UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1968

September Term, 2016

DOMINIC GARRETT

v.

STATE OF MARYLAND

Meredith,
Reed,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Davis, J.

Filed: July 21, 2017

Appellant, Dominic Garrett, was tried and convicted in the Circuit Court for Montgomery County (Greenberg, J.) of robbery with a dangerous or deadly weapon, conspiracy to commit robbery with a dangerous or deadly weapon and use of a firearm in the commission of a felony or crime of violence. Appellant was sentenced to a period of twenty years under the jurisdiction of the Commissioner of Corrections, all but seven years suspended in favor of supervised probation, a concurrent term of twenty years' imprisonment, suspending all but seven years for conspiracy and a consecutive sentence of twenty years' imprisonment, suspending all but the five-year mandatory minimum penalty for the use of a firearm conviction, for a sum total of twelve years of incarceration, dating from August 27, 2016. Appellant filed the instant appeal in which he posits the following questions for our review:

1. Did the trial court err in admitting irrelevant and/or extremely unfair prejudicial other crimes or other bad acts evidence?

2. Was the evidence legally insufficient to sustain the convictions?

FACTS AND LEGAL PROCEEDINGS

Melissa Lopez testified that, in the several months prior to December 2014, she dated Appellant, whom she met in high school between 2010 and 2011, and who was known by the nickname "Domo." Lopez testified that she ended the relationship just before the "incident" that occurred on December 12, 2014, which was the subject of this trial, because she did not want "to be associated with him anymore." Nonetheless, Lopez testified that she contacted Appellant on December 12, 2014 in order to buy $150.00 worth of marijuana. According to Lopez, a meeting was arranged for the two through

"iMessaging" and she picked Appellant up that evening at McDonald's on Quince Orchard Road and he directed her to drive to an address near Lakeforest Mall, also in Gaithersburg, Maryland. Lopez testified that she parked in a residential area while they were "waiting for his friend" when Appellant took the key out of the ignition. Then, according to Lopez

> [f]ive minutes later, somebody starts banging on my door and I thought it was his friend, so I unlocked the door and let him in and he pulls, he just gets in the back seat, he pulls out a gun, he aims it at Domo, telling me, or saying, where's the dope, where's the money. And then Dominic just says, he doesn't have time for this and gets out [of] the car.

Lopez testified that, while Appellant was walking away, the person in the back seat hit her on the back of the head and continued to demand "money and dope." Lopez could only say that the person was a black male with a mask wearing a Helly Hansen brand jacket and that he had two guns, a gray one and a black one. She said that the black gun was a "normal size handgun" and that the gray gun was similar. Thereafter, the person grabbed her Michael Kors brand handbag that contained her wallet and iPhone and ran away. Lopez testified that a passerby allowed her to use his phone to call 9-1-1. The 9-1-1 call was played for the jury. According to Lopez, Appellant appeared to be texting someone immediately prior to the incident. Lopez was taken to the hospital where she was released after treatment. Her purse and identification documents were later recovered.

Ultimately, Lopez identified photos of a person in a mask whom she believed was the person in the back seat wearing a mask, *i.e.*, whom she believed was "Iquan," because she could "see the form of his face" through the mask, as well as the Helly Hansen brand jacket. Lopez also identified the two guns that were used that night because of the

"silverness" of one and because the other was all black. Lopez said that Appellant did not strike her or point any weapon at her that evening.

Twenty-three year old Raven Jordan-Wran testified that Iquan Jordan is her seventeen year-old brother. She identified Appellant as a friend of Iquan. According to Jordan-Wran, Appellant gave her a Michael Kors handbag for Christmas in December 2014. She identified photographs of the family townhome on Pier Point Lane and she identified the bag in the photograph and testified that it was no longer in her possession because the police took it from the house.

Officer Mike Phillips testified that, on December 31, 2014, the police were surveilling Iquan Jordan's residence and arrested him later when he left the house to go to a shopping center. Photographs of Iquan Jordan, on the day of his arrest, were entered into evidence. Officer Nicholas Hoomstra testified that he responded and assisted with the arrest of Iquan Jordan on December 31st and that, incident to Jordan's arrest, a black ski mask and cell phone were recovered from him.

Detective Marisol Orlina testified that, on January 21, 2016, she assisted in the execution of a search warrant for 18370 Pier Point Lane, where the Detective recovered a tan-colored Michael Kors handbag from the basement.

Detective James Vitaletti testified that he assisted in the execution of the search warrant and that he located several ID cards and paperwork wedged inside the top reservoir of an upstairs toilet tank that included a resident alien or "green" card.

Officer Sean Wade testified that he also assisted in the execution of the search

warrant and that he recovered a starter pistol from Iquan's bedroom closet.

Detective Gregory Loftis of the Frederick Police Department testified that, on December 18, 2014, he searched Appellant in Frederick, Maryland and recovered two cell phones. Detective Kevin Forrest of the Frederick Police Department testified that he received the cell phones from Detective Loftis and placed them into a "secured closet" in their office until an extraction could be done. The extraction of Appellant's Apple iPhone was done by Detective Alston and the phones were later released to Montgomery County Detective Fernandez.

A Kahr CW9 pistol was also recovered in connection with the December 18th encounter, but not on Appellant's person. According to Frederick City Police Officer Scott Pyon, Iquan and Appellant were stopped in the area of Market Street in Frederick and a search of the area yielded a .9mm handgun in an alley behind North Market Street.

Frederick City Police Detective Loumis Alston testified as an expert in digital forensic examination that he conducted an examination of the Apple iPhone and LG phone recovered from Appellant. Detective Alston gave a compact disk of the data extracted from the phones to Detective Forrest.

Electronic Crimes Unit Detective William Heverly testified as an expert in digital forensics examinations that he processes digital evidence and that he also examined the two phones in this case, an LG and an Apple iPhone. Detective Heverly also created a DVD of the twelve videos that were extracted from the iPhone, which later were designated as State's Exhibit 37A. Ultimately, it was Detective Heverly's opinion that the videos were

taken by that iPhone.

Detective Michael Fernandez testified that he responded to the scene, whereupon he spoke to Lopez, observed her injuries and obtained a description of the assailant and information regarding Appellant. It was through Appellant's Facebook page that police identified Iquan Jordan as a possible suspect. Detective Fernandez identified the extraction reports for the cell phones and he identified a number of photographs from one of the cell phones, ostensibly connecting Iquan and Appellant. The State was ultimately permitted to display the video evidence to the jury based on the testimony of Detective Fernandez.

During its case in chief, the State sought to introduce into evidence, *via* State's Exhibit 37A, the twelve video recordings it had extracted from the seized iPhone. Defense counsel interposed the following objection:

> Your Honor, assuming that the State intends to show us an hour long presentation of videos from my guy's cell phone, I think they're very prejudicial. They show them doing a lot of activities, where they're acting kind of like pit rock [sic] on this with money and guns and playing and acting stupid like kids will do. And I think it's going to unfairly prejudice this jury.

After the trial court heard further argument and reviewed the videos, it determined that several of the videos, or parts thereof, would be admitted. Specifically, the trial court ruled that videos 1, 4, 5, 10 and 12 would not be admitted and that videos 2, 6, 8 and 9 would be admitted in their entirety. The court also decided that video 3 would be admitted with limited audio and that videos 7 and 11 would be admitted without audio.

At the conclusion of the State's case and, at the conclusion of all of the evidence, defense counsel moved for judgment of acquittal, both of which were denied. As noted,

supra, Appellant was convicted of robbery with a dangerous or deadly weapon, conspiracy to commit robbery with a dangerous or deadly weapon and use of a firearm in the commission of a crime of violence or felony. Appellant was acquitted of first degree assault, conspiracy to commit first degree assault and conspiracy to use a firearm in the commission of a crime of violence or felony.

DISCUSSION

I

Appellant's first assignment of error is that the trial court admitted State's Exhibit 37A, including the several redactions pursuant to the trial court's ruling. On appeal, Appellant asserts that the video, which was admitted, was irrelevant, but if relevant, it was "far more prejudicial than probative" and represented evidence of "other crimes, wrongs or acts" that was inadmissible without a specified exception. The gravamen of appellant's argument is that "the videos were not sufficiently demonstrated to be directly—if at all—related to the charged offenses; thus, they had no tendency to make any fact 'of consequence to the determination of the action' more or less probable." According to Appellant, admission of these videos was error and, therefore, "reversal is required on this basis alone."

The State responds that Appellant has waived any objection to the seven admitted videos on appeal. The State maintains that, although Appellant objected when the State moved to admit State's Exhibit 37A into evidence, Appellant failed to object when the seven videos were played for the jury. The State further argues that, if the issue is

preserved, Appellant's arguments fail on the merits and the trial court properly admitted the video evidence. Videos 2, 6, 7 and 8 illustrated the relationship between appellant and Iquan Jordan, videos 3 and 11 illustrated appellant's familiarity with the silver and black handguns used in the commission of the robbery and video 9 illustrated that, on the day of the incident, Appellant had access to a cell phone with service. The State also argues, in the alternative, that any error was harmless.

As a preliminary matter, we address the State's contention that the matter has not been properly preserved for our review. "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" MD. RULE 8–131(a). The State cites *Standifur v. State*, 64 Md. App. 570, 579 (1985), which established, "[i]t is a long-standing rule in Maryland that any objection to the admission of evidence is waived by the subsequent admission, without objection, of the same evidence at a later point in the proceedings." *Standifur* also noted that a renewed objection would not be required when the evidence is offered immediately after the court's ruling and defense counsel's objection. *Standifur* reasoned, "[t]o require another objection immediately would be pointless and would be tantamount to the reinstitution of the requirement that objecting counsel take formal exception to the overruling of their objections." *Id.* at 580.

In the instant case, Appellant waived his present claim when counsel failed to object when the same evidence was subsequently played for the jury. Appellant generally objected to the admission of State's Exhibit 37A, but did not subsequently object when the seven

videos that were admitted were later played for the jury, nearly 20 pages later in the trial transcript. The "immediacy" requirement of *Standifur*, *supra*, is not present here to permit Appellant to proceed with his claim without the subsequent objection. Accordingly, we hold that Appellant's claim has not been preserved.

We note, however, that, even if Appellant had preserved his claim, he would be limited by what he argued at trial. "Although not required, when the grounds for an objection are stated by the objecting party, either on a volunteered basis or at the request of the court, only those specifically stated are preserved for appellate review; those not stated are deemed waived." *Banks v. State*, 84 Md. App. 582, 588 (1990) (citations omitted). *See also* MD. RULE 4-323(a).

As State's Exhibit 37A was played before the trial judge, the Assistant State's Attorney and Detective Fernandez identified who was in each of the 12 videos and what was transpiring. Appellant's counsel offered one or two grounds for exclusion for most of the videos. We summarize the grounds offered by Appellant's counsel for the admitted videos as follows:

- Video 2 – Unduly Prejudicial, *i.e.*, "very inflammatory"

- Video 3 – Audio to the video was irrelevant: "Well, I would hope if their IT guy can take the audio out, except for the gun clicking that would probably be the perfect solution."

- Video 6 – "Well, I'd argue it's basically a home video that they're using, and I guess they're using it to show that my client knows Iquan."

- Video 7 – Cumulative and Unduly Prejudicial, *i.e.*, "highly inflammatory."

• Video 8 – Cumulative and Unduly Prejudicial, *i.e.*, "highly inflammatory."

• Video 11 – Argues to exclude the audio, permitting the video.

Appellant also did not renew his objection to any of the individual videos or the exhibit as a whole when the court summarized its ruling. In fact, after the court summarized which videos would be admitted, Appellant's counsel reiterated that some of the videos would be admitted, albeit, with limitations: "I think we said [video] 11, Your Honor, without the audio." Clearly, Appellant would be limited to the grounds for the objection upon which he relied at trial and not the broader review he seeks on appeal, if he had properly preserved the issue.

II

Appellant's second assignment of error is that the State failed to present legally sufficient evidence to support his convictions, *i.e.*, robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous or deadly weapon and use of a firearm in the commission of a crime of violence or felony. Specifically, Appellant reiterates that he never used a dangerous or deadly weapon against Lopez or committed robbery against her. When the assailant approached, according to appellant, he "merely got out of her car and walked away[.]" Although Appellant acknowledges that that was "hardly a chivalrous act on his part," he maintains that it was not illegal. Furthermore**,** Appellant asserts that the evidence presented merely suggests an "association" with Iquan Jordan, not an agreement with him to support the acts which constituted his conspiracy convictions.

The State responds that Appellant has effectively failed to preserve his claim

because his arguments in support of his Motion for Judgment of Acquittal "centered exclusively [on] the charges of first-degree assault, for which he was acquitted, and use of a firearm in the commission of a crime of violence." Specifically, the State asserts that,"[a]t no point did Garrett argue, as he does on appeal, that the State failed to prove the existence of a conspiratorial agreement, that he withdrew from the conspiracy or that he had a larcenous intent." The State acknowledges that Appellant argued, in support of his Motion, that the evidence was insufficient to sustain a conviction for use of a firearm in the commission of a crime of violence or felony; however, the State asserts that Appellant's argument on appeal differs. The State maintains that Appellant previously argued that "the firearm was not operable because it was a starter pistol and that there was no evidence that Garrett 'instructed' Jordan to use a gun." The State characterizes Appellant's arguments on appeal as "there was no evidence that Garrett had 'knowledge of the presence of the weapon' or 'any specific intent' 'to use that weapon.'" Therefore, the State avers, Appellant's claims, as they are presented for appeal, have not been preserved. The State also asserts that, assuming Appellant's claims have been preserved, they fail on the merits, *i.e.*, each element of the crimes for which Appellant has been convicted are sufficiently supported by the evidence presented.

Preservation

As a preliminary matter, we review the State's response that appellant has not preserved his claim on appeal.

In a jury trial, the scope of the legal sufficiency issue is clear. Maryland Rule of

> Procedure 4–324 requires an appellate court to review the legal sufficiency of the evidence if, at the close of all of the evidence, a timely motion for a judgment of acquittal has been made by the defendant. . . . Absent such a motion, no review of the legal sufficiency of the evidence is even permitted.

Chisum v. State, 227 Md. App. 118, 124 (2016) (citations omitted).

Furthermore, "[a] failure to move for judgment of acquittal at both the end of the State's case and, after presenting evidence, the end of the defense's case, results in a failure to preserve the issue for appellate review." *Ruth v. State*, 133 Md. App. 358, 364 (2000) (citing *Ennis v. State*, 306 Md. 579, 583–87 (1986)).

A pretrial motion to dismiss focuses upon the legal sufficiency of the indictment and not the sufficiency of the evidence; however, when the *effect* of a "motion to dismiss" would be the same as an acquittal, *i.e.*, a final judgment based on the merits of the case, then a trial court is deemed to have subject matter jurisdiction to grant or deny the motion and the grant of a motion to dismiss under such circumstances would be treated as an acquittal for double jeopardy purposes. *State v. Taylor*, 371 Md. 617, 644, 654 (2002).

In the instant case, Appellant designated his motion as a "Motion to Dismiss," but, in effect, it functioned as a Motion for Judgment of Acquittal. The Motion occurred after the close of all evidence, *i.e.*, the defense did not present any testimony or evidence after the State rested. During his argument in support of the Motion, Appellant's counsel correctly stated the standard of review for a motion for judgment of acquittal, *i.e.*, in the light most favorable to the State, and provided a particularized argument as to why the evidence presented was insufficient to support the charges. Although requirement of a

motion for judgment of acquittal to preserve appellate review is not discretionary, *Williams v. State*, 131 Md. App. 1, 7 (2000), we view Appellant's Motion to Dismiss, made at the close of all evidence, concerning the insufficiency of the evidence presented to support the charges against him as in compliance with Md. Rule 4–324 to preserve his complaint on appeal.

However, our analysis of the issue of preservation does not end there. "Maryland law is clear that, on appeal, an appellant's sufficiency arguments are limited to the specific grounds stated in his motion for judgment at trial." *Reeves v. State*, 192 Md. App. 277, 306 (2010). At trial, Appellant's counsel made the following argument in support of his Motion to Dismiss for insufficiency of the evidence:

> Yes, I would like to make a motion to dismiss, Your Honor. I don't believe the State has proven beyond a reasonable doubt. I know that's not the standard at this point. In the light most favorable to the State, I don't believe that they've presented evidence that my client has engaged in first degree assault.
>
> That the gun that was used was a starter pistol. [sic] By all accounts it wasn't capable of shooting and my client didn't use it. Didn't (unintelligible) there's no evidence that he instructed Iquan Jordan to assault the lady or rob the lady. I would argue there's no evidence sufficient to show that he was using a handgun in the commission of a felony.
>
> He didn't direct Iquan Jordan to use a gun, if a gun was used. And all the evidence is that he was an accomplice and basically set this up in advance. There's no evidence that he directed him to come there and use a gun and rob Melissa Lopez.

Accordingly, Appellant's sufficiency of the evidence argument must be constrained to the argument made at trial. Appellant did not preserve a review of the sufficiency of the evidence to support his conviction for conspiracy to commit robbery with a dangerous

weapon because, at trial, he did not argue the conspiracy charge when he made his Motion to Dismiss at the close of all of the evidence. Therefore, we review Appellant's claims for insufficiency of the evidence for his remaining two convictions.

Analysis

> When determining whether the State has presented sufficient evidence to sustain a conviction, we have adopted the Supreme Court's standard articulated in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), namely, '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.'

Hobby v. State, 436 Md. 526, 537–38 (2014) (second emphasis supplied) (quoting *Derr v. State*, 434 Md. 88, 129 (2013)). We do not "retry" the case; rather, we defer to the fact-finder even if we would have arrived at a different conclusion, acknowledging the fact-finder's unique position to observe the evidence first-hand. *Derr*, 434 Md. at 129 (citing *Titus v. State*, 423 Md. 548, 557–58 (2011)).

"When dealing with the issue of legal sufficiency in a jury trial, we are dealing only with the satisfaction of the burden of production . . . whether the State has satisfied its burden of production by producing legally sufficient evidence to permit a verdict of guilty." *Chisum v. State*, 227 Md. App. 118, 125 (2016). "The Due Process Clause of the Fourteenth Amendment . . . requires the State to prove every element of an offense charged beyond a reasonable doubt." *Savoy v. State*, 420 Md. 232, 246 (2011). Accordingly, we must examine each element for all Appellant's convictions preserved for our review.

Md. Code Ann., Crim. Law. ("C.L.") § 3–403 governs robbery with a dangerous weapon and subpart (a)(1) provides that, "[a] person may not commit or attempt to commit

robbery under § 3-402 of this subtitle with a dangerous weapon[.]" C.L. § 3–402(a) provides that a person is prohibited from committing or attempting to commit robbery. C.L. § 3–401(e) defines "robbery," noting that it "retains its judicially determined meaning," except subpart (e)(1) provides that "robbery includes obtaining the service of another by force or threat of force" and subpart (e)(2)(i) provides that "robbery requires proof of intent to withhold property of another permanently[.]"

"[T]here can be no robbery without a larcenous intent [and] such intent may be ascertained and determined from the words, acts and conduct of the accused." *Midgett v. State*, 216 Md. 26, 41 (1958).

> Therefore, as larceny is an ingredient of robbery, we look to the components of the former to ascertain the requisite mental element of the latter. Larceny is the fraudulent taking and carrying away of a thing without claim of right with the intention of converting it to a use other than that of the owner without his consent.

State v. Gover, 267 Md. 602, 606 (1973) (citations omitted).

When examining whether a weapon is a "dangerous or deadly weapon" for purposes of C.L. § 3–403, "[b]ecause the words 'deadly or dangerous weapon' are stated in the disjunctive, the State need not prove that the weapon is deadly; the dangerousness of the weapon used will suffice to sustain a conviction." *Handy v. State*, 357 Md. 685, 691 (2000).

In determining the "dangerousness" of a weapon, the Court of Appeals, in *Brooks v. State*, 314 Md. 585, 600 (1989), held:

> [T]herefore, that for an instrument to qualify as a dangerous or deadly weapon under [C.L. § 3–403], the instrument must be (1) designed as 'anything used or designed to be used in destroying, defeating, or injuring an enemy, or as an instrument of offensive or defensive combat'; (2) under the circumstances of the case,

> immediately useable to inflict serious or deadly harm (*e.g.*, unloaded gun or starter's pistol useable as a bludgeon); or (3) actually used in a way likely to inflict that sort of harm (*e.g.*, microphone cord used as a garrote).

Brooks, 314 Md. at 600 (citations omitted).

C.L. § 4–204 governs the use of a firearm in the commission of a crime and subpart (b) provides that, "[a] person may not use a firearm in the commission of a crime of violence, as defined in § 5–101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime." Subpart (a) defines "firearm," which includes starter guns. Md. Code Ann., Pub. Safety § 5–101(c)(14) provides that robbery with a dangerous weapon constitutes a "crime of violence."

"Consistent with the case law of this State, an individual must possess a handgun before he or she can use that handgun." *State v. Williams*, 397 Md. 172, 197 (2007), *abrogated on other grounds by Price v. State*, 405 Md. 10 (2008). "Possession" can include actual or constructive possession, meaning "to exercise actual or constructive dominion or control over a thing by one or more persons." *State v. Gutierrez*, 446 Md. 221, 233 (2016).

In the instant case, in addition to jury instructions given regarding each crime for which Appellant had been charged, the trial judge also gave the following instruction to the jury:

> The defendant may be guilty of robbery with a dangerous weapon [] or handgun use during a felony or crime of violence as an accomplice even though the defendant did not personally commit the acts that constitute that crime.
>
> In order to convict the defendant of robbery with a dangerous weapon [] or handgun use during a felony or crime of violence as an accomplice, the State must prove that the robbery with a dangerous weapon [] or handgun use during a felony or crime of

> violence occurred and that the defendant with the intent to make the crime happen knowingly aided, counseled, commanded or encouraged the commission of the crime or communicated to the primary actor in the crime that he was ready, willing and able to lend support if needed.
>
> A person need not be physically present at the time and place of the commission of the crime in order to act as an accomplice. 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 by as a lookout to warn the primary actor of danger and whether the defendant communicated that willingness to the primary actor.

During closing arguments, the Assistant State's Attorney reiterated the theory of accomplice liability, stating: "And you heard the instruction on accomplice liability which is perhaps the most important instruction that you will rely upon in this case. Did he counsel, command or aid and abet in the commission of that crime?"

> Under Maryland law, one may commit an offense as either a principal in the first degree, or a principal in the second degree[.] A first degree principal is the actual perpetrator of the crime. A second degree principal must be either actually or constructively present at the commission of a criminal offense and aid, counsel, command, or encourage the principal in the first degree in the commission of that offense. *** There is no practical distinction between principals in the first and second degrees 'insofar as indictment, conviction, and punishment is concerned.' An accomplice . . . who knowingly, voluntarily, and with common interest with the principal offender, participates in the commission of a crime . . . is a guilty participant, and in the eye of the law is equally culpable with the one who does the act.

Owens v. State, 161 Md. App. 91, 99–100 (2005) (citations omitted).

In the case *sub judice*, we are tasked with determining whether the evidence presented was legally sufficient to support the two convictions Appellant has preserved for

our review, *i.e.*, armed robbery and use of firearm during a crime of violence. We hold that that the evidence is legally sufficient and affirm the jury's verdict. We explain.

One of Appellant's preserved arguments concerning the sufficiency of the evidence for his conviction for robbery with a dangerous weapon was that the gun used was a starter's pistol. *Brooks*, *supra,* clearly illustrates that a starter's pistol is considered a dangerous weapon under the second objective test. The trial court also instructed the jury that a starter's pistol qualifies as a firearm, to which instruction Appellant did not object. Accordingly, Appellant's argument fails.

The second part to Appellant's argument concerning the sufficiency of the evidence for his conviction for robbery with a dangerous weapon is that he did not use the gun and he did not instruct Iquan Jordan to use it. Appellant's argument is incorrect. The fact that Appellant did not employ the gun himself or instruct Jordan to use the weapon is not dispositive; rather, in order to establish the elements for robbery with a dangerous weapon, the elements are that Appellant had the larcenous intent to permanently deprive Lopez of her property, using force *via* a dangerous weapon. The evidence presented was sufficient to support the jury's finding that Appellant was complicit with Jordan in the commission of armed robbery. *See Williams,* 397 Md. at 195 (citations omitted) ("When two or more persons participate in a criminal offense, each is responsible for the commission of the offense. . . .").

According to Lopez, Appellant arranged the meeting with her to give her $100 worth of marijuana for free in exchange for a ride to Gaithersburg. Appellant also arranged

the location for meeting his supplier, *i.e.*, a residential area, approximately one half mile from Jordan's home, in a poorly lit area, after dark, with little to no traffic. After Lopez refused Appellant's amorous advances, he took the keys out of the ignition of the parked car and threw them in the backseat out of Lopez's reach. Appellant then made a call, *via* Facetime video message, to an unknown person, then sent a text message**,** using his cell phone, which he continued to "check." Within five minutes of sending the message, an individual "banged" on the door and Appellant allowed him to get into the car. After the individual got into the backseat and brandished a gun**,** demanding money and drugs, Appellant, who maintained a calm demeanor throughout, stated that he "didn't have time for this" and exited the vehicle, leaving Lopez behind. Appellant did not contact the police or flag down assistance. Moreover, an item that was stolen from Lopez, *i.e.*, the tan Michael Kors handbag, was later gifted by Appellant to Raven Jordan-Wran as a Christmas present in 2014.

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of armed robbery and Appellant's complicity in the crime. It is patent, from the evidence presented, that Appellant was present at the time and place of the commission of the crime and acted in a manner that knowingly aided, counseled, commanded or encouraged the primary actor, *i.e.*, Iquan Jordan. Accordingly, we hold that Appellant's conviction for robbery with a dangerous weapon was legally supported by the evidence.

Finally, Appellant contends that the evidence was legally insufficient to support his

conviction for use of a firearm in the commission of a violent crime or felony. At trial Appellant argued that there was "no evidence sufficient to show that he was using a handgun in the commission of a felony. He didn't direct Iquan Jordan to use a gun, if a gun was used. And all the evidence is that he was an accomplice and basically set this up in advance." Again, Appellant's argument is unpersuasive. Patently, Iquan was in actual possession of two firearms and used them during the commission of a crime of violence, *i.e.*, armed robbery. As stated, *supra*, a rational jury could find, after viewing the evidence in the light most favorable to the State, that Appellant knowingly aided, counseled, commanded or encouraged Jordan during the armed robbery. Accordingly, Appellant is also culpable for the use of a firearm in the commission of a crime of violence. *See Williams*, 397 Md. at 195 ("When two or more persons participate in a criminal offense, each is responsible for the commission of the offense. . . .").

Therefore, we hold that, with respect to the issues preserved for our review, the evidence presented was legally sufficient to support the convictions**.**

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