

Circuit Court for Baltimore City  
Case No. 118288004

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1481

September Term, 2019

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DYRON JACKSON, JR.

v.

STATE OF MARYLAND

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Nazarian,  
Shaw Geter,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: August 19, 2020

\*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.

A jury, in the Circuit Court for Baltimore City, convicted Dyron Jackson, appellant, of first-degree assault, use of a handgun in the commission of a felony or crime of violence, wearing, carrying, or transporting a handgun, and possession of a regulated firearm by a prohibited person. The court sentenced Mr. Jackson to a total term of 25 years' imprisonment. In this appeal, Mr. Jackson presents three questions for our review:

1. Did the trial court err in finding that Mr. Jackson did not have standing to challenge the lawfulness of a wiretap that intercepted a telephone conversation in which Mr. Jackson was a party?
2. Did the trial court abuse its discretion in admitting evidence contained in a telephone conversation recorded after Mr. Jackson's arrest?
3. Was the evidence adduced at trial sufficient to sustain the convictions?

For reasons to follow, we hold that, although the trial court erred in finding that Mr. Jackson lacked standing to challenge the wiretap, the court's error was harmless. As to question two, we hold that the trial court did not err in admitting the recording of a telephone conversation that occurred following Mr. Jackson's arrest. Finally, we hold that Mr. Jackson's sufficiency argument was not preserved and that, even if preserved, his argument is without merit. Accordingly, we affirm the judgments of the circuit court.

### **BACKGROUND**

In the evening hours of July 20, 2018, Derrell Coakley was sitting in the driver's seat of a parked vehicle when he observed a group of people standing near where his car was parked. Shortly thereafter, Mr. Coakley moved his vehicle from its parking spot toward the crowd of people. As Mr. Coakley continued driving, shots were fired, and Mr.

Coakley suffered multiple gunshot wounds. Mr. Coakley then drove to the hospital, where he was treated.

Approximately thirty minutes after the shooting, an individual, later identified as Mr. Jackson, placed a telephone call to an individual whose telephone had been wiretapped by the Drug Enforcement Agency subject to a wiretap order issued by a federal district court in an unrelated case. During that call, which was recorded, the individual identified as Mr. Jackson made statements implicating himself in the shooting of Mr. Coakley. That recording was later forwarded to the Baltimore City Police Department. Mr. Jackson was ultimately arrested and charged with attempted murder in the first degree, attempted murder in the second degree, first-degree assault, use of a handgun in the commission of a felony or crime of violence, wearing, carrying, or transporting a handgun, and possession of a regulated firearm by a prohibited person.

### *Motion to Suppress*

Prior to trial, Mr. Jackson filed an omnibus motion to suppress evidence “seized as a result of the illegal interception of wire or oral communications.” Despite that motion, it does not appear from the record that Mr. Jackson was aware of the existence of the telephone recording. Sometime later, the State, as part of its pretrial discovery obligations, made the recording available to Mr. Jackson. Mr. Jackson thereafter filed a “Motion to Dismiss,” claiming that the intercepted communication “was not in compliance” with the Federal and Maryland wiretap statutes.

On the first day of trial, the parties convened in court to discuss pretrial motions. At the outset, the State asked for a postponement because it had not provided defense counsel with the application and order for electronic interception that led to the wiretap that captured the recording of Mr. Jackson’s telephone call. The State’s request was denied. The State then provided that documentation to defense counsel, and the court granted a short continuance so that defense counsel could review the documents.

The following day, the parties returned to court, and the proceedings continued with argument on Mr. Jackson’s preliminary motion regarding the admissibility of the recording. In support of that motion, defense counsel argued that the recording should be excluded because the State had failed to disclose the documents ten days prior to trial, as required by § 2518(9) of the Federal Wiretap Statute.<sup>1</sup> The court ultimately reset the matter so that the parties could brief the issue.

In his brief that followed, Mr. Jackson reiterated his argument regarding the State’s failure to adhere to the ten-day disclosure requirement. Mr. Jackson also argued that the documents provided by the State, namely, the application and court order for the wiretap, were insufficient to establish that the recording was lawfully intercepted.

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<sup>1</sup> Section 2518(9) of Title 18 of the United States Code states, in pertinent part, that:

[t]he contents of any wire, oral, or electronic communication intercepted pursuant to this chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing or other proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved.

*Suppression Hearing*

At the suppression hearing, which was held approximately two months after the initial trial date, defense counsel contended, as he did in his motion, that the ten-day disclosure requirement set forth in § 2518(9) of the Federal Wiretap Statute required strict compliance and was a “condition precedent” to the introduction of the telephone recording involving the person identified as Mr. Jackson. Defense counsel argued that, because the State did not provide the application and order for wiretap until the day of trial, the State was precluded from introducing the telephone recording. Defense counsel further argued that Mr. Jackson suffered prejudice as a result of his continued incarceration pending trial.

As for his remaining arguments regarding the lawfulness of the interception, defense counsel explained that the wiretap that had captured the recording at issue was actually the third of three wiretaps that had been issued by a federal district court in an unrelated case. The first wiretap, defense counsel explained, was issued pursuant to an application and order authorizing electronic surveillance on a telephone number associated with an individual named “Baynard.” Based on surveillance conducted pursuant to that wiretap, a second wiretap was issued pursuant to another application and order authorizing electronic surveillance on a different telephone number associated with an individual named “Moore.” From that, a third application was made, and a third order issued, for electronic surveillance on another telephone number associated with the individual named “Moore.” That third wiretap resulted in the telephone recording involving Mr. Jackson.

Defense counsel argued that, although the State had disclosed the applications and orders for the second and third wiretaps on the telephones associated with Moore, the State had not disclosed the application and order for the original wiretap on the phone associated with Baynard. Defense counsel maintained that, in order for the State to introduce the recording at issue, it needed to prove the legality of the original wiretap order and application, which it failed to do by not producing said documents. Regarding the documents that were provided, defense counsel asserted that the applications and orders for the second and third wiretap were insufficient to permit Mr. Jackson, as an aggrieved party, to challenge the lawfulness of the interception. Defense counsel noted that he had not been provided any “logs” or other details of the interception, and, as a result, he was unable to mount an adequate challenge to the admission of the interception.

The State responded that it could not disclose the documents any sooner because the State had not received the documents from the United States government. The State maintained that the documents were disclosed in a timely fashion once they were in the State’s possession. The State also maintained that, given the trial court’s decision to continue trial for two months after the documents were disclosed, Mr. Jackson had ample time to prepare any motion to suppress. As to defense counsel’s argument regarding the legality of the preceding wiretaps, the State asserted that, because Mr. Jackson was neither the target of any of those wiretaps nor captured in any recording as a result of those wiretaps, he did not have standing to challenge those wiretaps.

The trial court ultimately denied Mr. Jackson’s motion. In so doing, the court found that the State had made a good-faith attempt at complying with the Federal Wiretap Statute and that, under the circumstances, Mr. Jackson had adequate time to prepare his motion to suppress the recording. The court also found that defense counsel’s claims regarding the lawfulness of the first and second wiretaps were “based on conjecture” and did not amount to “anything more than speculation.” Finally, the court found that because Mr. Jackson was not the focus of the wiretaps, “any motion to suppress the statement would be denied and any attempt to challenge the underlying nature of the wiretap will also be denied for failure to have standing to assert any privacy interest in that information that was captured.”

### *Trial*

At trial, the victim, Mr. Coakley, testified that, at approximately 7:00 p.m. on the day of the shooting, he was sitting in the driver’s seat of his vehicle, a Honda Accord, when he observed a group of people. Mr. Coakley testified that, as he drove past the crowd of people, he was struck multiple times by gunfire. Mr. Coakley did not identify the person who fired the shots. Mr. Coakley testified that he was good friends with Mr. Jackson’s younger brother; that he had known Mr. Jackson for approximately ten years; and that, while growing up, he had spent time at Mr. Jackson’s home.

Officer Kevin Davis of the Maryland Transportation Authority testified that, at the time of the shooting, he was part of a Drug Enforcement Agency Task Force that was involved in an investigation of drug activity in Baltimore. Officer Davis testified that his investigation included intercepting telephone calls pursuant to a federal wiretap order.

Officer Davis testified that, on the day of the shooting, the wiretap he was monitoring recorded a telephone conversation between the target of the wiretap, Sean Moore, and another individual, whom Officer Davis later identified through telephone records as Mr. Jackson. Officer Davis testified that the conversation occurred at approximately 8:00 p.m. on the day of the shooting.

During that conversation, which was played for the jury, the following transpired:

MR. JACKSON: Yo just slung that bitch.

MR. MOORE: For real?

MR. JACKSON: Yeah, I flipped that bitch.

MR. MOORE: What did – you slung a bitch and did what?

MR. JACKSON: Cuz, he was sitting on us. We ain't even know. I seen a car. I'm like, "What the fuck?" I'm like, "Yo, who the fuck is that Honda down there?" And they was like, "We don't know, bro." That bitch was sitting there for like 20 minutes, man. I just pulled up. You feel me?

MR. MOORE: Uh-huh.

MR. JACKSON: So I grabbed the joint and was about to walk towards the car. The car assed out, you feel me, assed out towards me. Like, assed out towards where we were standing out. You feel me? Like, pulled towards us. Passed (indiscernible) come, man. Man, I aired that bitch out.

Baltimore City Police Detective Brian Coffin testified that he investigated the shooting and that, during his investigation, he received the recording of the telephone call between Mr. Jackson and Mr. Moore. Detective Coffin testified that he then arrested Mr.



Jackson and interrogated him for “about an hour” at the police station. During that interrogation, Mr. Jackson told Detective Coffin that his mother lived a few blocks away from where the shooting occurred. Mr. Jackson also stated that he had never seen Mr. Coakley before.

The State then re-played the recording of the conversation between Mr. Jackson and Mr. Moore. Detective Coffin testified that he recognized Mr. Jackson’s voice and that Mr. Jackson was the individual “describing the incident.” Detective Coffin also testified that the term “joint” was slang for a firearm and that the term “slinging” was slang for an act of shooting violence.

Dennis Stankiewicz, an “analyst,” testified that, while performing his duties as an analyst, he received a “request to search for captured phone calls.”<sup>2</sup> Mr. Stankiewicz testified that that request was “based off an identification number” associated with Mr. Jackson. The State then played one of those calls, which was placed on October 7, 2018, from the identification number associated with Mr. Jackson. During that call, the person using Mr. Jackson’s identification number stated: “The whole time they did grab me for that shit, but they grabbed me on yo, on yo’s shit, man . . . . For that shit that happened up there . . . . They got that shit – it was a phone – it was a phone conversation, wiretap.”

At the conclusion of the State’s case-in-chief, defense counsel moved for judgment of acquittal, arguing that “this is a first-degree assault case” and that “the first two counts,

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<sup>2</sup> Mr. Stankiewicz’s complete title was “intelligence analyst for the Department of Public Safety and Correctional Services,” and the captured phone calls were made to and from a correctional institute. Prior to Mr. Stankiewicz’s testimony, the trial court precluded the State from introducing that evidence.

the attempted murder counts should be taken from the jury” because the injuries to the victim “were not of a severe nature.” The trial court denied the motion.

The jury ultimately convicted Mr. Jackson of first-degree assault, use of a handgun in the commission of a felony or crime of violence, wearing, carrying, or transporting a handgun, and possession of a regulated firearm by a prohibited person. The jury acquitted Mr. Jackson of attempted murder in the first degree and attempted murder in the second degree.

## DISCUSSION

### I.

Mr. Jackson first contends that the trial court erred in denying his motion to suppress the intercepted telephone call on the grounds that he lacked standing to mount such a challenge. Mr. Jackson argues that, as a party to the telephone conversation, he did have standing to contest the legality of the wiretap. Mr. Jackson maintains, therefore, that “reversal is required, along with suppression of the recorded conversation.”

“In reviewing the denial of a motion to suppress evidence . . . we look only to the record of the suppression hearing and do not consider any evidence adduced at trial.” *Daniels v. State*, 172 Md. App. 75, 87 (2006). “[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party.” *Davis v. State*, 426 Md. 211, 219 (2012). “We accept the trial court’s factual findings unless they are clearly erroneous, but we review *de*

*novo* the court’s application of the law to its findings of fact.” *Pacheco v. State*, 465 Md. 311, 319 (2019) (citations and quotations omitted).

We hold that, although the trial court did err in finding that Mr. Jackson lacked standing, that error was harmless and, consequently, reversal is not warranted. Indeed, the Federal and Maryland statutory statutes governing the interception of telephone conversations permit any “aggrieved person” to challenge the admission of the interception on certain enumerated grounds, and both statutes define “aggrieved person” to include any person who was a party to the intercepted communication. *See* 18 U.S.C. §§ 2510(11) and 2518(10); Md. Code (2013, Repl. Vol.), Cts. & Jud. Proc. §§ 10-401(1) and 10-408(i)(1). Mr. Jackson, as a party to the recorded conversation at issue, met the statutory definition of aggrieved person and thus had standing to challenge the admission of the recording.

Nevertheless, the trial court’s error does not require reversal. The record makes plain that the trial court did not deny Mr. Jackson’s suppression motion solely, or even primarily, on standing grounds. Rather, the court’s finding that Mr. Jackson was not an “aggrieved person” was one of several findings that the court cited in denying Mr. Jackson’s motion.

More to the point, the court addressed, considered, and ultimately rejected all of defense counsel’s arguments in support of his motion. Specifically, the court found that the State made a good-faith attempt at complying with the ten-day requirement contained in the Federal Wiretap Statute and that Mr. Jackson was not prejudiced by the State’s failure to strictly comply with that time requirement. The court also found that defense counsel’s

alternative argument regarding his ability to challenge the lawfulness of the underlying wiretaps was “based on conjecture” and did not amount to “anything more than speculation.” Mr. Jackson does not challenge those findings in this appeal, nor does he offer any argument as to why the intercepted communication should have been suppressed.

In short, despite the court’s erroneous legal conclusion regarding his lack of standing, Mr. Jackson was permitted to litigate his suppression motion, and the court decided the motion on the merits. *See Bates v. State*, 64 Md. App. 279, 288 (1985) (noting that a defendant’s success “on the threshold issue of standing . . . simply entitles him to have [the] merits litigated.”). Thus, the court’s error was harmless, as it had no discernible effect on the outcome of Mr. Jackson’s motion. *See Jones v. State*, 139 Md. App. 212, 226-29 (2001) (holding that the court’s erroneous allocation of burdens during suppression hearing was harmless where the misallocation had no effect on the court’s consideration of the motion to suppress).

## II.

Mr. Jackson next claims that the trial court erred in admitting the recording of the telephone call that was placed on October 7, 2018, from the identification number associated with Mr. Jackson. Mr. Jackson argues that the evidence was not relevant because he was never identified as being the person who placed the call.

Evidence is relevant if it makes “the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Md. Rule 5-401. Evidence that is relevant is generally admissible; evidence

that is not relevant is not admissible. Md. Rule 5-402. Establishing relevancy “is a very low bar to meet.” *Williams v. State*, 457 Md. 551, 564 (2018). We review the court’s determination of relevancy under a *de novo* standard. *State v. Simms*, 420 Md. 705, 725 (2011).

We hold that the recording was relevant. Although Mr. Jackson was never positively identified as the person speaking in the recording, the State presented evidence that the phone call was placed from an identification number associated with Mr. Jackson. Moreover, when the recording was played, the jury had already heard the recording of the intercepted call from the wiretap, and Detective Coffin had already identified Mr. Jackson’s voice in that recording. From that, a reasonable inference could be drawn that Mr. Jackson made the call and that his voice matched the voice on the recording. *See Thomas v. State*, 372 Md. 342, 352 (2002) (noting that relevance may be established by inference). Given that the person in the recording made statements that could reasonably be construed as being related to the crime, the recording made the existence of a fact in consequence, namely, Mr. Jackson’s guilt, more probable than it would have been without the evidence. Therefore, the recording was relevant.

### III.

Mr. Jackson’s final contention is that the evidence adduced at trial was insufficient to sustain his convictions of first-degree assault, use of a handgun in the commission of a felony or crime of violence, wearing, carrying, or transporting a handgun, and possession of a regulated firearm by a prohibited person. Mr. Jackson argues that no one identified

him as the shooter, that no gun was ever recovered, and that no physical evidence was presented linking him to the crime. Mr. Jackson maintains, therefore, that the State failed to prove his criminal agency beyond a reasonable doubt.

We hold that Mr. Jackson’s argument is unpreserved. “Maryland Rule 4-324(a) requires that, as a prerequisite for appellate review of the sufficiency of the evidence, [an] appellant move for a judgment of acquittal, specifying the grounds for the motion.” *Whiting v. State*, 160 Md. App. 285, 308 (2004). “The language of the rule is mandatory, and review of a claim of insufficiency is available only for the reasons given by [the] appellant in his motion for judgment of acquittal.” *Id.* “Grounds that are not raised in support of a motion for judgment of acquittal at trial may not be raised on appeal.” *Jones v. State*, 213 Md. App. 208, 215 (2013).

When Mr. Jackson moved for judgment of acquittal at trial, he argued that “this is a first-degree assault case” and that “the first two counts, the attempted murder counts should be taken from the jury” because the injuries to the victim “were not of a severe nature.” Mr. Jackson did not argue, as he does here, that the evidence was insufficient because the State failed prove his criminal agency as the shooter. Accordingly, that issue was not preserved for our review.

Assuming, *arguendo*, that the issue was preserved, we conclude that Mr. Jackson’s arguments are without merit. “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) (citing *State v. Coleman*, 423 Md. 666, 672 (2011)). That 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). Moreover, “the limited question before an appellate court 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.” *Darling v. State*, 232 Md. App. 430, 465 (2017) (citations and quotations 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 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). Further, “[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).

Here, the evidence adduced at trial, when viewed in a light most favorable to the State, established that Mr. Coakley was shot while driving his Honda Accord a few blocks away from Mr. Jackson’s mother’s house. Approximately one hour later, Mr. Jackson was involved in a telephone conversation, which was recorded pursuant to a wiretap. In that conversation, which was played for the jury, Mr. Jackson stated that he was “just sitting up there at [his] mother’s” when he saw a “Honda” that had been “sitting there for like 20 minutes.” Mr. Jackson also stated that he “grabbed the joint” and “slung that bitch.”

Detective Coffin testified that “joint” was a slang term for a firearm and “slinging” was a slang term for a shooting. Detective Coffin also testified that Mr. Jackson had admitted to being near his mother’s house on the day of the shooting. Following his arrest, Mr. Jackson was involved in another recorded conversation, which was also played for the jury. During that call, Mr. Jackson referenced the phone conversation that had previously been intercepted by the wiretap.

Based on that evidence, a reasonable factfinder could have found beyond a reasonable doubt that Mr. Jackson was the person who shot Mr. Coakley. Accordingly, the evidence was sufficient to sustain the convictions.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**