the assault, Brandi Upshur had told several people that she was with, including Mr. Murray, to "go get my money back" from the victim. Mr. Murray now claims that the court erred in admitting in that statement because it was inadmissible hearsay. However, for testimony to constitute hearsay the declaration at issue must be both an assertion and offered for the truth of the matter asserted. *See Parker v. State*, 408 Md. 428, 436 (2009). Here, Ms. Upshur's statement did not communicate a factual proposition. Rather, it was a command to the other members of her group, which is generally not considered hearsay. *See Wallace-Bey v. State*, 234 Md. App. 501, 540 (2017). Moreover, to the extent that Ms. Upshur was asserting that the victim had her money, her statement was not offered to prove the truth of that fact. Instead, it was admitted to prove that Mr. Murray and the other assailants had attacked the victim at Ms. Upshur's request. Finally, any error in admitting the statement was harmless beyond a reasonable doubt. Specifically, Ms. Upshur's statement was cumulative of other evidence that was introduced without objection, including a letter written by Mr. Murray to another inmate wherein he indicated that the assault had occurred because the victim had taken Ms. Upshur's money.

III.

Finally, Mr. Murray asserts that there was insufficient evidence to sustain his convictions because the State failed to prove his criminal agency. However, Brandon

Yarns, one of Mr. Murray's co-conspirators, testified at trial that Mr. Murray participated in the assault and robbery of the victim and that, during the assault, Mr. Murray stabbed the victim multiple times with a knife. Moreover, Mr. Yarns's testimony was corroborated by other evidence including letters written by Mr. Murray to another inmate and the fact that the victim's blood was found on Mr. Murray's prosthetic leg shortly after the murder. Mr. Murray nevertheless contends that Mr. Yarns was not a believable witness because he was "given a generous plea . . . in exchange for his testimony." However, it is "not a proper sufficiency argument to maintain that the [fact-finder] should have disbelieved certain witnesses." *Correll v. State*, 215 Md. App. 483, 502 (2013). Rather, Mr. Yarns's credibility was for the jury to resolve.

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