Circuit Court for Anne Arundel County
Case No. C-02-CR-16-001118

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1033

September Term, 2017

DAQUON DARRYL PACK

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 2, 2018

A jury, in the Circuit Court for Anne Arundel County, convicted Daquon Pack, appellant, of first-degree murder, use of a firearm in a crime of violence, illegal possession of a firearm, and carrying a handgun. Pack was sentenced to a term of life imprisonment without the possibility of parole. In this appeal, Pack presents the following questions for our review:

1. Was the evidence insufficient to sustain the conviction for first-degree murder?

2. Did the circuit court err at sentencing in considering aggravating information outside the pre-sentence investigation report?

For reasons to follow, we answer both questions in the negative and affirm the judgments of the circuit court.

BACKGROUND

Pack was arrested and charged following the shooting death of his girlfriend's uncle, Patrick Dixon. At trial, Pack's girlfriend, Rontavia Howard, testified that, on the day of the shooting, she and Dixon drove to Meade Village, a neighborhood in Anne Arundel County, so that Dixon could visit friends and Howard could visit Pack. During that visit, Pack and Howard got into an argument, and Pack left. Approximately two hours later, Pack came back to the area, at which time Howard told Pack that she was leaving "to get the baby." Pack became agitated and informed Howard that he wanted her to stay. Around the same time, Dixon came upon the scene and told Howard "to go ahead and get the baby." Pack and Dixon then engaged in a conversation. A moment later, Dixon was shot multiple times. Howard later told the police that Pack was the shooter.

A witness to the shooting testified that, moments before the shooting, he saw the shooter and the victim involved in a conversation and that, at some point, the victim began walking away from the shooter. The witness claimed that, as the victim was walking away, the shooter shot the victim in the back of the head, aimed his weapon, and then fired two more shots. Another witness to the shooting testified that he heard "a loud bang and then two or three loud bangs." A third witness to the shooting testified that he saw the shooter "pacing back and forth" prior to the shooting. Pack was ultimately convicted.

At sentencing, the State discussed, among other things, the details of two incidents from when Pack was a juvenile: a 2009 incident, in which Pack was adjudicated involved in second-degree assault; and a 2011 incident, in which Pack was again adjudicated involved in second-degree assault. Regarding the 2009 incident, the State informed the court that Pack, along with another individual, had assaulted a teenage boy by pushing him off his bike and hitting him. Regarding the 2011 incident, the State informed the court that Pack had "sucker punched" someone during a basketball game.

Although the two adjudications were listed as part of Pack's criminal history in his pre-sentence investigation report, the details of the adjudications, namely, the circumstances of the assaults, were not. When defense counsel informed the court that he "didn't have advanced notice of those details and an opportunity to discuss them with Mr. Pack," the court allowed the proceedings to continue and ultimately sentenced Pack to life imprisonment without the possibility of parole. In doing so, the court expressly mentioned the circumstances of the 2011 adjudication, specifically, that Pack had "sucker punched someone playing basketball," which the court described as "cowardly conduct."

DISCUSSION

I.

Pack first argues that the evidence adduced at trial is insufficient to sustain his conviction of first-degree murder. Pack's sole contention is that the State failed to prove that the murder was premeditated.

"The test of appellate review of evidentiary sufficiency 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.'" *Donati v. State*, 215 Md. App. 686, 718 (2014) (citations omitted). That same standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). "While we do not re-weigh the evidence, 'we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Id.* (citations omitted).

That said, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (citations

omitted). Moreover, '[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (citations omitted).

For a murder to be premeditated, "the law requires only that 'the defendant have conscious knowledge of the intent to kill (deliberate), and that there be time enough for the defendant to deliberate, *i.e.*, time enough to have thought about that intent (premeditate).'" *Wood v. State*, 209 Md. App. 246, 322 (2012) (citations omitted). In other words, premeditation is established when the design to kill precedes the killing "by an appreciable length of time, that is, time enough to deliberate." *Bryant v. State*, 393 Md. 196, 215 (2006) (citations and quotations omitted). Premeditation "may be instantaneous . . .as long as there is sufficient time for the trier of fact to determine that the purpose to kill 'was the product of a mind fully conscious of its own design[.]'" *Wood*, 209 Md. App. at 322 (citations omitted). "If the killing results from a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder." *Colvin v. State*, 299 Md. 88, 108 (1984) (citations omitted). "Ordinarily, premeditation is not established by direct evidence. Rather, it is usually inferred from the facts and surrounding circumstances." *Hagez v. State*, 110 Md. App. 194, 206 (1996).

We hold that sufficient evidence was presented at trial from which a reasonable fact-finder could have concluded beyond a reasonable doubt that Pack acted with premeditation in killing Dixon. The evidence showed that Pack was agitated prior to the shooting, in part because he did not want Howard to leave to "get the baby." When Dixon intervened, he

and Pack exchanged words. As Dixon was walking away, Pack shot him in the back of the head. Following a pause, Pack fired more shots. From those facts, a reasonable inference can be drawn that Pack made the conscious decision to kill Dixon and that an appreciable amount of time had passed between the intention and the act. *See Bryant*, 393 Md. at 216 ("[A] delay between firing a first and second shot 'is enough time for reflection and decision to justify a finding of premeditation.'") (citations omitted).

II.

Pack next argues that the sentencing court erred in considering the details of his two juvenile adjudications. Pack maintains that those details were not included in the pre-sentencing investigation report disclosed by the State prior to the sentencing hearing.

Maryland Rule 4-342(d)[1] provides that the State "shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing." The Rule further provides that, "[i]f the court finds that the information was not timely provided, the court shall postpone sentencing." *Id.* Under those circumstances, "the sentencing judge lacks the discretion to admit the evidence and proceed with the sentencing hearing; rather, the sentencing judge must postpone the hearing to allow the defendant the opportunity to investigate the evidence and prepare accordingly." *Dove v. State*, 415 Md. 727, 741 (2010).

[1] Pack was sentenced on July 3, 2017. On January 1, 2018, Maryland Rule 4-342(d) was "relettered," without substantive change, as Rule 4-342(c). *See* Maryland Court of Appeals' Rules Order (October 17, 2017).

"The purpose of Md. Rule 4-342(d) is to notify the defendant of the information the State will present against him or her at the sentencing hearing and afford the defendant a reasonable opportunity to investigate the State's information in order to prepare for sentencing." *Id.* at 739. "The plain language of the Rule is broad and encompasses any information on which the State plans to rely at sentencing." *Id.* Moreover, "[t]he Rule does not make an exception for substantial compliance or information the defendant could have requested or uncovered through investigation." *Id.* Thus, "the defendant's awareness that certain types of evidence might be presented at the sentencing hearing is not sufficient to fulfill the Rule's notice requirement[.]" *Id.* at 740.

On the other hand, "Maryland Rule 4-342(d) does not require the State to provide a line-item list of every fact to be presented at sentencing." *Lopez v. State,* 231 Md. App. 457, 472 (2017), *aff'd* __ Md. __, 2018 WL 1531071 (filed March 29, 2018). Rather, the Rule requires that the State "identify, with some specificity, what previously disclosed documents and information it intends to rely upon at sentencing." *Id.* at 473. "That is to say, it must provide enough detail that it reasonably informs the defense of what material and information the defense will face at sentencing." *Id.*

Here, we are persuaded that the State did not violate Rule 4-342(d). The pre-sentence investigation report, which had been disclosed to the defense, totaled a mere eight pages and included an itemized list of Pack's criminal history. Both the 2009 and the 2011 juvenile adjudications were expressly referenced on that list. Although those references did not mention the circumstances of the offenses (which Pack claims violated Rule 4-342(d)), they did include the date of the offenses, the charges, the dispositions, and the case

numbers. In short, this is not the type of case where the State surprised a defendant with information about which the defendant was completely unaware and which directly resulted in an increased sentence, *see Dove*, 415 Md. at 733-34, nor is this the type of case where the State disclosed a myriad of information and expected the defendant to sift through the material without any reasonable guidance. *See Lopez*, 231 Md. App. at 472-73. Instead, the State presented Pack with an eight-page report that specifically referenced the two adjudications. In so doing, the State provided sufficient detail to reasonably inform Pack of the material and information he would be facing at sentencing.

Nevertheless, any error in admitting the evidence was harmless beyond a reasonable doubt. *See Dove*, 415 Md. at 742 (noting that violations of Rule 4-342(d) are subject to harmless error). We can find nothing in the record to suggest that Pack was prejudiced by the State's failure to disclose, as Pack was well-aware that the State intended to rely on both juvenile adjudications during sentencing. Moreover, because Pack was a primary offender in both adjudications, it is axiomatic that he would have full-knowledge of the details of those offenses. *See Lopez*, 231 Md. App. at 470 ("[T]he defendant's actual knowledge of the information that is, in fact, adduced at a sentencing hearing and relied upon by the sentencing court may be relevant in determining whether a rule violation prejudiced the defendant or amounted to no more than harmless error."). Thus, even though the State did not disclose exactly how it intended to use the adjudications, the defense was on notice the State intended to discuss the adjudications in some manner and, as a result, had a reasonable opportunity to investigate that information and prepare for sentencing.

Furthermore, although the sentencing court did mention the circumstances of the 2011 adjudication when rendering its sentence, the comment was made in passing and represented only a small fraction of the court's nearly four-page colloquy. The court did not mention those circumstances at any other point and did not appear to rely on them to any discernible degree. In fact, when the court reviewed Pack's criminal record, it did not discuss the details of the juvenile adjudications but rather focused on the circumstances surrounding a different assault conviction, which occurred in 2015 and stemmed from an altercation Pack had with his girlfriend, during which he "pulled a gun on her" and "then punched her in the face."

In sum, we are persuaded that the court did not err and, even if it did, any error was harmless beyond a reasonable doubt.

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