Circuit Court for Prince George's County
Case Nos. 13-1642B & 13-1642C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1050 & 1079

September Term, 2016

RINALDO SAVON WASHINGTON &

KIMFREY LEE WILLIAMS

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: April 11, 2018

* 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.

Kimfrey Williams and Rinaldo Washington were tried together and convicted in the Circuit Court for Prince George's County of first-degree felony murder, armed robbery, first-degree assault, two counts of use of a handgun in a crime of violence, and conspiracy to commit armed robbery. Both challenge the sufficiency of the evidence supporting their convictions. Mr. Washington also claims that the trial court committed reversible error by admitting hearsay statements by Mr. Williams against him. We affirm the judgments.

I. BACKGROUND

On the night of October 21, 2013, Mr. Williams and Mr. Washington accompanied their friend Deandre Weems to the Clarion Hotel (the "Hotel") in Oxon Hill, MD, where Mr. Weems robbed the front desk clerk at gunpoint. During the course of the robbery, Mr. Williams remained near the entrance of the Hotel, in the driver's seat of the car they drove there, a dark four-door sedan, with the parking lights on. Mr. Washington stayed outside of the Hotel entrance. Mr. Weems shot and killed the Hotel's restaurant manager, Jesse Chavez, after a struggle with Mr. Chavez when he came to the defense of the five-months-pregnant front desk clerk.

The State contended that Mr. Williams and Mr. Washington conspired with Mr. Weems to commit the robbery, although no physical evidence linked them to the robbery and Mr. Chavez's murder. According to the State, Mr. Williams was the getaway driver and Mr. Washington served as the lookout. The State presented multiple eyewitnesses and established a timeline of the robbery. We describe the witness testimony in chronological order below.

Mr. Weems's girlfriend, Latrice Nelson, testified that Mr. Weems and Messrs. Williams and Washington left together on the night of October 21st from the apartment she shared with Mr. Weems. When they left, Mr. Weems told Ms. Nelson that "they were going to see their man." According to Ms. Nelson, Mr. Williams drove the car, a black, four-door, Toyota Camry with a paper license plate. Ms. Nelson identified video footage from the Hotel of a black car as the car Mr. Williams drove when he left with Mr. Weems and Mr. Washington.

At the Hotel, Kimberly and Randal Bland were leaving around 8:40 p.m. after a business meeting. As they walked out, the Blands passed a car that Mr. Bland described as a dark green four-door with its engine running and lights on, parked near the front of the Hotel but not in a parking spot. The Blands also noticed two men sitting and smoking near the entrance. Mr. Bland was suspicious and thought "it just didn't look right . . . . I felt uncomfortable with it." Mrs. Bland described one man as "darker complected, slender face, slender build" and wearing a hoodie. Mr. Bland testified that this man also had dreadlocks. Mrs. Bland described the second man as "lighter complected" with "pluckery lips, larger lips." Mr. Bland described the second man as "bald-headed." Both identified this second man as Mr. Washington at trial.

As the Blands hurried to their car, Mrs. Bland saw the first man, the one with the darker complexion, put out his cigarette and start to walk towards the entrance of the Hotel. According to Mr. Bland, Mr. Washington sat on a bench outside as Mr. Weems entered the

hotel. Video footage from the lobby shows a pair of legs standing outside of the Hotel's entrance; the State asserts that they belonged to Mr. Washington.

Margie Hurd was working as the front desk clerk at the Hotel on October 21, 2013. She testified that around 9:30 p.m., a man wearing a hoodie jumped the counter. She shouted for help, but the man pointed a gun at her stomach (she was five months pregnant at that time) and told her to "shut [her] mouth." The man grabbed Ms. Hurd by her hair and forced her to the cash drawer, which she unlocked for him. While the man collected the money in the cash drawer, he released her, and she ran to hide in the bathroom. Ms. Hurd identified Mr. Weems, both in a photo array and at trial, as the man who jumped the counter and held her at gunpoint. Ms. Hurd did not identify either appellant as entering the hotel with Mr. Weems.

Larry Reid was a patron at the Hotel's bar. Mr. Reid saw Mr. Chavez, the manager and victim, run towards the front desk to assist Ms. Hurd after he heard her scream. Mr. Reid testified that Mr. Chavez confronted Mr. Weems as he ran towards the exit. As Mr. Chavez and Mr. Weems tussled, they moved from inside the hotel lobby to outside. Mr. Reid then heard a gunshot. Upon leaving the hotel, Mr. Reid saw Mr. Chavez shot on the ground. Mr. Reid did not see either appellant at the scene, but did see a dark vehicle with multiple occupants leaving the Hotel at speed.

William Warner was a Hotel guest. As he stood outside smoking, Mr. Warner heard a commotion from the front entrance. He saw Mr. Chavez and Mr. Weems engaged in a struggle as they exited the hotel. Mr. Warner remembered that there was another person

adjacent to Mr. Weems and Mr. Chavez's struggle, but couldn't describe the individual. He saw Mr. Weems shoot Mr. Chavez in the chest, and saw Mr. Chavez fall to the ground. Mr. Warner didn't see where Mr. Weems or the other person went, but did recall a dark, four-door sedan with three people in it race by and exit the Hotel parking lot.

Multiple witnesses saw Mr. Weems and the other man, identified by the Blands as Mr. Washington, get into passenger seats of a car parked near the front entrance of the Hotel. At the same time, Roshawnda Chase sat in a vehicle parked outside of the Hotel. She witnessed two men, whom she described as either Black or Latino, run to a car parked near the front of the Hotel and get into the front passenger seat and back seat. Dontai White and Jerome Hodge were stopped at a traffic light during Mr. Chavez and Mr. Weems's struggle. Mr. White saw Mr. Weems shoot Mr. Chavez and saw Mr. Weems and another man run to a dark vehicle parked near the entrance. Mr. Hodge only saw the two men run from the Hotel entrance to the vehicle. As the car left the parking lot, Mr. Hodge and Mr. White chased the vehicle hoping to see a tag number, but were unsuccessful. By the time Prince George's County police arrived at 10 p.m. in response to 911 calls, Mr. Chavez had died.

Ms. Nelson, Mr. Weems's girlfriend, was still at their apartment when Mr. Weems and the appellants returned together later that night. Ms. Nelson overheard some of the conversation among them. She recalled hearing Mr. Williams say, "I'm gone. I'm gonna burn that joint;" she understood the term "joint" in this context to mean "car."

On October 24, 2013 at approximately 7 p.m., the District of Columbia Fire Investigation Squad received a report of a vehicle fire a couple of blocks from Ms. Nelson and Mr. Weems's apartment. According to the testimony of Scott Ford, the investigator who responded to the call, and the later incident report, the car was a 2005 Toyota Camry with a paper license plate on the rear, and the passenger compartment was fully consumed by flames.

On October 26, 2013, the Prince George's County police served an arrest warrant on Mr. Weems at his and Ms. Nelson's apartment. That same day, the police searched the apartment and found a loaded gun that belonged to Mr. Washington. A firearms expert identified the gun as the weapon that killed Mr. Chavez. (The appellants stipulated to the firearms expert's identification at trial). Mr. Washington was taken into custody on the 26th, and Mr. Williams was taken into custody the following day.

The State presented cell phone data that showed (1) Mr. Weems's travel from his apartment to the Hotel and back to his apartment, and (2) that Mr. Williams was in or near Mr. Weems's apartment on the evening of October 21, 2013, immediately before the robbery. Furthermore, calls made to and from Mr. Williams's phone placed him in the area where the burned Toyota Camry was found on October 24, 2013 between approximately 7 and 7:30 p.m. The State did not produce cell phone records for Mr. Washington.

Throughout the trial, the defendants attempted to discredit the State's witnesses on cross-examination, primarily by confirming that none could identify positively that either was present at the scene of the robbery or the car burning. No eyewitness testimony placed

Mr. Williams at the Hotel as the driver of the car. The Blands did identify Mr. Washington as being at the scene of the robbery, but neither saw him enter the Hotel. Mr. Bland also testified that he did not hear or see Mr. Weems and Mr. Washington converse or otherwise discuss the robbery. The defense also attempted to discredit Ms. Nelson by pointing out that she had been granted immunity by the State in exchange for her testimony, her history of heroin abuse (she was still using at the time), her misrepresentation of her marital status under oath during her grand jury testimony, and two instances when she had lied to law enforcement and a car rental agency.

At the conclusion of the State's case, the appellants moved for judgment of acquittal, and the court denied their motions. Both then rested their cases without calling witnesses or offering testimony of their own. They renewed their motions for acquittal, which the court again denied, and the jury convicted both on all counts. They filed a timely notice of appeal.

II. DISCUSSION

In this consolidated appeal, the appellants share one common contention, plus Mr. Washington has a claim of his own.[1] Mr. Williams and Mr. Washington both contend

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[1] In Mr. Williams's brief, he phrased the Question Presented as follows:

> Whether the evidence was sufficient, as a matter of law, to sustain Appellant's convictions on counts 1 through 6.

In Mr. Washington's brief, he phrased the Questions Presented as follows:

> 1. Did the trial court err in ruling that the co-defendant's hearsay statements were admissible against Appellant as statements of a co-conspirator?
> 2. Was the evidence presented to the jury insufficient to sustain Appellant's convictions?

that the evidence presented to the trial court was insufficient to support their convictions. They argue that the State's evidence did not demonstrate any knowledge of the armed robbery or any intent to assist Mr. Weems with it. Without proof of the conspiracy to commit armed robbery, they argue, their other convictions cannot stand. The State responds that the evidence was sufficient, that a reasonable juror could find that each had conspired with Mr. Weems to commit the robbery that led to Mr. Chavez's death. Mr. Washington also asserts that the trial court erred in admitting a statement made by Mr. Williams against him. The State responds that the statement was admissible under a hearsay exception and that, even if it wasn't admissible, was harmless error.

Two standards of review apply to these issues. *First*, when we assess the sufficiency of evidence in a criminal conviction, we do not "re-weigh the evidence," *State v. Smith*, 374 Md. 527, 534 (2003) (cleaned up),[2] but instead 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." *Velez v. State*, 106 Md. App. 194, 201 (1995) (emphasis in original) (cleaned up).

Second, when reviewing the admission of hearsay statements, we start from the premise that hearsay is inadmissible unless it falls within an exception to the hearsay rule

[2] "Cleaned up" is a new parenthetical intended to simplify quotations from legal sources. *See* Jack Metzler, *Cleaning Up Quotations*, J. APP. PRAC. & PROCESS (forthcoming 2018), https://perma.cc/JZR7-P85A. Use of "cleaned up" signals that the current author has sought to improve readability by removing extraneous, non-substantive clutter (such as brackets, quotation marks, ellipses, footnote signals, internal citations or made un-bracketed changes to capitalization) without altering the substance of the quotation.

or is "permitted by applicable constitutional provisions or statutes." Md. Rule 5-802. Hearsay is "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." Md. Rule 5-801(c). Whether a statement is hearsay is a factual determination that we review for clear error, and the decision that a hearsay statement is subject to an exception is a legal determination, *Baker v. State*, 223 Md. App. 750, 760 (2015), that we review *de novo*. *Bernadyn v. State*, 390 Md. 1, 7–8 (2005).

A. Sufficient Evidence Supported The Convictions.

1. Circumstantial evidence permitted the jury to infer Appellants' presence at the scene.

Mr. Williams and Mr. Washington challenge the sufficiency of the evidence used to convict them. Both assert that the State did not prove that they had the necessary intent to commit robbery, nor that they had any awareness of Mr. Weems's plans or that they conspired with him. Mr. Washington asserts that there was no evidence he was aware of the robbery or evidence that he assisted Mr. Weems in committing it. Mr. Williams does not admit that he was present at the Hotel, but suggests that even if a jury were to infer that he drove the getaway car, he would be, "at best, an accessory after the fact, who, upon discovering what Weems had done, sought to hinder any investigation of the matter by disposing of the vehicle use[d] to flee the scene." Mr. Williams was not charged, nor convicted, of any crime relating to the arson of the car.

Both appellants' convictions for felony murder, armed robbery, first-degree assault, and the two counts for use of a handgun are grounded in their actions as lookout or getaway

driver during the robbery and shooting. Although they are not alleged to have robbed the Hotel or killed the victim themselves, they are, as accomplices, charged with the same crimes as the principal, Mr. Weems. An accomplice, also known as a principal in the second degree, "is one who is actually or constructively present when a felony is committed, and who aids or abets in its commission." *Pope v. State*, 284 Md. 309, 326 (1979). To be charged as an accomplice, it is not necessary that the defendant participate directly in the crime, as "[o]ne may . . . encourage a crime by merely standing by for the purpose of giving aid to the perpetrator if necessary[.]" *Id.* at 332. The evidence presented at trial must prove that appellants participated in the planning or execution of the armed robbery with Mr. Weems. The jury, as the trier of fact, is in the best position to evaluate whether the evidence met that burden. *Jones v. State*, 173 Md. App. 430, 447 (2007).

When assessing the sufficiency of trial evidence, "we review evidence in the light most favorable to the State[.]" *State v. Albrecht*, 336 Md. 475, 478–79 (1994). "Fundamentally, our concern is not with whether the trial court's verdict is in accord with what appears to us to be the weight of the evidence, but rather is only with whether the verdicts were supported with sufficient evidence—that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Id.* (cleaned up). And in this context, there is no difference between direct and circumstantial evidence. *Jensen v. State*, 127 Md. App. 103, 117 (1999). Indeed, "circumstantial evidence can support a conviction on its own if there is enough to support

a finding of guilt[.]" *Hall v. State*, 233 Md. App. 118, 137 (2017). "It is not necessary [] that the circumstantial evidence be such that no possible theory other than guilt can stand [or] . . . that the circumstantial evidence exclude every possibility of the defendant's innocence," *Morgan v. State*, 134 Md. App. 113 (2000), as juries may "draw reasonable inferences from proven facts." *Velez*, 106 Md. App. at 202; *see Hebron v. State*, 331 Md. 219, 227–29 (1993); *Jensen*, 127 Md. App. at 117.

In this case, the State presented sufficient evidence for a reasonable juror to determine that Mr. Washington and Mr. Williams were aware of and participated in the robbery. Ms. Nelson tied it all together: she testified that both men left together with Mr. Weems approximately an hour before the robbery "to [go] see their man." They left with Mr. Weems in, and Mr. Williams drove, a black, four door Toyota Camry with a paper license plate, the car identified later by Hotel surveillance camera footage. Mr. Washington was identified at the entrance of the Hotel during the robbery, and several witnesses saw a dark, four-door car with its engine running waiting by the entrance of the Hotel around the time the robbery occurred. Witnesses testified that they saw three men in the car as it fled the botched robbery. Mr. Weems's cell phone data placed him at, and in, the Hotel at the time of the robbery, and traced his passage back to his and Ms. Nelson's apartment from the Hotel. Ms. Nelson testified that both men arrived back at the apartment with Mr. Weems, and that Mr. Williams left later, stating he was going to burn the car, which was found a couple days later near Mr. Weems's and Ms. Nelson's apartment. Mr. Williams's

cellphone records placed him in the area of the burned car when the fire was reported. And a firearms expert identified Mr. Washington's gun as the weapon that killed Mr. Chavez.

Considered together, a reasonable juror readily could find that the trial evidence supported the State's theory that Mr. Williams was the getaway driver and Mr. Washington the lookout during the robbery and shooting. Viewed in the light most favorable to the State, these "strings" of circumstantial evidence tied the State's theory of the case together, and are sufficient to sustain both appellants' convictions.

2. Burning and disposing of the car fell within the scope of the robbery conspiracy.

The State offered Mr. Williams's statements about "burning that joint," meaning the car, as evidence that he participated in and entered the conspiracy to commit armed robbery. Mr. Williams argues that this statement showed that he was, "at best, an accessory after the fact, who, upon discovering what Weems had done, sought to hinder any investigation of the matter by disposing of the vehicle use[d] to flee the scene," and that these actions fell outside the scope of the original conspiracy. The trial court admitted the statements under the conspirator exception to the Maryland rules of hearsay exclusion, Md. Rule 5-803(a)(5), and he challenges that decision here.

Conspiracies don't necessarily include an agreement to conceal the agreed substantive offense, but as with any rule, there are exceptions. *State v. Rivenbark*, 311 Md. 147, 158 (1987). Under Rule 5-803(a)(5), a conspirator's hearsay statement must typically be made "before the attainment of the conspiracy's central objective." *Id.* at 158. These statements are typically "interpreted broadly . . . . A statement is in furtherance of a

conspiracy if it is intended to promote the objectives of the conspiracy." *Shelton v. State*, 207 Md. App. 363, 378 (2012). But a conspiracy doesn't necessarily end after the conspirators have "successfully attained their main object, [as] they often must take additional steps, *e.g.*, fleeing, or disposing of the fruits and instrumentalities of crime. Such acts further the conspiracy by assisting the conspirators in realizing the benefits from the offense which they agreed to commit." *Rivenbark*, 311 Md. at 158. It all depends on the relative timing between the substantive offense and the concealment, and it is typically only when statements about concealment come "long after" the participants have "realized all benefits from the [criminal] offense which they had agreed to commit" that they must be excluded. *Id.*

In this case, there was effectively no distinction, substantive or temporal, between the conspiracy to commit the armed robbery and the decision to conceal the getaway car. Even if they hadn't decided previously to burn the car, Ms. Nelson testified that Mr. Williams made his statements about burning the car immediately after the three men returned from the robbery, and the car was burned right after. By disposing of the getaway car, Mr. Williams furthered the conspiracy to commit the armed robbery, and the circuit court did not err by admitting his out-of-court statements to that effect as evidence of the conspiracy.

B. Mr. Williams's Statement Was Admissible Against Mr. Washington.

Because Mr. Williams's statements about burning the getaway car, as recounted at trial by Ms. Nelson, fell within the scope of the conspiracy to commit armed robbery, the

court admitted them against Mr. Washington. Mr. Washington contends that he "didn't say a thing" when Mr. Williams stated he was going to burn the car, and thus his statements after that point are hearsay and should not be admitted against him. The application of a hearsay exception is a legal determination we review *de novo*. *Bernadyn*, 390 Md. at 7–8.

Hearsay is "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." Md. Rule 5-801(c). We agree that Ms. Nelson's testimony that Mr. Williams said he was "gonna burn that joint," is hearsay, and admissible only if it satisfies an exception to Md. Rule 5-802. And it did: for the reasons discussed above, Mr. Williams's statements were admissible against Mr. Washington under the conspirator provision of Md. Rule 5-803(a)(5). "[A] conspirator is, in effect, the agent of each of the other co-conspirators during the life of the conspiracy. As such, any statement made or act done by him in furtherance of the general plan and during the life of the conspiracy is admissible against his associates and such declarations may be testified to by third parties as an exception to the hearsay rule." *Manuel v. State*, 85 Md. App. 1, 16 (1990) (cleaned up). When he stated his intention to burn the car, Mr. Williams furthered the conspiracy to commit armed robbery, and his hearsay statements were admissible against the other conspirators, including Mr. Washington, whether or not they said anything in response.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANTS TO PAY COSTS.