Circuit Court for Baltimore City
Case No. 115041001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1150

September Term, 2017

JEROME WILLIS

v.

STATE OF MARYLAND

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

JJ.

Opinion by Sharer, J.

Filed: September 25, 2019

Jerome Willis was charged by indictment with first-degree murder and a related firearm offense in the Circuit Court for Baltimore City on February 11, 2015. His trial, before a jury, began on February 21, 2017 and, on March 6, 2017, the jury returned guilty verdicts of second-degree murder and use of a firearm in the commission of a crime of violence.[1]

In this appeal, Willis asserts that:

1. He was denied his constitutional right to a speedy trial.
2. The court erred by permitting the State to introduce the prior recorded statement of a witness.
3. The evidence was insufficient to sustain the convictions.

For the reasons we shall discuss, we affirm the judgments of the circuit court.

BACKGROUND

On December 30, 2014, the persons involved in the events surrounding the shooting death of Antoine Pettiford, known as "Black", were gathered at Melba's Place, located at Greenmount Avenue and 32nd Street in Baltimore City. Among those present at one time or another during the evening were Octavia Barnes, Cassandra Williams, a woman known by Barnes as "NooNoo" but who was later identified as Willis' girlfriend April Washington, Alonzo Farley (a Melba's Place security officer), and Willis. Later in the evening, "a gentleman and his lady" left the club with Pettiford following shortly behind. Within minutes shots were heard and Pettiford was found on the street, fatally wounded.

[1] Willis was sentenced to 30 years for second-degree murder; 20 years consecutive for the handgun violation, ten years of which were suspended, but the first five years to be served without the possibility of parole.

We shall provide greater factual detail as necessary to our resolution of the issues presented by Willis.

1. Speedy Trial

Willis' motion for dismissal, based on denial of his speedy trial rights, was denied by the trial court following a hearing on September 14, 2016. That ruling, he posits, was erroneous.

In our review of the denial of a motion to dismiss on speedy trial grounds, we will accept the findings of fact by the motions court unless those findings are clearly erroneous, and then undertake an independent constitutional appraisal. *White v. State*, 223 Md. App. 353, 376 (2015). As the Court of Appeals discussed in *State v. Kanneh*, 403 Md. 678 (2008), our guidepost is *Barker v. Wingo*, 407 U.S. 514 (1972), which established that there are "four factors to be used in determining whether a defendant's right to a speedy trial has been violated: 'Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.'" *Kanneh*, 403 Md. at 688 (quoting *Barker*, 407 U.S. at 530). Because delays in bringing a defendant to trial can be created by the State, by the defense, by the trial court, or by joint action, we assess speedy trial violation claims by applying the *Barker* four-factor balancing test, "in which the conduct of both the prosecution and the defendant are weighed." *Nottingham v. State*, 227 Md. App. 592, 613 (2016) (quoting *Kanneh*, 403 Md. at 687-88).

Length of delay

We measure the length of delay from "the date of arrest or filing of indictment, information, or other formal charges to the date of trial." *Divver v. State*, 356 Md. 379,

388-89 (1999). Willis was arrested on January 19, 2015, indicted on February 11, 2015, and held in custody until his trial began 741 days later – two years and ten days – on February 21, 2017. We find, and the State concedes, that 741 days is a delay of constitutional dimension, thus triggering our review of the *Barker* factors.

Reason for delay

Willis' first scheduled trial date was May 1, 2015. Although we begin the calculation of delay from the date of indictment, February 11, 2015, the delay from that date to the first trial date – 79 days – is not charged to either party. In *Howell v. State*, 87 Md. App. 57, 82 (1991), we noted that the time between the indictment and first trial date is considered time for the "orderly administration of justice," *i.e.*, pre-trial preparation by the parties and the court. That 79-day period is weighted as neutral. *See Malik v. State*, 152 Md. App. 305, 318 (2003) (citing *Dalton v. State*, 87 Md. App. 673, 687 (1991)).

On the initial trial date, May 1, 2015, the State announced that the assigned prosecutor was not available.[2] Trial was rescheduled for July 10, 2015, but prior to trial, was postponed until September 10, 2015, again because the assigned prosecutor was not available. We conclude that those 132 days were chargeable to the State.

[2] Despite some confusion, as articulated on the record at the initial trial date, the Criminal Postponement Form reflects that the court marked both parties as being charged for the delay.

On September 10, 2015, because there was no courtroom available, a postponement of 61 days was ordered until November 13, 2015.[3] That delay is charged to the State but is not weighed heavily. *See Glover v. State*, 368 Md. 211, 226 (2002) (explaining that "[t]he unavailability of a judge [ ] is clearly a neutral reason. While the State will be held accountable for this factor, it will not weigh heavily against the State." (internal citation omitted)).

Trial did not go forward on November 13, 2015, because Willis had, in October, discharged his then-counsel. On November 10, his new counsel requested in advance of the trial date, and was granted, a postponement until January 8, 2016. Those 59 days are chargeable to Willis.

The January 8, 2016 date likewise was passed for a March 7 trial date because the assigned prosecutor was in trial in another case.[4] The 59 days between January 8 and March 7 are chargeable to the State.

On March 7, 2016, the parties represented to the court that each required more time to investigate, as indicated on the court's Criminal Postponement Form. The parties were also in the process of selecting an agreeable date for the trial to be specially set. The court

[3] Because Willis sought and received an advance postponement on November 10, three days from the scheduled trial date of November 13, those three additional days will be charged to the defense and not against the State.

[4] The prosecutor's unavailability for the January 8 trial date was known and disclosed to the court by both parties during the November 10, 2015 hearing. During the January 8 hearing, defense counsel characterized the January date as a "fake date" because Willis' trial would ultimately have to be specially set. In light of this advance understanding by defense counsel, that period of delay will not weigh heavily against the State.

selected September 12 as a tentative trial date, subject to approval by the administrative judge. Counsel agreed to the new trial date and a scheduling order was issued. Those 189 days are neutral.

The next scheduled event was for September 14, 2016, a hearing on Willis' pending motion to dismiss on speedy trial grounds and the State's request for postponement. Following the hearing, Willis' motion was denied, and trial was scheduled for November 2, 2016, 49 days later.[5] We classify those days as we did the time between indictment and the first trial date as time allowing for the orderly administration of justice, *i.e.*, scheduling time.

The case was called for trial on November 3, 2016, but did not go forward because, after *voir dire*, there were not enough qualified jurors to be seated. Trial was rescheduled for December 6, 2016, but again postponed at the request of defense counsel. The period between November 3 and December 6 – 33 days – is chargeable to the State. The period from December 6, 2016, to the ultimate trial date on February 21, 2017 – 77 days – is chargeable to Willis.

Before this Court, Willis and the State place somewhat different interpretations on the causes of delay and reach difference conclusions as to fault.

Willis posits:

> In sum, 136 days or four and one-half months of the delay is solely attributable to the defense. 83 days were neutral administrative delay preceding the first trial date. 186 days were the result of mutual request to

[5] The two days between the September 12 scheduled trial date and the September 14 resolution of the motion to dismiss will also be considered neutral in our speedy trial review.

> postpone. All of the remaining delay, approximately 11 months, was the result of the State's requests to postpone….

He concludes that "[b]ecause much of the pre-trial delay was attributable solely to the State, this second factor of the *Barker v. Wingo* analysis should weigh in Appellant's favor."

Conversely, the State views the delay times under a slightly different light, asserting that "of the roughly 24 months under review, nearly six months are 'neutral,' seven months are lightly weighed against the State, and eleven months are weighed, at least in part, against the defense."

The motions court, after reviewing in some detail, the delays and reasons therefore, opined:

> The length of the delay [is] a little less than 20 months, something on the order of one year, seven months and some days, the length of the delay of almost 20 months is concerning. It is presumptively prejudicial when you look at the authorities. We know that if this were a DUI case or a possession [or] even a distribution case the length of delay might have been classified as inordinate especially if we look at that Divver … case … where a delay of 12 months and 16 days for a so-called relatively run-of-the-mill DUI case in the district court was of uniquely inordinate length.
>
> But here we've got a murder and both parties have identified some of the challenges associated with trying this murder case, which makes it a whole lot more complicated than something that might be characterized as a run-of-the-mill case. But this murder case among any murder cases is not, cannot be classified as less than serious, less than complex.
>
> The cause of the delay, the causes of the delay seem to be pretty well spread out. The critical delay that takes us past the Hicks date is contributable [sic] to the State. Overall, looking at and revisiting the postponement forms as I see them, I don't see anything shocking or untoward in the ordinary process of felony cases in this court.

Although the motions court did not assign fault to each identified period of delay, the court did find that the delay was of constitutional dimension and intimated that the State bore a substantial share of the burden of those delays. We agree. Nonetheless, we conclude that, although the State was accountable for a significant portion of the delays, none would weigh heavily against the State. All were delays that would be expected to occur in the preparation for the trial of a complex homicide prosecution, as this case is.[6]

Assertion of speedy trial rights

"The defendant's assertion of his speedy trial right[ ] … is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 531-32. Both the "'frequency and force'" of the assertion of speedy trial rights, as well as the method, are to be considered and weighed. *State v. Ruben*, 127 Md. App. 430, 443 (1999) (quoting *Barker*, 407 U.S. at 529).

Willis first asserted the right in his opening omnibus motion, filed on March 2, 2015. A later demand was filed on October 13, 2015, by Willis' new trial counsel along with counsel's entry of appearance and several pre-trial omnibus motions.[7] He asserts that he did not "waive his right to be tried within 180 days afforded by Maryland statute and rule[,]" referring to the "Hicks Rule" as enunciated in *State v. Hicks*, 285 Md. 310 (1979)

[6] In our review of the record, we would identify the fault as follows: the State – 285 days; the defense – 136 days; and neutral – 319 days.

[7] Willis' the second speedy trial demand cited the authority of only the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights, with no reference to, or an assertion of, a speedy trial right pursuant to *Hicks*, Rule 4-271, or CP § 6-103.

and formalized in Maryland Code (2001, 2008 Repl. Vol.) Criminal Procedure (CP), § 6-103 and Maryland Rule 4-271.

As to the latter, Willis conflates the 180-day *Hicks* standard with his constitutional speedy trial rights. They are not the same. Not waiving his *Hicks* rights does not amount to an objection grounded in his constitutional speedy trial rights. We said in *Marks v. State*, 84 Md. App. 269, 281 (1990) that an objection under Rule 4-271 does not raise a constitutional speedy trial claim because they are "separate and distinguishable."

Likewise, we do not consider his speedy trial demand, contained in a boiler-plate omnibus motion or his later generic demand to have been made with "frequency" or "force." In reaching that conclusion we also consider, as we have noted, that Willis sought, and was granted, several trial continuances.

In considering the weight to be given Willis' assertion of his speedy trial rights, the motions court observed:

> I'm not intending to suggest that there was any abrogation of any lack of concern for a speedy trial. I just don't see that there was a sense of urgency about the assertion of that right to a speedy trial either by first counsel before the Hicks date and when [the] Hicks date was coming and going, or after the arrival of [new defense counsel].

We agree with the motions court that the record does not support a finding of urgency or extraordinary circumstances in Willis' generic assertion of his speedy trial rights.

Prejudice

Willis correctly points out that "prejudice should be weighed with respect to the three interests that the right to a speedy trial was designed to preserve:" (1) prevention of

oppressive pretrial incarceration; (2) to minimize anxiety and concern; and (3) to limit the possibility of impairment to the defense. *State v. Kanneh, supra*, at 693.

Before the motions court Willis argued only generally that his lengthy period of pretrial incarceration caused prejudice. Counsel offered no specificity as to adverse effects on Willis' health or wellbeing, and no suggestion that his defense was in any way impaired by the destruction of evidence or absence of witnesses. Indeed, the motions court observed that "[o]ther than the assertion of the anxiety and oppression occasioned by incarceration, I am not presented or confronted with anything that I … could identify solidly, clearly as an impairment of the Defense ability to prepare and anticipate witnesses and prepare for trial."

Balancing the factors

While we conclude that the State was a significant contributor to the delays, we do not find the State's action to weigh heavily in our calculation. Moreover, the defense was not without fault in its contribution to the delays. The record does not reveal negligence or bad faith on the part of the State in the delays. In addition to our finding that Willis' assertion of his speedy trial right was not more than generic, it is significant that after those assertions he sought additional postponements. We also conclude that the delays caused no demonstrable prejudice to Willis. Our balancing of the *Barker* factors leads to our conclusion that Willis' constitutional right to a speedy trial has not been violated.

2. Prior inconsistent statements

Alonzo Farley was employed as the security officer at Melba's Place on December 30, 2014, the evening of the shooting of Antoine Pettiford. In the course of the

investigation, Farley gave an initial recorded statement to the police.[8] At trial, the State proffered the recording, and a video of the recording, as a prior inconsistent statement which it intended to introduce pursuant to Rule 5-802.1, which provides, relevant to this appeal:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:
>
> > (a) A statement that is inconsistent with the declarant's testimony, if the statement was (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) reduced to writing and was signed by the declarant; or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement[.]

Rule 5-802.1(a).

Farley testified as a State's witness. He gave, in three instances, answers that the State asserted were inconsistent with the answers he gave to the same, or similar, questions during his recorded statement several weeks after the event. Thus, the State sought to impeach Farley by use of the prior statement. Defense counsel objected on the basis that the State did not sufficiently establish that the variances in Farley's answers rose to the level of inconsistencies that would entitle the State to avail itself of Rule 5-802.1.

After hearing from counsel out of the presence of the jury and reviewing parts of the transcript from Farley's police interview, the court initially agreed with defense counsel

[8] Farley gave two recorded statements to the police, the first of which occurred on January 8, 2015 and the second on January 29, 2015. While recordings of both statements were admitted at trial, Willis only challenges the admission of the recording of Farley's first statement to police.

and sustained the objection, allowing the State the opportunity to establish inconsistencies through further questioning of Farley before entertaining a renewed motion. The State continued to question Farley about the sequence of events and the version he had articulated to the police shortly after the incident. Following the supplemental questioning, the State renewed its motion to introduce the recording of Farley's police interview. The court overruled defense counsel's objection and admitted the prior recording, but did not articulate a precise finding of Rule 5-802.1 inconsistency in Farley's testimony *vis-à-vis* his investigative interview.

On appeal, Willis asserts that Farley's testimony did not establish inconsistencies, and that the court both erred and abused its discretion in its ruling and in admitting the recording. Willis also asserts error in the court's failure to make an explicit finding of inconsistency. Moreover, Willis argues that the error was not harmless.

Because Farley's prior statement to police was recorded the rule is implicated, and admissibility depends on whether the statement was inconsistent with his testimony at trial. *See generally Nance v. State*, 331 Md. 549 (1993). Moreover, while we give the trial court's factual findings deference, "the trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal." *Gordon v. State*, 431 Md. 527, 538 (2013). "'Inconsistency includes both positive contradictions and claimed lapses of memory. When a witness's claim of lack of memory amounts to deliberate evasion, inconsistency is implied.' (Citations omitted)." *Tyler v. State*, 342 Md. 766, 777 (1996) (quoting *Nance*, 331 Md. at 564 n. 5).

Willis calls our attention to three instances in Farley's testimony from which the State asserted prior inconsistent statements.

Willis first asserts that the State "sought to contradict Mr. Farley's testimony that the victim and the gentleman did not leave immediately after he broke up the 'something' that was going on." In his brief, however, Willis relies on a portion of the trial transcript, which reflects what the courtroom recording device picked up from Farley's recorded statement to police when it was played for the jury. However, that portion of the thirdhand recording of Farley's initial statement to police does not accurately reflect Farley's statement to police. The portion of the transcript relied on by Willis reflects that Farley stated: "I'm like, dude, you're with your girl *and then he left*." (Emphasis added). However, in the actual recording of the police interview, Farley stated: "I'm like dude you're with your girl, *enjoy your night*." (Emphasis added). Notwithstanding this discrepancy, at no point in Farley's statement to police did he state that the gentleman immediately left the club after Farley had approached the group.

Next, Willis asserts that the State "sought to contradict Mr. Farley's trial testimony that, when the gentleman and his lady left the club, he did not see where 'Black' went." At trial, Farley confirmed that the "gentleman and his lady" walked to the right, but he was unable to definitively state in which direction "Black" went after leaving the club. In his initial statement to police, Farley, discussing when the "gentleman and his lady" left the club followed by "Black," did not state which direction any of the parties went.

Finally, when asked by the prosecutor at trial if he had told detectives that "this other gentleman and his girl … immediately left the club, going out to look for [Black],"

Farley responded, "I don't recall." Willis asserts that such a statement was never made by Farley to the police.

Farley did not make a claim of lack of memory of the events of December 30, 2014, only of his recollection as to what particular statements he made to police. Therefore, we consider the question on the basis of whether his inconsistencies, if any, were positive contradictions. Farley's testimony came at a trial that was held more than two years after the crime. His testimony continued over two days and its continuity was interrupted by numerous objections, bench conferences, by recesses, and, on one occasion by the court admonishing persons in the gallery. Farley's time in the witness box was not a fluid process of fact-giving. On this record, we hold that the State did not establish that the slight variances in Farley's testimony at trial *vis-à-vis* his recorded statement to police investigators were inconsistent statements that would justify its admissibility as an exception to the hearsay rule. Indeed, in his interview with police, both Farley and the interviewing officer overused "he" and "she" pronouns when referring to multiple persons of the same gender, namely, with Willis and Pettiford (the victim), and with Barnes and Washington (Willis' girlfriend). That constant use of pronouns, rather than given names or nicknames, created a lack of clarity and some confusion as to who specifically was being referred to in various statements. That confusion is apparent in various references at trial as well as on appeal.

Willis makes the final argument that the court further erred by failing "to make the required factual finding" of inconsistencies, citing *Corbett v. State*, 130 Md. App. 408, 426-27 (2000). The State likewise refers us to *Corbett* for the opposite – that the court was

not required to make on the record findings. The issue before us in Corbett was whether the trial court erred in admitting into evidence the prior written and signed statement of the prosecuting witness in a case of alleged child sexual abuse. Indeed, as Willis point out, this Court, (Byrnes, J.) wrote:

> The federal cases hold that trial courts have considerable discretion in determining whether a witness's testimony truly is inconsistent with his prior testimony. We agree that the decision whether a witness's lack of memory is feigned or actual is a demeanor-based credibility finding that is within the sound discretion of the trial court to make. In this case, we are not taking issue with the court's exercise of discretion. Rather, we are confronted with an absence of any finding on the issue. The admissibility of [the declarant's] prior inconsistent statement depended upon a preliminary finding by the court that [his] lack of memory of the events in question was not actual, but a contrivance. The court erred in permitting [the] statement to come into evidence as a prior inconsistent statement without first making a finding on that preliminary, predicate issue.

Corbett, 130 Md. App. at 426-27 (internal citations omitted).

Because the Court's opinion in *Corbett* was predicated on a circumstance in which the declarant claimed a loss of memory it is instructive in the matter before us, but not necessarily controlling, because in this case we consider a situation involving asserted positive contradictions rather than a claim of lack of memory of the event. Nonetheless, in either circumstance the better practice would involve a finding by the trial court that the asserted inconsistent statements were, in fact, inconsistent in a manner contemplated by Rule 5-802.1, thereby justifying their admission.

On this issue, we hold that the initial recorded police statement of Farley, offered by the State as an admissible prior inconsistent statement, was not established by the

evidence to be such and therefore was not admissible under Rule 5-802.1 as an exception to the hearsay rule.

Harmless Error

We next address whether the admission of the video recording of the first police interview with Farley was harmless. "In cases of established error, that error will be deemed harmless if a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Wilder v. State*, 191 Md. App. 319, 369 (2010) (citing *Dorsey v. State*, 276 Md. 638, 659 (1976)).

Willis asserts that the error was not harmless because "the [recorded] statement echoed, emphasized, and bolstered the testimony of the [State's] main witness, who had personal knowledge about the interaction between the gentleman, who was [Willis], and 'Black,' who was the victim." He points to the portion of the recording when Farley described that the victim was "talking to a girl, like he had a little anger,"[9] which Willis posits could have been misconstrued by the jury based on the State's theory that his girlfriend had been arguing with the victim. This, Willis contends, "could have been used by the jury to imply that [he] was angry and intent on doing harm in the time period before the shooting took place."

[9] An independent review of the initial police interview with Farley reveals in that statement that Farley was likely referring to Willis having a discussion with his girlfriend. Farley explained his response to the speaker of the statement "… I'm like dude you're with your girl enjoy your night." The detective then followed up with the question, "So he was having problems with his own girl?" Willis was the only male involved with his girlfriend present.

Willis only challenges the admission of the recording of Farley's initial statement to police on January 8, 2015. However, the State offered, without objection, the second recorded statement made by Farley to police on January 29, 2015. It is in the second statement that Farley stated that the parties all walked to the right after leaving the club. Farley also describes the proximity of the victim to the man and woman as they walked down the street, how far down they all walked, and who the shooter could have been.

On direct examination, Farley was also asked, without objection, to explain the sequence of events as the video surveillance from inside Melba's was played for the jury. Farley identified the man in the white hat on the video, who was leaving the club after he had been approached by Farley while standing with the two women, as the victim and commented "it's like the guys there had some little altercation …." At which point, Farley identified "the lady friend of the other gentleman (Willis)," and confirmed that they did not go to the back of the club but left the club after the victim left. That confirmation, in relation to video surveillance of the sequence of events, contradicted Farley's earlier testimony that they all had stayed in the club after he had approached the victim and the two women.

Similarly, the State asked Farley, when reviewing the video, what he observed when he followed "the gentleman and his lady friend and the victim" out of the club, to which he responded, "That they just all went right." This statement also contradicts his prior testimony that he did not see where the victim went after he left the club.

We cannot find that the admission of Farley's initial police statement as a prior inconsistent statement affected the verdict. The second recorded statement reiterating and

clarifying several of the statements was admitted without objection. Further, the alleged inconsistencies at trial, while not inconsistent with the initial police statement, were established from other evidence admitted without objection. If evidence is admitted in error over objection, but later admitted without objection, the objection to the earlier admission is waived and any error is deemed harmless. *See DeLeon v. State*, 407 Md. 16, 31 (2008) ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection." (citation omitted)). *See also Yates v. State*, 202 Md. App. 700, 709 (2011) (explaining that "[t]his Court and the Court of Appeals have found the erroneous admission of evidence to be harmless if evidence to the same effect was introduced, without objection, at another time during the trial." (collecting cases)).

3. Sufficiency of the evidence

Lastly, Willis argues that the evidence was not sufficient to support the jury's guilty verdicts. He asserts that "the prosecution failed in this case to prove his identity as the person who shot the victim[,]" and that "[t]here was no physical or biological evidence linking [him] to the victim or the crime scene." He argues further that "[n]othing in the testimony of the firearms examiner showed conclusively that a handgun was used in the crime."

The court undertook a commendably thorough review of the evidence and arguments of counsel before denying Willis' motion for judgment of acquittal at the conclusion of the State's case-in-chief. The court acknowledged that the State's evidence was circumstantial, but carefully elaborated the test underlying its finding that the evidence was sufficient to withstand a motion for judgment of acquittal at that stage of the trial.

Willis opted not to testify but offered three witnesses in his defense. The first was a Baltimore City police officer, Detective Jonathan Jones, who testified that he had been asked by Detective Ross to speak with Willis in an attempt to have Willis provide helpful information about what occurred outside of Melba's the night of the shooting. The testimony sought from Jones was an attempt to criticize the interrogation methods utilized by Detective Ross, but it resulted in Jones testifying that he already "knew what he (Willis) had done[,]" and that he was there to find out "[w]hy it was done[.]"

Willis' second witness was a United States Capitol Police officer, Jerry Smith, who was off-duty the early morning of December 30, 2014, and saw the shooting while he was driving in the area. Smith testified that he was driving home late from dinner at a friend's house and that his GPS had directed him to the area of the 3100 block of Greenmount Avenue. He testified that as he approached an intersection, he observed a man, about a quarter of a mile away, standing in the street yelling when another man, in possibly a light-colored hoodie, approached from Smith's right and began shooting at the man in the street. He testified that he was driving towards the shooting, that it occurred across the street from the intersection he was approaching, that he saw the flashes of the shots when they began as he approached the intersection, and that he then immediately made a right turn at the intersection where he called 911 and doubled back.

Following Smith's testimony, Willis briefly re-called Detective Ross to the stand. Through Ross, Willis admitted a photograph into evidence, taken the night of the shooting, of the location of the M&T Bank ATM. He also unsuccessfully attempted to elicit testimony from Ross about "Black's" criminal record.

At the close of all the evidence, Willis renewed his motion for judgment of acquittal, adopting his earlier arguments from the initial motion while also emphasizing his theory that the State identified the wrong suspect. The court then explained its final analysis of the evidence:

> The Court previously denied the motion for judgment of acquittal at the conclusion of the State's case in chief. The Court of course was bound to consider the evidence at that phase in the light most favorable to the non-moving party, the State.
>
> Then, Mr. Willis, here the landscape shifts. The issue is whether a reasonable juror could find beyond a reasonable doubt, as the State alleges, that you committed these crimes. That's essentially an issue for the jury with regard to its function as the fact-finder, the jury sits as the judges of the law.
>
> The jury can afford a lot, totally, none or some weight to the testimony of any witness. And, of course, the jury affords whatever weight it thinks the demonstrative evidence, video and otherwise, should be given, if any.
>
> That's the fact-finding of the jury. There's been a lot of evidence presented in this case presented … both by the State and the Defense. The issue here is not what evidence was put on as must as the facts that the jury must draw from the evidence. Because just because something is admitted in evidence it doesn't make it so. That's the jury's function. Its role is to sit as the fact-finder. The jury will draw the facts out of all of this evidence and it will determine the guilt or innocence of Mr. Willis.
>
> The Court does not invade the province of the jury at this time, because the Court finds that a reasonable fact-finder could find beyond a reasonable doubt that the Defendant committed these crimes as charged. A reasonable fact-finder could, of course, if it affords no weight to the essentially [sic] the witnesses presented by the State with regard to the thoroughness, if any, of the investigation as well as the video evidence both inside Melba's Place and outside, it could find that simply the State has not met its burden of proof.
>
> The Court will not strip the fact-finder or the judges of the fact, the jury, of that function. And for that reason only [sic] the motion of judgment of acquittal is denied….

Evidence is sufficient to support a conviction if, "'after viewing [both direct and circumstantial evidence, and all reasonable inferences drawn therefrom][,] in the light most favorable to the prosecution, [whether] *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Handy v. State*, 201 Md. App. 521, 558 (2011) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The same standard exists in all criminal cases, "regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citing *State v. Smith*, 374 Md. 527, 534 (2003)). That is so because, as we have recognized, "there is no distinction to be given to the weight of circumstantial, as opposed to direct, evidence. A conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence." *Burlas v. State*, 185 Md. App. 559, 569 (2009). *See also State v. Suddith*, 379 Md. 425, 430 (2004) (explaining that "generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." (internal quotation and citation omitted)). The Court of Appeals has cautioned, however, that because "[b]y definition, circumstantial evidence requires the trier of fact to make inferences, … those inferences must have a sounder basis than 'speculation or conjecture.'" *Bible v. State*, 411 Md. 138, 157 (2009) (quoting *Taylor v. State*, 346 Md. 452, 458 (1997)).

Sufficiency – Second Degree Murder

Willis argues that the State "failed to prove either his criminal agency or the intent element of this crime."

The court instructed the jury:

> In order to convict [Willis] of second degree murder the State must prove; 1) that [Willis] caused the death of Antoine Pettiford; and 2) that [Willis] engaged in the deadly conduct either with the intent to kill or with the intent to inflict such serious bodily harm that death would be the likely result.

Willis concedes that he did not specifically argue before the circuit court with the particularity required by Md. Rule 4-324. But, "[he] maintains that the [State] failed to prove all of the elements of the crimes that were submitted to the jury and resulted in convictions." Notwithstanding this failure, we have said, "[i]ntent and premeditation typically must be inferred from the facts and surrounding circumstances." *Handy*, 201 Md. App. at 560. As such, we will consider the issue of intent within the scope of the sufficiency of the evidence of Willis' criminal agency as the shooter.

The jury was presented with video footage from inside and outside of Melba's depicting the interaction between Barnes, NooNoo (Washington), Pettiford, Willis, and Farley. The video footage was accompanied by both Farley's testimony about the events as well as his commentary while the videos were being played. On the video, the jury also saw Black follow Willis and his girlfriend (Washington) out of Melba's, all proceeding in the same direction, followed by Farley's apparent reaction to the sound of the gunshots, which occurred within less than a minute. The State also presented the ATM security camera slide show footage capturing images of a male matching the description of Willis, appearing to wait in a "cut" then begin to cross the street, followed by an image of a car that obstructs the view of the individual, and concluding with images of the victim on the ground in the same area.

The medical examiner testified that the victim had been killed as a result of the six gunshot wounds he had sustained. As the circuit court noted, "not just five times, but even after the fifth time, a sixth time." Evidence of the number of gunshot wounds would support a reasonable inference that there was an intent to kill or the desire to inflict such bodily harm that death would be likely.

Willis' recorded statement to police was also played for the jury, wherein he described the altercation between his girlfriend and Pettiford, expressing his frustration with her for getting involved in other people's business. In Willis' statement he maintained that when he and his girlfriend left the club that night, they went to the left, which was directly contradicted by the video footage taken from outside of Melba's. Further, the jury also heard Willis insist to police that he did not hear the shooting, but later in the interview admitted that he did hear the gunshots.

We emphasize that weighing the credibility of witnesses and resolving conflicts in the evidence are tasks left to the fact-finders. *See Handy*, 201 Md. App. at 559; *Johnson v. State*, 156 Md. App. 694, 714 (2004). As discussed, *supra*, even had the recording of Farley's initial statement to police been excluded, the evidence was sufficient for a reasonable jury to find beyond a reasonable doubt that it was Willis who shot Pettiford on December 30, 2014, and that those gunshot wounds were the cause of his death.

Sufficiency – Firearms Charge[10]

Maryland Code (2002, 2012 Repl. Vol.), § 4-204 of the Criminal Law Article (CL) prohibits the "use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime." CL § 4-204(b). As relevant to the instant case, the statute defines a "firearm" as "a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive[,]" CL § 4-204(a)(1)(i), and includes "an antique firearm, handgun,[11] rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded." CL § 4-204(a)(2).

The Baltimore City Police Department's firearms examiner, Daniel Lamont, was admitted as an expert in the field of firearm identification and comparison, without objection. Lamont testified that the bullet casings collected from the crime scene "were 9 millimeter Luger[,]" and that "they were fired from a weapon that is also caliber 9 millimeter Luger." Later explaining, that "[i]n this case 9 millimeter Lugers would come from a semi-automatic pistol." In response to a question on cross-examination, he explained:

> [A] 9 millimeter is a caliber. There are 9 millimeter revolvers that are actually fairly rare. The majority of guns, a 9 millimeter Ruger [sic] or a semi-automatic weapon, which is a weapon that in firing the weapon when the bullet goes down the barrel of the gun the cartridge case is actually pushed

[10] The State argues that, because Willis did not raise any claim regarding the nature of the weapon used in the shooting of Pettiford, that issue has not been preserved for our review. We shall assume preservation, *arguendo*.

[11] A "handgun" is defined as "a pistol, revolver, or other firearm capable of being concealed on the person." CL § 4-201(c)(1).

> backwards against the breach. The breach opens up and the cartridge case is actually ejected from the gun, … in the process of reloading the gun automatically. So that's the difference between a semi-automatic weapon and a revolver, where a revolver, for lack of a better term, is what you consider the old cowboy guns, that has a cylinder that the cartridge case actually stays inside of the weapon until they are manually removed from it.

Lamont stated further that, without having examined the weapon, he could not be certain that it was a semi-automatic gun, but that "based on the fact that there were cartridge cases found on a crime scene most likely means that they were ejected from a gun."

The statute, in effect at the time of the shooting on December 30, 2014, prohibits the use of a firearm, without limiting it to the use of a handgun. *See* CL 4-204. Lamont's ballistics testimony coupled with the testimony from Willis' witness, Officer Smith, that he saw "the flashes from the gun … [,]" was sufficient evidence from which the jury could reasonably infer, beyond a reasonable doubt, that the weapon used to kill Pettiford was a proscribed firearm.

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