UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1362

September Term, 2015

RASHAAN MARCELLUS WILLIAMS

v.

STATE OF MARYLAND

Arthur,
Leahy,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: March 21, 2017

On April 24, 2015, a jury sitting in the Circuit Court for Baltimore County convicted appellant, Rashaan Marcellus Williams, of second degree murder. The court sentenced appellant to thirty years of active incarceration. Appellant appeals and presents the following question for our review:[1]

> Did the Circuit Court err by giving a jury instruction regarding the destruction or concealment of evidence?

For the reasons discussed below we assign no error and affirm.

BACKGROUND

In June of 2013, Melinda Schaefer was working as a property manager for Bozzuto, a property management company, at The Townes at Harvest View ("Harvest View"), a townhouse style apartment complex. The leasing office, in which Schaefer worked, was located on the bottom floor of 17 Augusta Ridge Road in Reisterstown. On the morning of June 14, 2013, she was seen arriving to the office by cleaning woman, Mayra Gonzalez, who was leaving the office after cleaning it, and the model unit, which was located above the office. After leaving the office, Gonzalez picked up trash around the complex and cleaned a vacant apartment unit after receiving the keys to the unit from appellant, who was employed as the complex's maintenance man. Gonzalez saw Schaefer standing outside of, and in front of the leasing office at approximately 8:20 a.m. At 8:49 a.m.

[1] Appellant phrased the question presented as follows:

> Did the lower Court err by giving a jury instruction regarding the destruction or concealment of evidence which was not supported by the record and which greatly aided the State in shifting the burden to Appellant to prove his innocence?

Schaefer sent an email to a tenant. At 9:51 a.m., a call to the leasing office went unanswered and was sent to voicemail. All calls after 9:51 a.m. went unanswered.

At approximately 9:50 a.m., Bong Lee, a resident who lived at 2 Augusta Ridge Road, went outside of his apartment to wait for a tow truck, which was scheduled to tow his vehicle to a garage for repairs. Lee's apartment was located in close proximity to the rental office. The tow truck operator arrived about 10:00 a.m. to load Lee's vehicle on the tow truck. As he arrived at Lee's apartment, tow truck operator Dave Wellein observed a black man, wearing something similar to a golf shirt, in close proximity to his truck. Lee took photos of his vehicle being loaded onto the tow truck, the first of which was timestamped at 10:06 a.m., and the last was timestamped at 10:20 a.m. The exterior of the leasing office was visible in the photo timestamped at 10:06 a.m., and the photo showed that the blinds covering the office window were in disarray. Lee, who described the tow truck as being very loud as it loaded his vehicle, stayed outside until approximately 10:40 a.m., after which he went back inside his apartment. Lee testified that he found it somewhat unusual that he did not see Schaefer when his car was being loaded, as she had a habit of looking outside the rental office window and waving whenever he was outside doing anything.

At around 10:50 a.m., Gonzalez returned to the rental office to return her cleaning supplies. Inside the office she found Schaefer on the floor, covered in blood and not breathing. She then ran from the office and around the apartment complex looking for someone who could help. She ran to Lee's apartment, whereupon Lee called 911, which

was recorded as made at 10:55 a.m. Neither Lee nor Gonzalez reported seeing anything or anyone unusual that morning.

The first police officers to respond arrived just after 11:00 a.m. and found Schaefer deceased and lying face down in a large pool of blood in the office. The office was in great disarray with a chair knocked on the floor and other office items broken and lying on the floor. The window blind was askew and smeared with blood. Schaefer's purse, money, and jewelry were found in the office and on her person. No one else was found in the office, or upstairs in the model unit. As police personnel processed the crime scene, the media and other onlookers gathered outside of the leasing office. Appellant and Gonzalez were also outside of the crime scene and were asked to go to police headquarters after it was determined that they were the last individuals to have seen Schaefer alive. An autopsy revealed that Schaefer had "died of sixty-nine (69) sharp force injuries to the head, neck, nose, torso and extremities."

Appellant was interviewed at police headquarters where he advised that in the morning Schaefer had given him the company debit card and that he had walked to the nearby Dollar store to pick up batteries. The police later found a receipt from the Dollar store in the leasing office safe, which was time stamped at 9:19 that morning. He also advised that he later travelled to a Home Depot store to purchase building supplies. Appellant told the police that it took about fifteen to twenty minutes to get to the Home Depot, and that he had not made any stops along the way. Appellant advised that he did not make a purchase at Home Depot however, because he had forgotten the company debit card which he had previously returned to Schaefer after returning from the Dollar store.

The police later recovered surveillance videos from the Dollar store and from Home Depot. In the Dollar store video, appellant was wearing long sleeves and khaki cargo pants. In the Home Depot video, appellant was wearing a short sleeve shirt and "straight-leg khaki pant[s] without any cargo pockets." In the Home Depot video, appellant is shown arriving to the store at 10:39 a.m. During his first statement to the police taken on June 14, 2013, appellant did not mention that he had changed his clothing that morning. Appellant was interviewed by the police a second time three days later, during which time he advised that he had not changed his clothes on the morning of June 14th, and that he had no reason to do so. Appellant was again interviewed on August 20th during which time he said he didn't know whether or not he had changed his clothes on the morning of June 14th.

Patrick Butler, a Regional Portfolio Manager for Bozzuto, testified at trial that as a part of appellant's employment benefits, appellant lived in an apartment in the complex, and was given a twenty percent discount on his rent. Appellant was expected to wear a uniform which included a long sleeve or short sleeve Bozzuto shirt, khaki pants and a Bozzuto jacket. He further testified that Schaefer, who was not required to wear a uniform, was in charge of making the uniform purchases and that she had purchased a Bozzuto jacket in March of 2013. In an interview with police, appellant admitted that he was wearing a jacket on the morning of the homicide. The jacket was never located.

In the afternoon of June 14th, the day of the murder, appellant called Butler, to inform him that he had lost his work cell phone and that he may have left it in the rental office. The cell phone was never found. Additionally, appellant told police detectives that he had met with Schaefer early on the morning of the homicide, and had picked up several

work orders and apartment keys. The police later searched for the missing work orders and keys, but were unable to locate them.

Roger Boyell an expert in electronic communication and cell phone analysis analyzed appellant's Bozzuto-issued cell phone records. Boyell testified that between 10:28 a.m. and 10:31 a.m. on June 14, 2013, appellant's Bozzuto-issued cell phone was relatively stationary and was located at an apartment complex off Liberty Road. He further testified that the phone could not have been on Liberty Road heading towards the Home Depot.

Lisa Halliwill, a Bozzuto Regional Manager, testified that Schaefer had informed her in early 2013 that appellant was having performance issues. In February of 2013, Halliwill had a conversation with appellant regarding his work performance. Butler testified that in March, Schaefer notified him of appellant's continued poor performance, and as a result, on April 26, 2013, he spoke with appellant regarding the performance issues. Schaefer was present at this meeting. One of the issues they addressed was the discovery that appellant had been "covering" for Vanessa Coates, another Bozzuto employee, when she arrived late to work. Butler "wrote up" appellant and placed him on probation for thirty days. Two days before the murder, Coates, who filled in for Schaefer on Schaefer's off days, was terminated by Butler. A forensic examination of Schaefer's work computer and thumb drive revealed that she had accessed appellant's work performance files on the day before the murder.

DISCUSSION

At trial, and at the request of the State, the court instructed the jury on "Concealment or Destruction of Evidence as Consciousness of Guilt" using the Maryland Pattern Jury Instruction 3:26, which reads as follows:

> You have heard that the Defendant concealed or destroyed evidence in this case. Concealment or destruction of evidence is not enough, by itself, to establish guilt, but may be considered as evidence of guilt. Concealment or destruction of evidence may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether the Defendant concealed or destroyed evidence in the case. If you find that the Defendant concealed or destroyed evidence in the case, then you must decide whether that conduct shows a consciousness of guilt.

Appellant asserts that the court erred by giving this jury instruction, because it "was not supported by the record" and it "greatly aided the State in shifting the burden to appellant to prove his innocence." The State responds that the jury instruction was proper as the State "presented 'some evidence' at appellant's trial that he destroyed evidence in this case." The State argues that evidence was produced that showed that the Bozzuto jacket, which appellant was required to wear, was never recovered, and that a reasonable trier of fact could have found that it contained blood evidence. Further, the State argues that "appellant's Bozzuto-owned cell phone was never recovered," and that a reasonable trier of fact could have found that it too contained blood evidence. Finally, the State argues that appellant, "who was in possession of the keys and work orders before the murder, destroyed or concealed the keys and work orders after the murder because they, too, contained evidence of Ms. Schaefer's blood." The State argues that "while there was no evidence presented that the missing items contained evidence of Ms. Schaefer's blood,

other circumstances permitted an inference that [a]ppellant concealed or destroyed the items because they contained evidence of her blood."

When granting the State's request for this instruction, the court stated:

> The definition of some evidence. It is – it calls for no more than what it says, some as that word is understood in common, every day usage. It need not rise to the level of beyond a reasonable doubt, or clear and convincing or preponderance. The source of the evidence is immaterial. It may emanate solely from the defendant. And then, it goes on. And I, I think, that based on the evidence that's been presented, it is fair, especially in light of the totality of the instruction. And I know that [defense counsel] had a concern with that first sentence. But what the second paragraph of the instruction says, and I will emphasize this, you must first decide whether the Defendant concealed or destroyed evidence in this case. If you find that the Defendant concealed or destroyed evidence in this case, then you must decide whether that conduct shows a consciousness of guilt. So the instruction actually tells them, that whether or not there was a concealment or a destruction of evidence, is for them to decide as a preliminary matter before they decide whether or not that shows consciousness of guilt.

We hold that the trial court did not err when it found "some evidence" to support the issuance of the requested jury instruction.

A trial "court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." Maryland Rule 4-325(c). The appellate court reviews "a trial judge's decision whether to give a jury instruction under the abuse of discretion standard." *Arthur v. State*, 420 Md. 512, 525 (2011) (quoting *Thompson v. State*, 393 Md. 281, 311 (2006)).

In reviewing for an abuse of discretion in this context, we consider the following factors: "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given." *Stabb v. State*, 423 Md. 454, 465 (2011). "A requested

jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Bazzle v. State*, 426 Md. 541, 550 (2012). "[T]he threshold is low," and only requires the production of "'some evidence' that supports the requested instruction." *Id.* at 551. The Court of Appeals explained the threshold in *Dykes v. State* as follows:

> Some evidence is not strictured by the test of a specific standard. It calls for no more than what it says – "some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or "preponderance."

319 Md. 206, 216-17 (1990).

In the instant case, because the trial court instructed the jury using the Maryland Pattern Jury Instruction, we need only consider whether the instruction was applicable under the facts of the case. *See Johnson v. State*, 223 Md. App. 128, 152 (2015) ("[I]t is well-established that a trial court is strongly encouraged to use the pattern jury instructions.").

The State argues that the evidence which was destroyed included a "premium Bozzuto jacket," appellant's Bozzuto-owned cell phone, work orders, and apartment keys. Homicide detectives recovered video surveillance of appellant in the Dollar store on the morning of the murder and he is seen in the video wearing khaki cargo pants and long sleeves. Homicide detectives also recovered video surveillance of appellant in a Home Depot store later that same morning, and he is seen in the video wearing non-cargo pants and short sleeves. The State argues that "a rational trier of fact could find that the clothing [a]ppellant was wearing at the Dollar Store was a Bozzuto jacket." When asked about the jacket, appellant said he was probably wearing a "zip up jacket" when he went to the Dollar

store, and offered to look in his home and truck for the jacket. Appellant later reported to the police that he was unable to locate the jacket. The Bozzuto-issued jacket was never located. The State further argues that at trial they produced "some evidence" that appellant destroyed the jacket, and explains as follows:

> Moreover, coupled with evidence of Appellant's evasiveness about whether he changed his clothes on June 14th between his trips to the Dollar Store and Home Depot, and evidence showing that Ms. Schaefer was murdered between the time Appellant returned from the Dollar Store and when he left for Home Depot, a rational trier of fact could infer that Appellant changed his clothes because they contained evidence of Ms. Schaefer's blood. Further despite efforts by Appellant and the police, the Bozzuto jacket was never recovered."

With regards to appellant's Bozzuto-issued cell phone, Halliwill, the regional manager for Bozzuto, testified that the company provided appellant with a cell phone because his position required him to be on call. On the afternoon of the murder, appellant notified Butler that he had lost his Bozzuto phone, but did not mention the lost phone at any time during his hours-long interview with police. Later, when the police learned that the phone was missing, they asked appellant if he had tried to call the Bozzuto phone in an attempt to locate it, and appellant responded that he had used his personal cell phone to call the Bozzuto phone. When appellant's personal cell phone was examined, however, no calls were discovered to have been made on June 14, 2013, from appellant's personal cell phone to his Bozzuto-issued phone. Appellant's Bozzuto-issued cell phone was never located. The State argues that this evidence is sufficient to show that appellant destroyed the Bozzuto cell phone and explains as follows:

> From this evidence, a rational trier of fact could infer that Appellant lied about losing his phone. This inference, coupled with testimony from the

> State's cell phone experts tracking the Bozzuto phone to an area off Liberty Road and not on the way to the Home Depot, would permit an inference Appellant concealed or destroyed the Bozzuto phone because it too contained evidence of Ms. Shaffer's blood.

Finally, during appellant's interview the afternoon of the murder, he told police detectives that he had met with Schaefer earlier that morning and had picked up several work orders and apartment keys. The police later searched for the missing work orders and keys, but were unable to locate them. When Butler asked appellant about them, he was unable to provide an explanation. The keys and work orders were never found. The State argues that this is evidence that appellant destroyed the work orders and keys, and explains as follows:

> From this evidence a rational trier of fact could infer that Appellant, who was in possession of the keys and work orders before the murder, destroyed or concealed the keys and work orders after the murder because they, too contained evidence of Ms. Schaefer's blood.

Applying the "some evidence" standard to the instant case, we are satisfied that the trial court did not err when it found that the State presented sufficient evidence to support the jury instruction. As the Court of Appeals stated in *Bazzle*, "the threshold is low." 426 Md. at 551. The State need not produce evidence that rises to the standard of "beyond a reasonable doubt," or "clear and convincing," or "preponderance." *Dykes*, 319 Md. at 217. The State need only produce "some evidence" to support the requested instruction. *Id.* Nor does the State need to prove that the missing evidence contained evidence of Schaefer's blood. In *Scarborough v. State*, we held that the destruction or concealment of evidence instruction was supported by the evidence where the defendant had been charged with

selling lottery tickets, and was observed swallowing a piece of paper, the contents of which were unknown. 3 Md. App. 208 (1968). We explained:

> It has been recognized that flight from the police may be evidence of guilt under proper circumstances. By analogy, we think the swallowing of the paper by the [defendant], under the circumstances, could reasonably be viewed as evidence of guilt of the crimes charged in the 9th and 10th counts of indictment No. 1126 and the 1st and 2nd counts of indictment No. 1258 even though there was no evidence as to what was on the slip.

Id. at 219 n.3 (internal citation omitted).

Appellant argues that "[a]ny conclusion that [the missing items] amount to evidence of murder necessarily rests on a presumption of appellant's guilt." We disagree. As noted by the trial court, the jury instruction directs the jury to first decide whether or not the accused has concealed or destroyed evidence, and only if they answer in the affirmative, are they to determine whether that conduct is consciousness of guilt. In sum, we hold that the trial court did not abuse its discretion in giving the requested jury instruction.

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