Circuit Court for Baltimore County
Case No. 03-K-13-002408

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 402

September Term, 2015

DEONTE S. ROBINSON

v.

STATE OF MARYLAND

Meredith,
Leahy,
Beachley

JJ.

Opinion by Leahy, J.

Filed: September 8, 2017

A jury in the Circuit Court for Baltimore County convicted Deonte Robinson, ("Appellant"), of first-degree assault and conspiracy to distribute a controlled dangerous substance—marijuana. Appellant was sentenced to a total of 30 years' imprisonment. In this appeal, Appellant presents the following questions for our review, which we have rephrased and reordered:

1. Did the circuit court err in denying the motion to suppress a pretrial identification of Appellant?

2. Did the trial court err by admitting autopsy photographs of the victim?

3. Was the evidence sufficient to sustain Appellant's convictions?

On the first question, we do not discern any improper procedure in the pretrial identification of Appellant and hold that the suppression court's denial of Appellant's motion to suppress was not erroneous. On the second question, we hold that the photographs were relevant, and that the trial court did not abuse its discretion by admitting the photographs at trial. And finally, we hold that there was sufficient evidence presented at trial to sustain Appellant's convictions of first-degree assault and conspiracy to distribute marijuana. Accordingly, we affirm the conviction and the judgments of the circuit court.

BACKGROUND

A. Pre-trial Motions

Motion to Suppress

Prior to trial, defense counsel sought to exclude Keesha Marshall's photographic identification of Appellant (and his co-defendant, Kenneth Johnson) as impermissibly suggestive. At the suppression hearing, held on February 4, 2014, Ms. Marshall testified

about the shooting that occurred on November 25, 2012. She testified that she knew Appellant's co-defendant, Mr. Johnson, but had not met Appellant before around 5:00 p.m. on the evening of the shooting. According to Ms. Marshall, she was with Appellant for "[n]o more than an hour, hour and a half" that night, after the two met up at a New York Fried Chicken in a shopping center off of Hillendale Road. They made eye contact when they met (although were not introduced by name); Appellant was wearing a black hoodie, jeans, and a black beanie on his head. From there, Marshall drove Appellant and Johnson in her car to buy drugs from her acquaintance's apartment, where the shooting would occur. On the drive back from the apartment, Appellant and Johnson asked Ms. Marshall if she could be trusted with the secret of what happened at the apartment. Appellant was driving, but because Johnson and Appellant questioned her loyalty, they changed drivers. Eventually they told Marshall to get out on the side of the road and took off with her car.

Then, according to Ms. Marshall's testimony, the police interviewed her on January 14 and 22, 2013. Ms. Marshall testified that the police picked her up for her first interview because her car had been impounded—after she reported it stolen on the night of November 25. She had not yet been charged with anything at this point, but the detectives made clear that they knew she had fabricated the story about her car being stolen, and that she was involved in the murder in some way. According to Ms. Marshall, it was her understanding that if she participated in the photo array, the police would release her car from impound.

The police presented Ms. Marshall with a photo array and asked her to identify anyone she recognized from photographs of potential suspects. When asked at the motions

hearing who she identified, Ms. Marshall responded, "I identified the two co-defendants that are sitting here." During direct examination, she indicated that both co-defendants were in the same set of photos, and that she was able to identify Appellant as the shooter because in his photo he was wearing the "exact same outfit from head to toe" as he did the night of the shooting.

On cross examination, Ms. Marshall testified that during her January 14 interview, she gave the police a description of Johnson, her coworker at Taco Bell who contacted her looking for a connection to a drug dealer. She said that eventually the police showed her a photo of Johnson, as well as "plenty" of other photos, including of "730 Boss" and some other people Ms. Marshall did not recognize. When asked about the order in which the police showed Ms. Marshall the photos, she responded that she thought the photo of Johnson was "third or fourth." She elaborated: "I think the first photo was 730 Boss. A second photo was somebody I couldn't identify with. I think the third photo was the victim, and then the fourth photo was Johnson." She explained that when the detectives showed her the picture of Johnson, "[i]t was in a pile of pictures but only one picture of [Johnson]." She testified that she already knew his name from working with him, and wrote Johnson's name along with the date and time on the picture she identified as his.

Counsel's questions then returned to the night of November 24, and Ms. Marshall testified that she was within five feet of Appellant when they met and that she got a clear view of him. She was with him until the drive back from the "incident" and the apartment, at which point Appellant and Johnson had her get out and walk because, according to Ms.

Marshall, "they didn't know if they could trust me, trust my word, and they fe[lt] like they needed to buy time."

When detectives asked Ms. Marshall to take a second trip to the police station, she testified that she drove herself now that she had her car back. The detectives informed her when she got there "that they might have . . . a picture of the shooter, because I couldn't, you know, I couldn't identify him or give a name for him or anything like that. So they wanted me to . . . look at more pictures, so that, just to see if I could point out . . . whoever the shooter was." She testified that detectives showed her a group of six pictures, one at a time. One of the pictures was of Appellant, who she identified as the shooter, then initialed and dated the photo and wrote "shooter" on it. When asked, Ms. Marshall stated that detectives did not show her Appellant's picture first among the six they presented her.

At the conclusion of the hearing, counsel for Appellant submitted on the testimony and made no argument in favor of suppression. The State argued that there was no indication of impermissible suggestiveness. The State's attorney contended: "They were done in a correct manner. . . . They were done without indicating in any way who the witness was to pick or to choose with regard to [Appellant]." The court found "that the identification procedure . . . w[as] not impermissible suggestive, and . . . the inquiry ends at that point."

Motion *in Limine*

Later, defense counsel filed a motion *in limine* seeking to exclude several autopsy photographs of the victim, Al Sawab Sawab. At the motions hearing, defense counsel

argued that the photographs were irrelevant because the cause of death was a "non-issue." Defense counsel further argued that, even if relevant, the photographs were highly prejudicial and should be excluded. The State's attorney countered that Appellant's intent "may be an issue" and that the photographs were not "overly gruesome in any particular way." The State also indicated that the photographs would be introduced at trial in conjunction with the testimony of the State's medical examiner.

After discussing the relevant case law and reviewing the autopsy photographs, the trial court denied defense counsel's motion:

> The photos may have probative value that's corroborative of the State's witnesses' testimony including the medical examiner and the photographs may be more persuasive and have a greater [effect] on the jury than either dry testimony or a stipulation. I think the Prosecution is entitled to seek the greater impact. . . . Now, it could be as the trial progresses that the Court may limit the number, you know, further limit the number of photographs admitted, but as a general proposition they are going to be admitted.

B. Jury Trial

The following narrative is drawn from the transcripts of Appellant's trial before a jury in the Circuit Court for Baltimore County. The trial lasted six days, from November 18 through November 25, 2014.

In 2011, Ms. Keesha Marshall was at a local gas station when a man, Al Sawab Sawab, approached her and intimated that he sold marijuana. Over the next year, Ms. Marshall met with Sawab "biweekly" to purchase marijuana. These transactions normally took place at the Fairways Apartment Complex in Baltimore County ("Apartment Complex"), where Sawab lived.

Ms. Marshall testified that in November of 2012, a friend of Ms. Marshall's, Kenneth Johnson, contacted her and indicated that he was interested in purchasing a quarter-pound of marijuana. Ms. Marshall agreed to arrange the transaction. She met with Johnson and another individual, later identified as Appellant, in a parking lot.[1] Johnson and Appellant then "took" Ms. Marshall to a vacant apartment, which Appellant stated belonged to his mother. After walking into the apartment, Johnson and Appellant told her "that's where they were coming back to bag up everything that they was [sic] going to get for that day." Ms. Marshall then called Sawab to set up the drug transaction.

After leaving the vacant apartment, Johnson, Ms. Marshall and Appellant got into Ms. Marshall's car, and Ms. Marshall drove to Sawab's apartment. During the ride, Ms. Marshall asked to see "the money," and Johnson showed her a "wad of cash." When they reached the Apartment Complex, all three individuals got out of Ms. Marshall's car and walked to Sawab's apartment.

Upon entering Sawab's apartment, Ms. Marshall observed a scale and four bags of marijuana on a table. Johnson proceeded to weigh the drugs, while Sawab counted the money and Appellant stood nearby. At some point, Sawab became "upset" and told Ms. Marshall "it's not right," which Ms. Marshall inferred to mean that "the money was short." Sawab then reached into the waistline of his pants, and Appellant jumped on him. A scuffle ensued, during which a gun went off and the two separated. Appellant then pulled out his

[1] At this point in her testimony, Ms. Marshall identified Appellant in the courtroom as the person she met that day with Johnson.

own gun and fired at Sawab. Sawab ran toward the kitchen, and Appellant pointed his gun in Sawab's direction. At this point, Ms. Marshall fled the apartment, after which she heard "more shots fir[ed]" and saw Appellant and Johnson "come running out the door." The pair told Ms. Marshall to "come on," and all three individuals left the Apartment Complex.

Lisa Manamenian, a resident of the Apartment Complex, who was in her apartment at the time of this incident heard "some loud noises," looked outside, and saw three individuals getting into a silver car. Another resident, Zachary Baier, was pulling into a parking space in the Apartment Complex at the time of the shooting when he heard multiple gunshots and witnessed two African-American men and one African-American woman exiting the apartment building.

Taylor Landrum, Sawab's next door neighbor, testified that he was also at home on the night of the shooting when he "woke up to a loud banging" at his front door. Landrum opened the door and saw Sawab "standing there bleeding." Sawab told Landrum to call 911, which he did. Sawab then "kind of curled up into the corner . . . between the stairs and his door."

Meanwhile, according to Ms. Marshall, as the trio drove away from the apartment, Appellant and Johnson got "excited." When asked at trial what Appellant said, Ms. Marshall responded, "He got his first kill. He was excited, trembling. I took it as him being excited." Ms. Marshall drove Johnson to his car, and then, at Appellant's command, Appellant and Ms. Marshall drove off. Ms. Marshall testified that she had already been feeling uneasy "because if the shooter doesn't trust me, will I be his next victim [?]"

Sometime later, Appellant told her to "stop" and to "get out." Ms. Marshall complied, and Appellant drove away in her car. Ms. Marshall later reported the car stolen but did not immediately report the shooting or identify Appellant as the person who stole her car. Instead, she told police that she had stopped her car on the street, and a man put a gun to her back and took her car and $600.

Following Landrum's 911 call, the police and paramedics responded to the Apartment Complex, and Sawab was transported to the hospital, where he was pronounced dead. Baltimore County Medical Examiner Russell Alexander later confirmed that Mr. Sawab died from multiple gunshot wounds.

During the subsequent investigation, the police recovered Ms. Marshall's vehicle, inside of which they found, among other things, a bottle of bleach and a grocery bag from Family Dollar. The police also observed that the inside of the car had "dried white residue" on "most of the surfaces." The police later matched Appellant's fingerprint with a fingerprint found on the grocery bag, and surveillance video from a Family Dollar store near the scene of the shooting showed Appellant purchasing a bottle of bleach on the night of the shooting.

The police also examined Sawab's cell-phone call records, which revealed multiple calls between Ms. Marshall and Sawab in the year leading up to the shooting and at least one call near the time the shooting was reported.

Kathi Michael, a crime scene investigator and forensic technician with the Baltimore City Police, responded to the crime scene in this case and testified at trial. Using

her notes to refresh her recollection, Ms. Michael testified that she, along with a second technician as well as other officers and detectives were present at the scene. They performed a consent search of the apartment next door to the crime scene, a search of the common hallway, and then searched the crime scene, taking photographs and sketching the scene at each point. During Ms. Michael's testimony, the State moved into evidence several photographs and a sketch depicting what she observed.

In the hallway outside of the apartments, investigators found a T-shirt, a pistol, and collected swabs of blood. The magazine and ammunition was removed from the pistol and each item was bagged separately as evidence. Ms. Michael testified that they also checked the headstamp and manufacturer of the ammunition so that they could check it against any casings found at the crime scene.

Once inside the victim's apartment (Apartment A), Ms. Michael testified that she collected nine bullet shell casings, as well as several projectiles, a bag of marijuana, a digital scale, and pills. Ms. Michael's testimony also documented the bullet holes in the apartment on a trajectory that led to the holes they found in Apartment B (neighboring apartment).[2]

Also at trial, the State offered the autopsy photographs during the direct examination

[2] In the investigators' search of the neighbor's apartment, Ms. Michael observed that "[a] bullet had gone through the victim's apartment into the coat closet of the adjacent apartment and then [] came out [of] the coat closet and went into the kitchen[,] striking the stove and the projectile was lodged inside of the stove down by the broiler." She testified that the bullet came through the kitchen wall in Apartment A, "into the hallway wall of Apartment A and then striking the coat closet of Apartment B and then into the kitchen of Apartment B."

of the medical examiner, who testified regarding the nature of Sawab's wounds and his cause of death. Defense counsel objected, citing his "prior motion," and did not offer any new argument. The trial court overruled the objection, and the photographs were admitted.

The jury found Appellant guilty of four separate counts—first-degree assault, second-degree felony murder–felony distribution of controlled dangerous substance, conspiracy to distribute controlled dangerous substance (marijuana), and accessory after the fact. However, at the sentencing hearing on March 4, 2015, the State entered a nolle prosequi for the second-degree felony murder and accessory after the fact charges.[3] The trial court then sentenced Appellant to 25 years of incarceration for the first-degree assault conviction and 5 years of incarceration for the conspiracy to distribute marijuana conviction, terms to be served consecutively. Appellant's sentence was entered into the docket on March 27, 2015. Appellant timely noted his appeal on April 24, 2015.

DISCUSSION

I.

Pre-Trial Photograph Identification

Before this Court, Appellant contends that the suppression court erred by denying his motion to suppress Ms. Marshall's pre-trial identification. Appellant avers that the procedure used by the police during the photographic identification—showing Ms. Marshall a series of photographs that contained Robinson and other people involved in the

[3] The State agreed to enter a nolle prosequi for the accessory after the fact charge after the trial court granted the defense's motion for a new trial of that charge.

case—was "unduly suggestive." Appellant also argues that the identification procedure was improper because Ms. Marshall "was afraid" and wanted her car released. Appellant maintains that "the burden therefore should have shifted to the State to prove that the reliability of Ms. Marshall's identification outweighed the suggestibility of the procedure." By finding that the identification was not unduly suggestive, Appellant insists that the suppression court, "abused its discretion . . . by failing to hold the State to its burden." Appellant asks that we "remand for the trial court to determine if the identification was ultimately reliable."

The State counters that Appellant failed to preserve this argument for appeal because the defense did not present the arguments it raises on appeal to the trial court. In the event Appellant preserved the issue for appeal, the State argues that Ms. Marshall's photo identification was not impermissibly suggestive because Ms. Marshall spent an hour to an hour and a half with Robinson on the date of the shooting, the identification occurred within two months of the shooting, and Ms. Marshall testified that the police officer did not indicate which picture to choose.

Because the issue we are asked to examine concerns the trial court's denial of Appellant's motion to suppress, our review is limited to the record of the suppression hearing. *James v. State,* 191 Md. App. 233, 251 (2010). We view the facts presented at the suppression hearing in the light most favorable to the prevailing party—in this case, the State. *Wallace v. State,* 219 Md. App. 234, 243 (2014). We defer to the suppression court's factual findings and credibility determinations, and review those findings and

determinations for clear error. *Id.* "We accept the findings of fact and credibility determinations of the [trial court] unless they are clearly erroneous[.]" *Id.* On the other hand, "[w]e review the [court's] conclusions of law *de novo* and make our own independent assessment by applying the law to the facts of the case." *Id.* at 243-44.

As we have already noted, at the conclusion of the hearing before the suppression court, defense counsel ultimately submitted on the testimony and made no further argument in favor of suppression. We observe that at trial, the defense counsel stated, "[w]e'll stipulate that the photo array was fairly completed and not unduly suggestive" when the State moved to admit the photo array into evidence. The defense counsel further said, "I'll stipulate now that the foundation for the photo array is proper and there is nothing unduly suggestive." Although our standard of review limits us to review the record of the suppression hearing, we cannot imagine a scenario where we would ignore the defense counsel's stipulation at trial and, therefore, we are inclined to conclude that Appellant waived this issue for appeal.

In the event that this issue was not waived, we conclude that the photo identification was not impermissibly suggestive. "With respect to identification testimony, courts have recognized that 'due process protects the accused against the introduction of evidence of, or tainted by, unreliable pretrial identifications obtained through unnecessarily suggestive procedures.'" *James*, 191 Md. App. at 251-52 (internal citations omitted). "Due process principles apply to remedy the unfairness that would result from the admission of evidence that is based on an identification procedure that was 'unnecessarily suggestive' and

conducive to misidentification at trial." *Id.* at 252.

We apply "'a two-stage inquiry for due process challenges to extrajudicial identifications.'" *Thomas v. State,* 213 Md. App. 388, 416 (2013) (internal citations omitted). The first question we must consider, and the question pertinent to this appeal, is whether the identification process was impermissibly or unduly suggestive. *Id.* "The accused, in his challenge to such evidence, bears the initial burden of showing that the procedure employed to obtain the identification was unduly suggestive." *James,* 191 Md. App. at 252. Once this burden is met, "the State must then prove, by clear and convincing evidence, that the independent reliability in the identification outweighs the 'corrupting effect of the suggestive procedure.'" *Gatewood v. State,* 158 Md. App. 458, 475 (2004) (internal citations omitted). If, however, the accused fails to show that the identification procedure was unduly suggestive, "then our inquiry is at an end." *James,* 191 Md. App. at 252.

"Suggestiveness can arise during the presentation of a photo array when the manner itself of presenting the array to the witness or the makeup of the array indicates which photograph the witness should identify." *Smiley v. State,* 442 Md. 168, 180 (2015). "Suggestiveness exists where the police, in effect, say to the witness: 'This is the man.'" *Thomas,* 213 Md. App. at 417. Nevertheless, "each case must be considered on its own facts, and . . . convictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very

substantial likelihood of irreparable misidentification." *Simmons v. U.S.*, 390 U.S. 377, 384 (1968).

In the present case, there is no evidence that the police did anything during Ms. Marshall's identification that would qualify as impermissibly suggestive. We are unpersuaded by Appellant's argument that the officer's identification procedures were impermissibly suggestive because the series contained photographs of other persons in the case. Appellant's reliance on *Rustin v. State*, 46 Md. App. 28 (1980), is misplaced. In *Rustin*, we held that the identification procedure was impermissibly suggestive, due largely to the fact that the witness was told, prior to the identification, that the defendant was involved in the crime. *Id.* at 33. The witness then reviewed the defendant's criminal history, and, after being shown only one photograph (the defendant's), the witness identified the defendant. *Id.* Thus, *Rustin* is inapposite, as none of these circumstances were present in the instant case. Here, the officer asked Ms. Marshall to look at a series of photographs and inquired as to whether she recognized anyone, at which time she identified Appellant as the shooter. The record does not indicate that the officer encouraged Ms. Marshall to identify Appellant, nor did the officer present the photograph array in a manner that suggested which photograph Ms. Marshall should identify. Further, there is nothing in the record to suggest that the inclusion of other individuals connected with the investigation had influenced Ms. Marshall's identification or that it caused Ms. Marshall to single-out Appellant.

We likewise reject Appellant's argument that the identification procedure was

improper because Ms. Marshall "was afraid" and wanted her car released. As we explained in *Conyers v. State*, 115 Md. App. 114 (1997), such extraneous pressures have little, if any, effect on the propriety of a particular identification procedure:

> Impermissibly suggestive police misbehavior . . . is not a category that embraces every variety of police misbehavior. . . . To do something impermissibly suggestive is not to pressure or to browbeat a witness to make an identification but only to feed the witness clues as to which identification to make. The sin is to contaminate the test by slipping the answer to the testee. All other improprieties are beside the point.

Id. at 121 (internal emphasis omitted).

Accordingly, we hold that the suppression court's denial of Appellant's motion to suppress was not erroneous.

II.

Autopsy Photos

Appellant argues that the trial court "erred in admitting unduly prejudicial and inflammatory photographs" because Sawab's cause of death and the extent of his wounds were not disputed. Before this Court, Appellant maintains, as he did during the motions hearing, that the autopsy photographs were not relevant to any contested issue and that his "entire defense was that [he] was not present at the shooting and that someone else must have shot [Sawab]." Appellant also avers that any probative value in introducing the photographs was outweighed by their prejudicial impact. Lastly, Appellant argues that the admission of the autopsy photographs was not harmless error because "the pictures [were] so graphic that the average juror[']s reaction to such gruesome images would be to want to hold somebody accountable for the injuries and return a guilty verdict regardless of the

strength of the State's case."

The State counters that the autopsy photographs were relevant to the medical examiner's testimony about Sawab's wounds and were properly admitted. The State maintains that the photographs depicting Sawab's wounds are not "graphic" or "gruesome."

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. In other words, evidence is relevant if it is both material and probative. "Evidence is material if it bears on a fact of consequence to an issue in the case." *Smith v. State*, 218 Md. App. 689, 704 (2014). "Probative value relates to the strength of the connection between the evidence and the issue…to establish the proposition that it is offered to prove." *Id.* (internal citations and quotations omitted). Generally speaking, evidence that is relevant is admissible; evidence that is not relevant is not admissible. *See* Md. Rule 5-402. Whether the evidence is legally relevant is "a conclusion of law which we review *de novo*." *Smith*, 218 Md. App. at 704 (internal quotations omitted).

Maryland Rule 5-403 provides that relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." In *Roebuck v. State*, 148 Md. App. 563 (2002), this Court discussed a wide-range of circumstances in which photographs of crime

victims may be admissible:

> Photographic evidence of crime scenes and autopsy photographs of homicide victims are often relevant to a broad range of issues, including the type of wounds, the attacker's intent, and the modus operandi. For example, photographic evidence may be highly probative of the degree of murder. . . . On certain occasions, photographs have also been admitted to allow the jury to visualize the atrociousness of the crime – a circumstance of much import where the factfinder must determine the degrees of murder.

Id. at 597 (internal citations and quotations omitted). Photographs may be admissible when the relevant fact is uncontested or has been stipulated to by the defendant. *Roebuck*, 149 Md. App. at 598; *see also State v. Broberg*, 342 Md. 544, 554 (1996) ("[P]hotographs do not lack probative value merely because they illustrate a point that is uncontested."). Moreover, photographic evidence does not become inadmissible merely because it is cumulative of testimonial evidence. *Roebuck*, 194 Md. App. at 598 ("To be sure, photographs are often used to illustrate something that has already been presented through testimony."). The Court of Appeals "has 'seldom found an abuse of a trial judge's discretion in admitting [photographs of victims] into evidence,' even when such evidence tends to be 'more graphic than other available evidence.'" *Id.* at 599 (internal citations omitted).

"[T]he issue of whether a particular item of evidence should be admitted or excluded 'is committed to the considerable and sound discretion of the trial court[.]'" *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619 (2011) (internal citations omitted). We, therefore, review the trial court's decision admitting photographs for abuse of discretion. *State v. Simms,* 420 Md. 705, 725 (2011).

We conclude that the photographs were relevant, and that the trial court did not abuse its discretion in denying Appellant's motion to exclude the autopsy photographs and admitting the photographs at trial. The photographs—seven in total—depicted multiple wounds inflicted upon Sawab as a result of the shooting. None of the photographs were particularly gruesome or graphic. After evaluating the autopsy photographs at the pretrial hearing, the trial court found that "[t]he photos may have probative value that's corroborative of the State's witnesses' testimony including the medical examiner[.]" The State offered the photographs in conjunction with the testimony of the medical examiner. The State used the photographs to elucidate the testimony of the medical examiner regarding the manner and cause of Sawab's death. Moreover, the photographs did not become unduly prejudicial simply because Sawab's cause of death was uncontested or because the photographs were cumulative of the medical examiner's testimony. We conclude that the trial court did not abuse its discretion in admitting these photographs.

III.

Sufficiency of the Evidence

At the end of the State's case, Appellant moved for judgment of acquittal on all counts. As discussed *supra*, Appellant was ultimately convicted and sentenced for two counts—first-degree assault and conspiracy to distribute a controlled dangerous substance (marijuana). With respect to the assault count, Appellant averred that "the only evidence that Mr. Robinson was the actor in that case is the testimony of Keesha Marshall[.]" Appellant contended that Ms. Marshall's testimony alone was insufficient and cannot

establish Appellant's intent. With respect to the conspiracy to distribute charge, Appellant argued that the State's theory that Johnson was conspiring to buy marijuana was not sufficient for a distribution conviction and that there was no evidence of Robinson's participation. The State countered that Ms. Marshall's testimony that she met Johnson and Appellant to go purchase marijuana coupled with the location where Johnson and Appellant would bag the marijuana to later sell was sufficient to sustain a conspiracy to distribute charge. The circuit court denied the motion without explanation. After the defense presented its case, Appellant again moved for judgment of acquittal on the same grounds, which the court denied.

Now before this Court, Appellant contends that the evidence was insufficient to sustain his convictions. Appellant argues that the evidence linking him to the crimes charged "consisted almost entirely of the testimony of [Ms. Marshall]" and that "Marshall gave multiple, inconsistent stories over the course of the investigation and trial." Appellant also cites to cell phone evidence adduced at trial, which established, according to Appellant, that he was not present at the scene of the crime. The cell phone evidence demonstrated that Appellant's cell phone was "connected to a tower a couple miles away during the entire time period surrounding the shooting[.]"

The State counters that Appellant's argument—that there was no evidence that Appellant conspired to distribute marijuana—was not raised at trial and, therefore, not preserved for appeal. If the arguments were preserved, the State asserts that the evidence was sufficient to support Appellant's convictions, summarizing Ms. Marshall's testimony.

In reviewing the sufficiency of the evidence, appellate courts ask "'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.'" *Taylor v. State*, 346 Md. 452, 457 (1997) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is long settled that "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *State v. Stanley*, 351 Md. 733, 750 (1998) (citing *Binnie v. State*, 321 Md. 572, 580 (1991)). Maryland courts have consistently held that

> "[w]here it is reasonable for a trier of fact to make an inference, we must let them do so, as the question 'is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence.'"

State v. Suddith, 379 Md. 425, 447 (2004) (brackets in original) (quoting *State v. Smith*, 374 Md. 527, 557 (2003) ("We shall give due deference to the trial judge's [factual] determination and his rational inferences in reaching his decision.")). We defer "to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference." *Suddith*, 379 Md. at 430 (citations and footnote omitted). Thus, "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.'" *Allen v. State*, 158 Md. App. 194, 249 (2004) (quotation marks and citation omitted) (emphasis in original). That certain evidence happened to be inconsistent with or

contradictory to other evidence is immaterial. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (An appellate court's determination of sufficiency "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.").

First, we find no merit to the State's preservation argument. Appellant made a motion for judgment of acquittal at the close of the State's case and renewed the motion at the end of trial.

We hold the evidence was sufficient to sustain Appellant's convictions. We reach this conclusion by reviewing the elements of the crimes for which Appellant was convicted and sentenced—first-degree assault and conspiracy to distribute a controlled dangerous substance (marijuana)—and the evidence in the light most favorable to the prosecution.

A. First-Degree Assault Conviction

Appellant asserts that the evidence was insufficient to sustain the first-degree assault conviction. Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL"), § 3-202, the statute for first-degree assault, provides

> (a) (1) A person may not intentionally cause or attempt to cause serious physical injury to another.
> (2) A person may not commit an assault with a firearm[.]

Here, Ms. Marshall testified that Johnson and Appellant went to Sawab's home to effectuate the drug transaction, during which Appellant fired a gun at Sawab. Ms. Marshall further testified that, following the shooting, Appellant was "excited" about getting "his first kill." Sawab later died from the multiple gunshot wounds.

During the subsequent investigation, the police recovered Ms. Marshall's vehicle in which Appellant took off after leaving Ms. Marshall on the side of the road. Inside the vehicle the police found, among other things, a bottle of bleach and a grocery bag from Family Dollar. The police also observed that the inside of the car had "dried white residue" on "most of the surfaces." The police later matched Appellant's fingerprint with a fingerprint found on the grocery bag, and surveillance video from a Family Dollar store near the scene of the shooting showed Appellant purchasing a bottle of bleach on the night of the shooting. We conclude there was sufficient evidence that "*possibly could have* persuaded *any* rational fact finder," that Appellant committed the crime of first-degree assault beyond a reasonable doubt. *Allen*, 158 Md. App. at 194.

B. Conspiracy to Distribute Marijuana Conviction

Appellant also asserts that the evidence was insufficient to sustain a conspiracy to distribute marijuana conviction. Appellant contends that there was no evidence that Appellant conspired to distribute marijuana. Appellant maintains that Ms. Marshall's testimony only established Appellant's role in the drug transaction as a buyer, which is not sufficient to sustain a conspiracy to distribute marijuana conviction. In support, Appellant asserts that Ms. Marshall only testified about an agreement to purchase marijuana, not an agreement to distribute marijuana.

The Court of Appeals has described the common law crime of conspiracy as:

> "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. In Maryland, the crime is complete when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown."

Mitchell v. State, 363 Md. 130, 145 (2001) (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). Therefore, the State only needs to establish that there was an agreement to distribute.

Here, Ms. Marshall testified that she arranged a meeting between Johnson, Appellant, and Sawab so that Johnson and Appellant could purchase a quarter-pound of marijuana. Ms. Marshall also testified that she went with Johnson and Appellant to a vacant apartment, at which both individuals stated that they planned to bring the marijuana back to the vacant apartment to "bag it up." From this, we are persuaded that a rational jury could draw a reasonable inference that Appellant conspired with Johnson to purchase marijuana, which they would later repackage for redistribution.

In sum, sufficient evidence was presented to sustain Appellant's convictions of first-degree assault and conspiracy to distribute marijuana.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.