Circuit Court for Baltimore City
Case No.: 123125041

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1118

September Term, 2024

ANTHONY WARD, III

v.

STATE OF MARYLAND

Graeff,
Zic,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 14, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Following trial in the Circuit Court for Baltimore City, a jury found Anthony Ward, III, appellant, guilty of attempted first-degree murder, use of a firearm in the commission of a crime of violence, unlawfully wearing, carrying, or transporting a handgun, and discharging a handgun within the City of Baltimore.[1]

On appeal, appellant presents the following questions, which we have re-phrased:

1. Did the circuit court err or abuse its discretion when it instructed the jury with the complete criminal pattern jury instruction MPJI-Cr 3:30, identification of defendant?

2. Was the evidence legally sufficient to support the offense of attempted first-degree murder?[2]

BACKGROUND

On March 31, 2023, at around 11:00 in the morning, following a brief altercation, Korey Minor was shot in the arm near a convenience store in the 4100 block of Frederick Avenue in Baltimore City. Thereafter, Minor walked to a nearby gas station, from which he was driven to Saint Agnes Hospital where his gunshot wounds were treated. Hospital

[1] The court sentenced him to twenty-five years' imprisonment for attempted first-degree murder, a consecutive twelve years' imprisonment for the use of a firearm in the commission of a crime of violence, and a concurrent one year imprisonment for discharging a firearm.

[2] Appellant phrased his questions as follows:

> I. Whether the circuit court erred in instructing the jury that a witness had identified Appellant as the shooter where the sole identification was of Appellant in a nearby store over two hours prior to the shooting.
>
> II. Whether the State sufficiently met its burden of proving attempted murder in the first degree where it produced no evidence of premeditation, no eyewitness identified Appellant as the shooter, and no physical evidence linked Appellant to the crime.

staff called 911 to report a "walk-in gunshot" which prompted Detective Douglas Valderas, of the Baltimore City Police Department, to respond to the hospital to meet with Minor.

After speaking with Minor, Detective Valderas went to the crime scene where he saw a trail of blood on the sidewalk. The police recovered two shell casings from the scene. Detective Valderas determined that some of the nearby businesses had surveillance video recordings relevant to his investigation, and he called Detective Kyle Johnson from the video recovery and cellphone forensics unit of the police department to obtain them. Among other things, Detective Johnson recovered surveillance footage from both inside and outside of a convenience store near where Minor was shot.

Detective Valderas showed the video recordings, and still images taken from them, to Detective Christian Boateng, who, until shortly before appellant's trial, had been a patrol officer assigned to the area of the shooting. Detective Valderas testified on direct examination by the State that, after reviewing the surveillance footage from the convenience store, "it was observed that they captured the actual shooting incident on camera. And then there was the individual that did the shooting [who] was ultimately identified from a camera for the same business." As a result, the police developed appellant as a "person of interest." When asked on cross-examination, "you believe that the person who committed the shooting was in that store two hours earlier, right?" Detective Valderas replied "So we didn't know that until after we pulled the video footage."

On direct examination, Detective Boateng identified appellant, with whom he was previously familiar from the neighborhood, in the surveillance video taken inside the convenience store. In that footage, appellant is seen through the glass door standing outside

of the store wearing a black hooded jacket with a small white emblem on the left breast, black skinny pants, and black and white shoes. He is also seen entering the store.

The convenience store's outside video surveillance cameras captured the following sequence, culminating in the shooting. The outside video shows a person of the same build as appellant, wearing what appears to be the same clothing as appellant, approach Minor and engage in a brief fist fight with him. After some punches are thrown, the shooter steps back, takes a firearm from his jacket pocket, and points it at Minor. The shooter then fires the gun a first time, causing Minor to fall to the ground. While Minor is on the ground, the shooter slowly walks toward him until he is standing directly over him. The shooter then points his firearm at Minor and fires a second shot.

We shall provide additional facts and circumstances as necessary to the resolution of the questions presented in this appeal.

DISCUSSION

I.

Appellant contends that the trial court erred in propounding the entire Maryland Criminal Pattern Jury Instruction on the "Identification of Defendant," MPJI-Cr 3:30.[3] He

[3] At trial, the court read the pattern instruction to the jury, except that it did not include the cross-racial identification portion of the instruction by agreement of the parties. The jury was instructed as follows:

> The State has the burden to prove beyond a reasonable doubt that the offense was committed and the Defendant was the person who committed it. *You have heard evidence about the identification of the Defendant as the person who committed the crime.* In assessing the accuracy and reliability of an identification, you should consider all the circumstances surrounding the

(continued…)

claims that the court should not have read the second sentence of that instruction which states that: "You have heard evidence about the identification of the Defendant as the

> identification. Among the circumstances you should consider are the opportunity of the witness to observe the person who committed the crime, including the length of time the witness observed the person, the distance between the witness and the person, the extent to which the person's features were visible, the lighting conditions at the time of the observation, whether there were any distractions occurring during the observation, any – and any other circumstance that affected the witness's opportunity to observe the person committing the crime, the ability of the witness to observe the person committing the crime. In assessing ability to observe, you should also consider the witness – whether the witness was affected by stress or fright at the time of the observation, personal motivations, biases or prejudices, uncorrected visual defects, fatigue or injury, and drugs or alcohol. Other circumstances surrounding the identification including the length of time between the crime and the identification, the manner in which the Defendant was presented to the witness, whether the identification procedure was suggested and influenced the witness to identify the Defendant, the accuracy of the witness's prior descriptions of the person, the witness's degree of certainty. Certainty may or may not be a reliable indicator of accuracy. A person in good faith may be confident, but mistaken.
>
> Prior identifications. You should consider whether the witness previously identified or failed to identify the Defendant. You should also consider whether any prior identification was consistent or inconsistent with the identification that the witness made at trial.
>
> Prior knowledge of Defendant. You should also consider whether the witness knew the Defendant or had previous exposure to him. The identification of the Defendant by a single eyewitness as the person who committed the crime, if believed beyond a reasonable doubt, can be enough evidence to[] convict the Defendant. However, you should examine the identification of the Defendant with great care.
>
> Finally, you should consider any factors affecting the reliability of the witness's identification, including the witness's credibility or lack of credibility. It is for you to determine the reliability of any identification and give it the weight you deserve – you believe it deserves.

(Emphasis added.)

person who committed the crime."[4]

At trial, when the parties and the trial court were discussing the jury instructions after the close of the presentation of evidence, appellant objected to that sentence on the basis that "nobody identified [appellant] as being the person that committed the crime." Appellant continued:

> He was identified as being the person in the store. And I think the State intends to make a circumstantial argument based on the clothing that they were the same person. But I just – I don't want the jury to hear from the [c]ourt that you've heard evidence that the Defendant's been identified as the person who committed the crime because he hasn't.

On appeal, appellant makes essentially the same argument. According to him, because no witness identified him as the shooter, the inclusion of the objected-to sentence in the jury instruction to the jury amounted to "a conclusion of fact unsupported by the evidence."

Standard of Review

We review challenges to the giving of a jury instruction for abuse of discretion. *Stabb v. State*, 423 Md. 454, 465 (2011) (citing *Gunning v. State*, 347 Md. 332, 351 (1997)). In so doing, we consider whether the requested instruction correctly states the law, whether the requested instruction applied to the facts of the case, and whether other instructions fairly covered the issue. *Id*. (citing *Gunning*, 347 Md. at 348). A particular jury instruction is generated only where "some evidence" has been adduced to support the instruction. *Dykes v. State*, 319 Md. 206, 216-17, 221 (1990). We review *de novo* whether "some

[4] The comment to MPJI-Cr 3:30 states, among other things, that "[t]he layout and phrasing of this instruction was updated in 2025 to improve clarity." As a result, it appears that the second sentence of the instruction was changed and now reads: "You have heard evidence identifying the defendant as the person who committed the crime."

evidence" has been adduced to support an instruction. *Hollins v. State*, 489 Md. 296, 310 (2024). Appellant concedes that the instruction correctly stated the law and that the other instructions did not fairly cover the matter. Thus, the question becomes whether "some evidence" was adduced at trial to support the inclusion of the contested sentence in the pattern instruction.

Analysis

This Court addressed virtually the same issue in *Hammersla v. State*, 184 Md. App. 295 (2009). Hammersla contended that "the trial judge erred in giving the pattern jury instruction on witness identification" because "the instruction erroneously informed the jury that [he] had been identified as the person who committed the crime, when no witness had seen [him] commit any crime." *Id*. at 303.

In *Hammersla*, the victim had been murdered in her home between 7:00 and 8:30 a.m. after her husband had left for work. *Id*. at 298. There were no witnesses to the attack. *Id*. A bloodhound led the police to find the victim's belongings on the edge of a cornfield near railroad tracks not far from the victim's home. *Id*. at 299. At about 8:50 a.m., a witness noticed a person she found suspicious stumbling near the railroad tracks. *Id*. Because she was uneasy with his unusual presence, she noted in writing a detailed description of him which included, *inter alia*, that he was wearing a distinctive flannel jacket. *Id*. at 300. She later identified Hammersla as the person she saw near the tracks. *Id*. Sometime between 6:30 a.m. and 8:20 a.m., four other witnesses had seen someone wearing a flannel jacket walking near the railroad tracks. *Id.* Two of them later identified Hammersla as the person they saw. *Id.* at 301. Later in the day, other witnesses saw Hammersla wearing the flannel

jacket. *Id*. In addition, DNA extracted from blood stains on Hammersla's clothing matched the victim. *Id.* at 302. The jury found him guilty of first-degree murder and related offenses. *Id.* at 297.

At Hammersla's trial, the court instructed the jury consistent with the then pattern instruction on the identification of a defendant as follows:

> You have heard evidence regarding the identification of the Defendant as the person who committed the crime. In this connection, you should consider the witness's opportunity to observe the criminal act and the person committing it, including the length of time the witness had to observe the person committing the crime, the witness's state of mind, and any other circumstances surrounding the event.
>
> You should also consider the witness's certainty or lack of certainty, the accuracy of any prior description, and the witness's credibility or lack of credibility, as well as any other factors surrounding the identification. It is for you to determine the reliability of any identification and give it the weight you believe it deserves.

Id. at 303-04

Hammersla contended on appeal that the trial court erred by including in the instruction the statement "[y]ou have heard evidence regarding the identification of the Defendant as the person who committed the crime" because no one witnessed the crime and therefore no one could identify him as the perpetrator of it.[5] *Id.* at 303.

In declining to address Hammersla's unpreserved contention as plain error, we explained that the court made no error, plain or otherwise, when it included that statement in the instruction because the instruction did not say unequivocally that anyone witnessed

[5] Hammersla's assignment of trial court error regarding the instruction issue was not preserved for appeal.

Hammersla commit the murder, only that there was evidence concerning his identification. *Id*. at 307. Specifically, we said:

> The instruction as given by the judge merely reminded the jury that they had "heard evidence *regarding* the identification of the Defendant as the person who committed the crime." (Emphasis added[.)] In essence, the jurors were instructed they had heard evidence *about* the identification of appellant, not that appellant had been definitively identified as the person who committed the crime. The jury was instructed that it should "consider the witness's opportunity [or the lack thereof] to observe the criminal act and the person committing it." The jury was also specifically advised that it was up to them to "determine the reliability of any identification and give it the weight you believe it deserves." The ultimate determination of whether appellant had been identified as the person who committed the crime beyond a reasonable doubt was properly left to the jury.

Id.

To the extent that that discussion in *Hammersla* may have been *dicta* given that we declined to address the claim as plain error, it was well-reasoned *dicta*, and we find it particularly persuasive under the circumstances of this case.[6]

Appellant's assertion that the court instructed the jury "that a witness had identified [a]ppellant as the shooter" is a wishful interpretation of the court's instruction. The court did not instruct the jury that anyone had specifically identified appellant as the shooter. Rather, the objected-to portion of the instruction told the jury that they had "*heard evidence about* the identification of the Defendant as the person who committed the crime." (Emphasis added.) We do not join appellant's conclusion that that phrase is the equivalent

[6] *See State v. Baby*, 404 Md. 220, 279 (2008) (Raker, J., concurring in part) ("Unlike ordinary *dicta*, judicial *dicta* is, by definition, well-reasoned and stated only after the court has investigated an issue with care. Accordingly, courts afford judicial *dicta* greater deference than ordinary *dicta*, treating judicial *dicta* almost like holdings." (cleaned up)).

of the court's having advised the jury that appellant was the shooter. The instruction itself is otherwise defendant-friendly and instructs the jury to be skeptical of eyewitness identifications and to consider numerous factors that might influence the reliability and accuracy of such an identification.

Even were we not persuaded by *Hammersla*, we would find no error in the trial court's decision to not deviate from the pattern jury instruction in this case as appellant suggests. In sum, appellant contends that there was not "some evidence" adduced at trial to support the inclusion of the statement "[y]ou have heard evidence about the identification of the Defendant as the person who committed the crime" in the pattern instruction. There was "some evidence" that supported that a witness had identified appellant as the perpetrator of the shooting. As our Supreme Court has explained, the "some evidence" threshold is "fairly low." *Hollins*, 489 Md. at 311 (cleaned up). As noted earlier, during appellant's trial, Detective Valderas testified that appellant was developed as a person of interest after the police had concluded that he was the person seen on the video surveillance inside the convenience store and seen shooting the victim from the outside surveillance camera footage. That alone is "some evidence" that appellant was identified as the shooter in this case. As a result, we perceive neither error nor abuse of discretion in the trial court's decision not to alter the pattern jury instruction.

II.

Appellant next contends, for two reasons, that the evidence is legally insufficient to support his convictions. He contends that the evidence is insufficient to show (1) that he

was the person who shot Minor, and (2) the premeditation required for attempted first-degree murder.

Standard of Review

To prevail on a claim that the evidence is legally insufficient to convict, an appellant must show that no rational trier of fact could have found the essential elements of the crime(s) beyond a reasonable doubt when the evidence is viewed in the light most favorable to the State. *State v. Suddith*, 379 Md. 425, 429 (2004); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Cerrato-Molina v. State*, 223 Md. App. 329, 351 (2015). It does not matter whether the evidence presented is of a direct or of a circumstantial nature. *Cerrato-Molina*, 223 Md. App. at 351. Indeed, a conviction may be based "on circumstantial evidence alone." *Jensen v. State*, 127 Md. App. 103, 117 (1999). The fact finder, moreover, is allowed to choose which inference to draw in the face of two rational inferences. *Ross v. State*, 232 Md. App. 72, 98 (2017).

Criminal Agency

As to the sufficiency, *vel non*, of the evidence of appellant's criminal agency, appellant made the following argument to the trial court:

> I'd also ask the [c]ourt to enter a verdict of acquittal to all the remaining counts. And I think [appellant] has not been identified. He's been identified by Detective Boateng as being in the store. And I think we've established that that was about two and a half hours prior to the shooting. Then we have all of this video, continuous video outside and around the store. [Appellant] is not identified as being anywhere near the shooting, other than two and a half hours prior.
>
> Detective Boateng acknowledged that he cannot make an identification of the individual that is conducting the shooting. He cannot say that that's [appellant]. What we're left with, essentially, is there is an article

> of clothing, a pair of sneakers, that may vaguely resemble an article of clothing that was worn by the shooter.

We cannot agree. Detective Boateng, after watching the security surveillance video (State's Exhibit A7) and still photographs taken therefrom (State's exhibits F15, F16, F17, and F18) identified appellant standing outside of a convenience store and then entering the store. The surveillance video was recorded about two hours before the shooting. As noted earlier, in that video and in those still photographs, appellant can be seen wearing a black hooded jacket with a small white emblem on the left breast, black skinny pants, and black and white shoes.

In the surveillance video recording taken from outside the convenience store that shows the area just up the block from the convenience store (State's Exhibit A9), a person wearing a black hooded jacket with a small white emblem on the left breast, black skinny pants, and black and white shoes can be seen fighting with someone, and then twice shooting that person before walking away.

On the record before us, and having reviewed all of the video and photographic evidence introduced, we are satisfied that, when viewing the evidence in the light most favorable to the State, a rational juror could reasonably draw the inference that the person identified by Detective Boateng as appellant is the same person who shot Minor. The evidence of appellant's criminal agency in this case is legally sufficient.

Premeditation

Challenging the sufficiency, *vel non*, of the evidence of the premeditation required for attempted first-degree murder, at trial, appellant made the following argument:

> I make a motion for judgment of acquittal, particularly with respect to attempted first-degree murder. There's no evidence at all of pre-meditation. In fact, it appears, at least from the video evidence, which I think is probably the best evidence on this point, it shows what appears to be kind of a fight that occurred out of, you know, spontaneously. There was no indication of proof of any planning, of any deliberate preparation or the like. So I don't think that this – and beyond that, the injury sustained by Mr. Minor were non-life threatening, it was a shot to his arm. The shooter was at point blank range. I mean, he very easily could've delivered a fatal shot . . . if he had intended to do so.
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> * * *
>
> [F]or those reasons, Your Honor, I don't think the State has established pre-meditation or that this was an attempt to kill. So I would ask the [c]ourt to enter a verdict of acquittal as to . . . attempted murder in the first degree and attempted murder in the second degree.

First-degree murder is "a deliberate, premeditated, and willful killing[.]" Md. Code (2002, 2021 Repl. Vol.), Criminal Law Article § 2-201(a)(1).

> For a killing to be "wil[l]ful" there must be a specific purpose and intent to kill; to be "deliberate" there must be a full and conscious knowledge of the purpose to kill; and to be "premeditated" the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate.

Tichnell v. State, 287 Md. 695, 717 (1980).

"[I]f 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." *Willey v. State*, 328 Md. 126, 133 (1992) (cleaned up). Maryland's Supreme Court has held "that the delay between firing a first and second shot is enough time for reflection and decision to justify a finding of premeditation and deliberation." *Hunt v. State*, 345 Md. 122, 161 (1997) (citing *Wilson v. State*, 261 Md. 551 (1971); *Cummings v. State*, 223 Md. 606 (1960); *Chisley v. State*, 202 Md. 87 (1953)).

The surveillance video recording that captured the broad daylight shooting in this case (State's Exhibit A9), shows appellant approach Minor before the two engage in a brief fist fight. Seconds later, appellant takes a step or two back, draws a pistol, points it at Minor, and fires one shot. This causes Minor to fall away from appellant and on to the ground. While Minor was on the ground rolling around, appellant slowly walks toward him and stands directly over him before pointing the pistol at him and firing a second shot. Before the second shot is fired, Minor can be seen raising his arms, possibly in defense. Viewing this evidence in the light most favorable to the State, we are persuaded that the evidence was sufficient for a rational juror to determine beyond a reasonable doubt that appellant acted with premeditation in attempting to kill Minor.

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