

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0631

September Term, 2015

KASHARRAH GILMORE

v.

STATE OF MARYLAND

Meredith,
Friedman,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: June 10, 2016

*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.

Appellant, Kasharrah Gilmore, was convicted by a jury in the Circuit Court for Prince George's County of attempted robbery with a dangerous weapon, attempted robbery, assault in the first degree, assault in the second degree, and conspiracy to commit assault in the second degree. She was tried jointly with her alleged co-principal, Shahid Turner, who was also convicted. Gilmore was sentenced to ten years' imprisonment, with all but four years suspended. Upon release she was to be placed on two years of supervised probation.

This appellant presents only one question for review, namely, whether the evidence was sufficient to sustain each conviction. We answer, "yes."

Facts and Procedural History

The offenses occurred about 3:00 a.m. on Wednesday, July 30, 2014. The victim, Robert Anagho, age forty at the time of trial, had met Gilmore, then age twenty-three, a few weeks previously at George Washington University. They had spent part of the day of the 29th together. Anagho learned of a birthday party that evening for a friend of his. Gilmore accepted Anagho's invitation to attend it with him. The two went to a Best Buy Store to purchase a phone as a birthday gift, but none was satisfactory. Anagho had between \$1,800 and \$2,000 in his pocket, in one-hundred dollar bills, but he did not produce any money at the store.

After attending the birthday party, Gilmore suggested that they go to the casino at Arundel Mills Mall. The couple arrived there after midnight in Anagho's Honda Accord. Anagho took the roll of currency out of his pocket, while Gilmore was standing with him, in order to purchase slot machine tokens for them with one of the bills.

At some point, Gilmore went to the ladies room while Anagho played the slot machines. She was in there "for a longer time" than "a couple of minutes." When Gilmore exited the ladies room, she was talking on her cell phone. As she approached Anagho, she hung up and said, "Let's go home." It was then about 2:00 a.m.

On the ride back to Gilmore's home on Evans Trail in Beltsville, she was talking on the phone and then texting. Anagho asked whom she was texting. The reply was her brother, who she said was in the hospital. Anagho knew that Gilmore had a sister, but he did not know of any brother.

When they arrived at Gilmore's home and while the car was stopped, Anagho saw a stranger, later identified as Turner, approaching the Accord from the rear. Not knowing what the man was going to do, Anagho "decided to take off." When he "pulled off, she stopped [Anagho] and said, 'don't move. Don't go. Let's help him.'" Anagho said that it was between 2:00 and 3:00 a.m. and he did not know the person. But Gilmore said, "Let's help him," so Anagho stopped the car. He did not back up.

Anagho remained seated in the car, with the driver's seat window partially open. The man approached on the driver's side. Anagho asked, "How can I help you?" The man said he needed to make a telephone call. He told the couple the number which Gilmore dialed, with the phone on speaker. The number was not in service. At that, Anagho again "took off." He testified, "Ms. Gilmore keep telling me, let's help him." He proposed dropping Gilmore off at her father's or her sister's, but she insisted that she wanted to go home.

Anagho returned to where he had stopped originally and had been approached by the stranger. Gilmore exited the car and stood there, holding the passenger door open, just talking, for about one minute. Then, Anagho saw the same man coming again. He made no attempt to take Gilmore's purse. The man jumped into the car through the open passenger door. Anagho testified, "He say, give me the money. Give me all the money. Give me the money."

The man stabbed Anagho with a knife. First, he stabbed Anagho in the hand, and then in the stomach. The victim was stabbed a total of five times. He testified:

"I went to grab him. You know, I held him. Now I started to get his hand with the knife, and that's when I bit his hand. Then my tooth came out. I bit his hand, then the knife break. ...

"So when the knife break now, then he took off."

While Anagho and the assailant struggled, the car was rolling, until it hit a tree and was damaged. Anagho, however, was able to drive his car to a nearby firehouse, accompanied by Gilmore. During that trip, the assailant's broken knife was on the floor of the Accord, on the front passenger side. The victim never saw the knife again.

Gilmore gave a written statement to a detective at the firehouse. Another detective had her come to the police station, as a witness, on July 30 or August 1. She had her cell phone with her. The officer requested permission to search it. Initially, she declined, but then assented. The officer left to get a consent form, leaving the room for three to four minutes. When he returned, an alert on the phone said there was no SIM card. Examination of the phone revealed that the SIM card had been broken. The effect was that one could not obtain call records or text messages, or contacts or "anything," said the detective.

Turner testified. He acknowledged that he had known Gilmore "a while" and that they were boyfriend and girlfriend. He also admitted that Gilmore had texted him late on the night of July 29, 2014. After 1:00 a.m. on the morning of July 30, 2014, Gilmore had texted or telephoned him again.

At the close of all the evidence, Gilmore moved for a judgment of acquittal. As to Count I (attempted robbery with a dangerous weapon), she argued that she had no weapon and did not attempt to take anything from the victim. Appellant did not specifically challenge the evidence in support of Count II (attempted robbery), but we shall consider that a part of the grounds submitted in support of the motion as to Count I apply to Count II as well. Gilmore argued for a judgment of acquittal on Count III (assault in the first degree) because the evidence showed that she simply stood nearby during the assault. Although no motion was directed to Count IV (assault in the second degree), we shall consider the sufficiency issue preserved, on the same rationale we applied to Count II. Counts V through VII charged conspiracy, respectively to commit robbery with a dangerous weapon and to commit assaults in the first and second degrees.

The court denied the acquittal motion on the ground of accomplice liability as to Counts I through IV. It rejected Gilmore's contention that there was insufficient evidence of conspiracy. The jury found appellant guilty on all counts, except conspiracy to commit robbery with a dangerous weapon and conspiracy to commit assault in the first degree.

After sentencing, this appeal was noted.¹

¹The sentences on Counts II and IV were merged into those on Counts I and III, which are concurrent.

Discussion

The State proved that the co-defendant, Turner, threatened Anagho with a knife, demanded "the" money, and stabbed him repeatedly, before fleeing without taking any of the victim's property. The evidence was also sufficient to permit the jury to find that Gilmore was an accomplice to the crimes charged in Counts I through IV. The court correctly instructed the jury on the law of accomplice liability, as follows:

"The defendant may be guilty of armed robbery, attempted robbery, first degree assault and second degree assault as an accomplice even though the defendant did not personally commit the acts that constitute that crime. In order to convict the defendant of attempted armed robbery, attempted robbery, first degree assault and second degree assault as an accomplice, the State must prove that the attempted armed robbery, attempted robbery, first degree assault and second degree assault occurred, and that the defendant, with the intent to make that crime happen, knowingly aided, counseled, commanded or encouraged the commission of the crime or communicated to the primary actor in the crime that he or she was ready, willing and able to lend support if needed.

"The mere presence of the defendant at the time and place of the commission of the crime is not enough to prove that the defendant is an accomplice. If presence at the scene of the crime is proven, that fact may be considered along with all of the surrounding circumstances in determining whether the defendant intended to and was willing to aid the primary actor – for example, by standing as a lookout to warn the primary actor of danger – and whether the defendant communicated that willingness to the primary actor."

Gilmore took no exception to this instruction. It is essentially Maryland Criminal Pattern Jury Instruction 6:00.

The jury could find that it was no coincidence that Turner was at Gilmore's home at about three o'clock in the morning, armed with a knife and awaiting the arrival of Gilmore and Anagho, for the purpose of demanding "the money" from Anagho. The reasonable

juror of *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S. Ct. 2781, 2788-89 (1979), could easily infer from all of the evidence that Gilmore had communicated with her boyfriend, Turner, from the casino, alerting him to the large sum of cash that Anagho was carrying, and arranging for a robbery outside of her home. Having completed the arrangement, Gilmore wanted to leave the casino immediately. It was also inferable that appellant's texting to her "brother" during the drive to Beltsville was to confirm that Turner was in place.

The inference of guilt becomes stronger once one considers what transpired after the couple arrived on Evans Trail. Anagho, apprehensive of the stranger approaching on foot, drove away but Gilmore induced him to stop. (How could Turner otherwise overtake, on foot, a fleeing automobile?). Once Anagho, through the partially open window on the driver's side of his car, learned that the supposed purpose for the stranger's presence was to reach a telephone number that was not in service, he "took off" again. But, Gilmore rejected Anagho's offers to take her to her father's or her sister's and insisted that he return to her home. There, Gilmore stalled Anagho's departure, giving Turner time to get back to her home and keeping the passenger door open thereby allowing Turner to jump into the car, assault Anagho, and attempt the robbery.

Under this analysis of the evidence, Gilmore was a principal in the second degree to the assault and attempted robbery perpetrated by Turner. With a limited exception not applicable here, "the distinction between an accessory before the fact and a principal [has been] abrogated." Maryland Code (2001, 2008 Repl. Vol.), § 4-204(b)(1) of the Criminal

Procedure Article (CP). Nevertheless, those terms retain "their judicially determined meanings." CP § 4-204(a).

"An accomplice is a person who, as a result of his or her status as a party to an offense, is criminally responsible for a crime committed by another. See L. Hocheimer, *Crimes and Criminal Procedure* § 21 at 24 (2d ed. 1902); 2 W. LaFave & A. Scott, Jr., [*Substantive Criminal Law*] § 6.7 at 136 [(1986)]; W. Clark & W. Marshall, [*Law of Crimes*] § 8.00 at 505 [(1958)]; 1 Wharton, [*Criminal Law*] § 38 at 191 [(14th ed. 1978)]. This responsibility, known as accomplice liability, takes two forms: (1) responsibility for the planned, or principal offense (or offenses), and (2) responsibility for other criminal acts incidental to the commission of the principal offense. W. Clark & W. Marshall, *supra*, § 8.08 at 531. In order to establish complicity for the principal offense, the State must prove that the accused participated in the offense either as a principal in the second degree (aider and abettor) or as an accessory before the fact (inciter). *Id.*"

Sheppard v. State, 312 Md. 118, 122, 538 A.2d 773, 775 (1988) (footnote omitted). Here, Gilmore was both an inciter, in that she targeted the victim, and an aider and abettor, by inducing the victim to return to the place where the crimes were committed and facilitating the crimes by keeping the car door open for the first degree principal.

As to the conspiracy conviction, appellant recognizes that

"[a] criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The essence of a criminal conspiracy is an unlawful agreement. The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design."

Mitchell v. State, 363 Md. 130, 145, 767 A.2d 844, 852 (2001) (quoting *Townes v. State*, 314 Md. 71, 75, 548 A.2d 832, 834 (1988)). Here, the offense was consummated when Gilmore proposed that she would have Anagho bring her back to her home, where Turner was to relieve the victim of his bankroll by, at least, threat of force and Turner agreed.

Gilmore argues that "[i]f the jury, as fact finders, believed the evidence established [that she] was in some way working with Mr. Turner to commit these crimes, they would have found her guilty of the conspiracy to commit armed robbery and first degree assault." Brief of Appellant Kasharrah Gilmore at 14. This, she submits, shows that only association was established, not criminal conduct.

We do not interpret appellant's submission to be that legally inconsistent verdicts were rendered, because Gilmore did not object "while the trial court ha[d] an opportunity to remedy the error," that is, before the verdicts are "final and the jury is discharged." *Martin v. State*, 218 Md. App. 1, 40, 96 A.3d 765, 788 (2014) (quoting *Tate v. State*, 182 Md. App. 114, 136, 957 A.2d 640, 653, *cert. denied*, 406 Md. 747, 962 A.2d 373 (2008)). Further, we see no inconsistency in the sense that there factually could be no finding of conspiracy to commit assault in the second degree.

An element of assault in the first degree, that distinguishes it from assault in the second degree, is "intentionally caus[ing] or attempt[ing] to cause serious physical injury to another." Maryland Code (2002, 2012 Repl. Vol.), § 3-202(a)(1) of the Criminal Law Article (CL). Assault in the second degree is any other common law assault. CL § 3-203.

Here, the jury could have given Gilmore the benefit of lenity. They may not have unanimously agreed that Gilmore proposed a robbery that would involve a dangerous weapon or serious physical injury but could have unanimously concluded that she intended for no more serious a crime than assault in the second degree.

For all these reasons, we affirm.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED.**

**COSTS TO BE PAID BY THE
APPELLANT.**