UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2260

September Term, 2015

RUPERT STAMPS

v.

STATE OF MARYLAND

Berger,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: February 22, 2017

A jury in the Circuit Court for Montgomery County convicted Rupert Stamps, appellant, on four counts of conspiring to commit armed robberies that occurred three months apart at the same Gaithersburg business. Stamps was sentenced to a total of 70 years, as follows:

> **Count 1:** Conspiracy to commit armed robbery of Janice Ray on August 14, 2014 – 15 years;
>
> **Count 2:** Conspiracy to commit armed robbery of David Rollins on August 14, 2014 – 15 years (consecutive);
>
> **Count 3:** Conspiracy to commit armed robbery of David Rollins on November 6, 2014 – 20 years (consecutive);
>
> **Count 4:** Conspiracy to commit armed robbery of Betty Johnson on November 6, 2014 – 20 years (consecutive).

Challenging those convictions and sentences, Stamps raises four issues for our review, which we have reordered as follows:

1. Did the lower court err in denying the motion to dismiss for failure to comply with the *Hicks* rule?

2. Did the lower court err in allowing the State to introduce the out-of-court statements of Mr. Stamps's alleged co-conspirator?

3. Was the evidence insufficient to prove that Mr. Stamps conspired to commit armed robbery?

4. Did the lower court enter too many convictions and sentences for conspiracy?

We conclude that the trial court did not err in denying a *Hicks* dismissal. Moreover, the State concedes that the hearsay statements of a co-conspirator were erroneously admitted through the testimony of a police detective. However, because

Stamps objected to only a portion of that testimony, and because the co-conspirator testified to substantially the same information that was recounted in the rest of the testimony, that evidence was harmlessly cumulative. Finally, as the State also concedes, the evidence was sufficient to convict Stamps of only two conspiracies, corresponding to the two separate robberies. Accordingly, we shall reverse two of Stamps's convictions and remand for revision and resentencing on the two surviving convictions.

FACTUAL AND PROCEDURAL BACKGROUND

At Sweeney Building Services in Gaithersburg, armed robberies took place on August 14, 2014, and November 6, 2014. In the first robbery, two masked gunmen stole $37,500 in cash, but neither victim was harmed. After police received a 911 call reporting that two masked men left that robbery in a grey or silver Dodge Durango, their trail went cold. In the second robbery, two masked men shot their way into the office and wounded two employees, but fled with nothing. Witnesses working at neighboring businesses observed two men running to a green Ford Explorer. One individual pursued that vehicle, called 911, and reported the license plate number.

Investigators identified Regina Mitchell as the owner of the Explorer and tied her to the second robbery through surveillance footage and cell phone records. Ms. Mitchell eventually admitted to acting as the driver in both robberies. In a statement to Montgomery County Police Detective Paris Capalupo, she implicated Stamps, whom she had dated "off and on" since June, among four co-conspirators. Stamps, Mitchell, and three others were arrested and charged in the two robberies.

In a four-day trial, the State established that the first robbery was committed with "inside" information provided by Kervon Noel, a vendor for Sweeney Building Services ("SBS"), which is a janitorial services business. Noel was a friend of Regina Mitchell's son. Noel met Stamps at Mitchell's house, and the two exchanged phone numbers. After Mitchell's son declined to participate in Noel's plan to rob SBS, Noel recruited Stamps, who in turn brought in Ms. Mitchell and the two men who eventually committed both robberies, Michael Robb and Hazlee Narce.

Noel targeted his boss, who regularly arrived at the office in a black Toyota truck between 9 and 10 a.m. with cash to pay vendors. Regina Mitchell recounted that the night before the August 14, 2014, robbery, Stamps drove his grey Dodge Durango to the Gaithersburg office of SBS, discussing the robbery plans with Noel, Robb, Narce, and Mitchell along the way. After this scouting trip, the group returned to Ms. Mitchell's apartment, where they stayed overnight.

Early the next morning, Ms. Mitchell dropped Stamps off at a Metro station so that he could get to his job at a retail store in Washington, D.C. Driving Stamps's vehicle, Ms. Mitchell returned to SBS, where Michael Robb and Hazless Narce robbed employees David Rollins and Janice Ray of approximately $37,500.

Ms. Mitchell then met Stamps for lunch at a fast food restaurant at the Maryland-D.C. line. When she gave Stamps $3,500 as his share of the robbery proceeds, he was angry and dissatisfied with that amount. He eventually obtained an additional $1,000 from Noel.

Three months later, Stamps, Robb, and Narce planned a second robbery of SBS. In an ill-fated decision, they excluded Noel, who could have informed them that in the wake of the August robbery, SBS had begun paying vendors by check. Unaware that there would be no payroll cash, the group proceeded with their plans.

Although Mitchell had not heard from Stamps for more than a month, she received a call from him shortly after 5 a.m. on a rainy November 6, 2014. Stamps's car had broken down, so he called Mitchell to ask her to pick him up on Georgia Avenue. When she arrived, Robb and Narce were with Stamps. The group returned to Mitchell's new apartment on Randolph Road. Stamps told Mitchell to give Robb and Narce "a ride to Gaithersburg" that morning, which she understood to mean they would be returning to SBS. She then took Stamps to the Glenmont Metro station so he could go to work.

Driving her green Ford Explorer, Mitchell took Robb and Narce to SBS, where they waited several hours in the parking lot until the black Toyota truck returned to the office. While Mitchell stayed in her car, Narce and Robb attempted another robbery at SBS. Narce, who was armed with a handgun, shot through the glass front door, shattering it. Employees David Rollins and Betty Johnson were shot multiple times during the robbery; both survived. After the two robbers were told there was no cash on hand, they fled.

During the robbery, Ms. Mitchell heard at least four gunshots. Robb and Narce ran back to the Explorer. Mitchell sped away, but saw someone writing down her license plate number and another person following in a vehicle. Robb was upset with Narce, demanding to know why he did "that," referring to the shootings. When Narce said he

was going to throw the gun out the car window, Mitchell locked the windows to prevent him from tossing the weapon near the elementary school they were passing. Ms. Mitchell dropped the two men off at the Shady Grove Metro stop, then returned to her home.

Mitchell called Stamps, who told her he would "handle" Narce "because [he] was crazy." Stamps came over to Mitchell's residence later that day. When she expressed distress over "two people being shot" and police having her "tag number," he told her to say she had been home asleep and that her son had been driving her vehicle. The next day, they cleaned her vehicle because Narce "had been in th[e] back and he had a gun."

After police identified Ms. Mitchell as the owner of the getaway car, Stamps told them that her son was driving that vehicle. Mitchell's son was arrested, jailed, and charged with attempted first degree murder. Despite Ms. Mitchell's insistence that she had been the one driving her vehicle, police did not believe her until she confessed to her role in both robberies, exonerating her son and implicating Stamps, Noel, Robb, and Narce. Later, pursuant to an agreement under which the State would recommend a sentence capped at eight years if she testified truthfully against her co-conspirators, Mitchell pleaded guilty to two counts of conspiring to commit armed robbery.[1]

Although it was undisputed that Stamps was not present during either robbery, the State alleged that he conspired to commit both crimes, taking a lead role in the planning of each. At trial, Detective Capalupo testified about Ms. Mitchell's statement incriminating Stamps and the other conspirators. Ms. Mitchell testified against Stamps,

[1] Ms. Mitchell testified that she was 61 years old and had no prior criminal record.

giving her account of both robberies. The State also presented the following circumstantial evidence:

- A recording of a 911 call from a witness who saw a grey or silver Dodge Durango leaving the scene of the first robbery on August 14, 2014.

- Cell phone records and expert testimony showing calls among the co-conspirators at times pertinent to both robberies, as well as cellular location data and expert testimony showing the geographic areas where those calls were made.

- Surveillance camera images showing Ms. Mitchell and her Ford Explorer in the parking lot at SBS before and immediately after the second robbery on November 6, 2014.

- Surveillance camera images showing Robb and Narce fleeing through the parking lot next to SBS just after the November 6 robbery.

- Surveillance camera images showing Robb and Narce at the Shady Grove Metro stop at 1:13 p.m. on November 6, 2014, minutes after the second robbery, wearing the clothes described by Mitchell.

- Testimony by a surveilling police officer that the day after the second robbery, he observed Mitchell and Stamps outside her residence, "wiping down" the exterior and interior surfaces of her Ford Explorer.

In closing, the State argued that once Noel introduced the idea of robbing SBS, Stamps acted as a "ringleader" who organized both robberies and gave himself an alibi while they were being committed. His agreement to commit the first robbery on August 14, the State contended, could be inferred from his behavior before and after that crime, from "casing" the premises the night before, to supplying his Dodge Durango to commit that robbery, assigning Ms. Mitchell as the driver, and accepting cash proceeds from that crime. Similarly, Stamps was the "mastermind" behind the second robbery on November

6, which could be inferred from his actions in excluding Noel from the plan, summoning Ms. Mitchell that morning, and instructing her to drive Robb and Narce to SBS.

We shall include additional facts as necessary to our discussion of the issues raised by Stamps.

DISCUSSION

I.
Hicks Dismissal

Stamps contends that the trial court erred in denying his motion to dismiss the charges against him because the State violated Md. Code, Crim. Proc. § 6-103(a) and Md. Rule 4-271(a), both of which require that a criminal defendant be brought to trial within 180 days after the earlier of the defendant's first appearance in circuit court or the appearance of defense counsel, unless the administrative judge finds "good cause" for a postponement. In *State v. Hicks*, 285 Md. 310, 318 (1979), the Court of Appeals held that charges must be dismissed if the State fails to establish good cause for trying the defendant after this 180-day deadline, which has become known as the "*Hicks* date." *See State v. Huntley*, 411 Md. 288, 298 (2009); *Peters v. State*, 224 Md. App. 306, 356, *cert. denied*, 445 Md. 127 (2015).

Stamps's trial was scheduled for June 29, 2015, approximately six weeks before his *Hicks* date of August 11. Trial of this Track 4 case[2] was set to proceed over four days against three of the four co-defendants who were allegedly involved in both robberies:

[2] Track 4 is the designation for the most complex cases in the Circuit Court for Montgomery County.

Mr. Stamps, Ms. Mitchell, and Mr. Robb. (Mr. Narce had been declared incompetent to stand trial and would not be ready by the scheduled trial date.)

On June 12, over Stamps's objection, the circuit court postponed the trial date to August 17, six days past the *Hicks* date. The postponement stemmed from a family emergency for the lead prosecutor, Patrick Mays, whose four-month-old daughter had "major surgery" and required a lengthy hospitalization. Prosecutor Julia Cardozo explained to the assigned trial judge that Mays's child would remain in the hospital until at least June 22, and "they anticipate that there will be further complications and further medical treatment that's going to be necessary." Ms. Cardozo proffered that this medical emergency would prevent Mr. Mays from preparing for and attending the June 29 trial, at which the State expected to call approximately 20 witnesses. Although Ms. Cardozo had been "second chair" from the outset, she pointed out that she lacked Mr. Mays's trial experience and that it would be difficult to replace him with another prosecutor who could be ready before the scheduled trial date.

Neither Ms. Mitchell, her counsel, Mr. Stamps, nor Mr. Narce were present on June 12. Nevertheless, Ms. Cardozo proffered that she expected the case against Mr. Mitchell to be resolved before trial and that counsel for Mr. Narce had not taken a position on postponement because his client, who had previously been declared incompetent, would not be ready for trial by June 29.

The two other defendants opposed a postponement. Mr. Robb, representing himself while incarcerated, objected to a delay, but then advised the parties and the court for the first time that he intended to call as many as ten witnesses, including alibi

witnesses, which the court noted could necessitate further investigation by the State and other defendants. Counsel for Mr. Stamps emphasized that his client, who was not present during either robbery, had been in jail since the previous November. He argued that given the "significant resources within the State's Attorney's Office," there was enough time for another "seasoned" prosecutor to be brought "up to speed" before the June 29 trial date.

The hearing was recessed until that afternoon, when Stamps and counsel for all defendants could be heard. During that recess, Ms. Mitchell pleaded guilty pursuant to an agreement that required her to testify against her alleged co-conspirators.

At the conclusion of the hearing, the judge was persuaded that the combined effect of Mr. Mays's family emergency, Mr. Robb's belated disclosure of witnesses, and Ms. Mitchell's agreement "to testify against the remaining codefendants" established good cause to postpone trial until August 17.

The administrative judge agreed, ruling as follows:

> The circumstances are such that no one could imagine them. And certainly recognizing, gentlemen, that you both have been in custody and your freedom deprived of you, I do find that under these circumstances there is good cause to go beyond the 180th day. And those reasons include the fact that one of the trial attorneys slated to try these matters is having a family emergency and is not available to prepare for trial; that is a very short notice for anyone skilled or otherwise to be prepared to go to trial or switch and have a new attorney put in place. If the reverse were the situation, I would certainly be sustaining the same request from the Defense.
>
> So I do find that there is good cause to go beyond the 180th day. I find with regard to all three defendants that they are not consenting to go beyond the 180th day, so this is the

> Court making this finding. The matters will be postponed until August 17th for a five-day trial before Judge Joseph M. Quirk.

Stamps then filed a written motion to dismiss for failure to comply with *Hicks*, which the trial court denied.

Stamps does not challenge the administrative judge's factual findings that these "circumstances [were] such that no one could anticipate them," that Mr. Mays would not be able to try the case unless it was postponed, and that trial of this Track 4 case involving multiple co-defendants would take four or five days. Instead, Stamps contends that the administrative judge abused her discretion in determining that there was not enough time for another prosecutor to substitute for the lead prosecutor. In Stamps's view,

> [t]he State failed to explain why none of the many other prosecutors in the Office of the State's Attorney could not step into the case. More likely was that the State was simply unprepared for trial. Indeed, the State subsequently made discovery disclosures after the originally scheduled trial date of June 29, 2015. *See* Mot. To Dismiss, at 2 & ex. 1.

(Citations in original).

Stamps's *post hoc* speculation that the State was unprepared for trial is not grounds for appellate relief. In debating the postponement request, defense counsel did not question the State's readiness for trial, apart from Mr. Mays's unavailability. Nor could the administrative judge have factored into her good cause evaluation the discovery

developments that had not yet occurred.[3] Instead, the judge properly exercised her discretion by determining good cause based on the proffers and arguments presented to her. *Cf. Morgan v. State*, 299 Md. 480, 488 (1984) (administrative judge does not abuse discretion by failing to consider information that was not presented at the postponement hearing).

Based on the unchallenged factual findings, the administrative judge did not abuse her discretion in ruling that two weeks was not enough "notice for anyone skilled or otherwise to be prepared to go to trial or switch and have a new attorney put in place." An unanticipated and unavoidable obstacle to the State's preferred prosecutor trying a complex case may constitute good cause for postponing trial beyond a *Hicks* date. Responding to the State's argument that "prosecutors are not 'fungible' and are not readily able to trade off serious cases[,]" the Court of Appeals has held "that the State's interest in maintaining prosecutorial continuity is a significant interest which in some instances may qualify as good cause for a postponement[.]" *State v. Toney*, 315 Md. 122, 135 (1989). *Cf. Choate v. State*, 214 Md. App. 118, 140 (2013) (administrative judge did not abuse discretion in finding good cause to postpone one of two trials scheduled to be

[3] In any event, we are not persuaded that either of the discovery disclosures made after the originally scheduled trial date suggest that the State would not have been ready for trial. According to the pleadings, the discovery material in question consisted of (1) "previously provided discs that were recopied at the request of Defense counsel," and (2) "reports of police that did not exist prior to July 2015." Neither of these discovery matters suggests that the State used the prosecutor's family emergency as a pretext to obtain more time to prepare for trial.

tried the same day by the same prosecutor because "[t]he State is not necessarily required to resolve schedule conflicts by reassigning prosecutors").

In this instance, postponing trial to a date that was only six days past Stamps's *Hicks* date reasonably accommodated the State's preference for its lead prosecutor to try this complex case, while also affording defense counsel opportunity to investigate and strategize in light of the two potentially important new developments that came to light during the postponement hearing, *i.e.*, Mitchell's newly minted agreement to testify against Stamps and Robb, and Mr. Robb's belated disclosure of his lengthy witness list. On this record, the administrative judge did not abuse her discretion in determining that there was good cause to postpone trial beyond Stamps's *Hicks* date. In turn, the trial court did not err in denying Stamps's motion for a *Hicks* dismissal.

II.
Admission of Hearsay

Stamps next contends that reversal is required because the trial court admitted Detective Capalupo's hearsay account of what Ms. Mitchell told him about both robberies. The State concedes that this testimony was inadmissible hearsay, but argues that Stamps failed to preserve his objection to it. In the alternative, the State asserts that the hearsay was cumulative to testimony by Ms. Mitchell, and, therefore, that its admission into evidence was harmless error.

For the reasons explained below, we are not persuaded that Stamps waived his hearsay objection to all of the challenged testimony. Because the hearsay testimony that Stamps did seek to exclude was cumulative, however, reversal is not warranted.

A.
The Record

Stamps's hearsay complaint arises from the testimony of Detective Capalupo on direct examination, which, as background for our discussion of the preservation and prejudice issues addressed below, we set forth in its entirety:

> [PROSECUTOR]: And, did yourself and other detectives, have a chance to interview [Ms. Mitchell] with respect to her involvement in both of these robberies?
>
> [DETECTIVE CAPALUPO]: Yes.
>
> [PROSECUTOR]: And, what, if anything, well, first let me ask you this. At first, did she deny involvement in the robberies?
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> [DETECTIVE CAPALUPO]: She did.
>
> [PROSECUTOR]: Did there come a point in time where those denials stopped and she began to provide details about her own involvement?
>
> [DETECTIVE CAPALUPO]: Yes.
>
> **[PROSECUTOR]: Can you tell us, ultimately, can you tell us what she told Montgomery County Detectives and yourself, regarding her involvement in these robberies?**
>
> **[DETECTIVE CAPALUPO]: She advised that her boyfriend –**
>
> **[DEFENSE COUNSEL]: Objection, Your Honor.**
>
> **THE COURT: Overruled.**

[DETECTIVE CAPALUPO]: She advised that her boyfriend, Rupert[4] Stamps, approached her in August and asked, excuse me, one second, Regina, [sic] may I look at my notes?

[PROSECUTOR]: Would it refresh your recollection to look at your notes?

[DETECTIVE CAPALUPO]: Yes, please.

[PROSECUTOR]: Sure.

THE COURT: He will be allowed to review his notes in order to answer the question.

[DETECTIVE CAPALUPO]: Okay, I'm sorry. That's good. It's been a while –

[PROSECUTOR]: I'm sorry, now having looked at your notes, does that refresh you recollection?

[DETECTIVE CAPALUPO]: Yes, yes.

[PROSECUTOR]: Okay. Can you just tell us what, if anything, she told Montgomery County Major Crimes Detectives regarding her role involvement in these crimes?

[DETECTIVE CAPALUPO]: Sure. The night before the August 14th robbery, Mitchell's boyfriend, Rupert Stamps, was at her residence on Bel Pre Road, also was another gentleman, that she knew as Little Mike, and she thought that was Stamps' nephew. And there was another gentleman, she knew as June (phonetic sp.) who later we determined to be Hazlee Narce, and she said that was Rupert Stamps' cousin. And Kervon Noel was at her apartment as well, and this is the night before the August 14th robbery.

That night, Stamps told Mitchell that they were going to drive, that Mitchell was going to take Noel, Robb and

[4] Mr. Stamps advises in his brief that his first name was "misspelled throughout the circuit court proceedings." We have corrected that spelling in the transcript excerpts.

Narce to Noel's work in the morning, being the 14th and Noel's work being Sweeney Building Services in Gaithersburg.

That night they all drive over, Mitchell, Stamps, Noel, Narce and Robb drove to Sweeney Building Services, and, essentially, scouted out the business and the robbery. During that drive, Mitchell said that Stamps laid out that this was the intended target. That this business was going to be robbed and kind of what everybody's role was.

They returned to her apartment. That night, Stamps, Narce and Robb spent the night at Mitchell's apartment on Bel Pre Road. And the next morning, Stamps took Mitchell's green Explorer and went to work down in D.C., which is at Wal-Mart. Mitchell drove Kervon Noel, Michael Robb and Narce in Rupert Stamps' grey Dodge Durango, and they went to Sweeney Building Services. I think they arrived there around 9-9:30. The night before Noel told them that the boss of Sweeney usually arrives there, between, I think between 9:00 and 10:00. He drives a black Toyota pickup and he goes to the bank first thing and when he comes back in the morning, he has the cash to pay their vendors.

When they arrived they saw the black truck there. I think they did a lap or two through the parking lot behind the business. Mitchell let out Robb and Narce and Noel stayed in the front seat slumped down, so he wouldn't be seen.

Robb and Narce exited the vehicle, went to the direction of Sweeney Building Services, while Mitchell parked a little ways away. Shortly thereafter, she advised that Robb and Narce came, you know, running up to the truck, the Ford Explorer and one of them was carrying what appeared to be a black bank bag. She said when they got into the car, Noel stated that he's been waiting for four years to do this.

From that point, they drove, the four of them, drove to, back to Noel's apartment, which is on Pear Tree Court in Silver Spring and they started to count out the money and they figured they had roughly $37,000. They divvyed the money out, $10,000 to Noel, $10,000 to Robb, $10,000 to

Narce and they gave $7,000 to Mitchell and advised Mitchell, meet with Stamps and give Stamps half of this money.

They went their separate ways. Mitchell, later that afternoon, met Stamps down in D.C. at McDonald's, near Georgia Avenue, for Stamps' lunch break, and just want to switch out their cars because Stamps had Mitchell's green Ford Explorer, Mitchell had Stamps' grey Durango, and she also gave him half of the $7,000. Mitchell said she did get into an argument with Stamps as he was upset at how little money they were getting. For the first robbery, that's pretty much, pretty much it.

[PROSECUTOR]: Okay. And, did she also make statements regarding her involvement in the second robbery?

[DETECTIVE CAPALUPO]: Yes.

[PROSECUTOR]: And, what, if anything, did she tell you with regards to how the day developed on November 6th, 2014?

[DETECTIVE CAPALUPO]: For the second robbery, she advised that she received a phone call early in the morning on November 6th, about 5:30 in the morning, from Stamps and it was Stamps saying that his truck broke down in the Silver Spring area and he was at a service station. And he requested that she come down and pick him up. Mitchell drove down to the service station where she met Stamps, Narce and Robb and picked them up and drove them in her Ford Explorer to her residence, which she moved to, which was on Randolph Road. They went to the residence for a bit and then she drove Stamps to the Wheaton-Glenmont Metro Red Line and he said he had to go to work down at Wal-Mart.

After dropping Stamps off at the Metro, Mitchell, Robb and Narce, they drove to Burger King in Alesia (phonetic sp.) Road area of Silver Spring, and men [sic] they ultimately drove back to Sweeney Building Services.

And, I forgot to mention, when she originally picked up Stamps down in Silver Spring, Stamps told her, you are

> are going to drive Narce and Robb to Sweeney Building Services this morning and, he said, we don't need Noel, we are going to leave him out of this one, meaning Kervon Noel.
>
> Once they left the McDonald's [sic], it was Narce, Robb and Mitchell in the green Ford Explorer, and they drove up to Sweeney Building Services in Gaithersburg where they scouted the parking lot. They saw the black Toyota pickup that they knew to be the owner of the business. It was backed into a, I guess, a loading dock area. They did another lap or two, realized the vehicle was gone, so they waited in the parking lot of the shopping center, or the strip mall area.
>
> They waited for several hours, and, at that point, Regina said she, Regina Mitchell said she got out to smoke. She took a nap in the vehicle and they just waited until they saw the black Toyota come back. I think that was around, just before 1:00 p.m. in the afternoon.
>
> She said, she drove around to the back side of, it would be Wellman's [B]athroom, like finishing business, where Narce and Robb exited her vehicle and walked towards Sweeney Building Services.
>
> She said, a short time later, she heard four gunshots and, you know, by then, less than a minute, she observed Narce running, with Michael Robb running, and she said that Narce had a handgun in his hand while he was running to the vehicle. They got in, Robb got into the front seat, Narce got into the back seat, and told her to go. She asked what happened. Narce said, just go. And said, I need to get rid of this gun. And he attempted to roll down his back window, and Mitchell said she locked the windows, preventing him from rolling down the window and throwing out the gun. She said from there, she drove to the Shady Grove Metro where Narce and Robb exited her vehicle and walked down to the Metro and she drove back home.

(Emphasis added.)

Ms. Mitchell testified after Detective Capalupo, providing a nonhearsay account of both robberies. As set forth in the Background section of this opinion and discussed

below, the portion of Detective Capalupo's testimony about the first robbery that Stamps sought to exclude was consistent with Ms. Mitchell's testimony.

B.
Preservation

The State contends that Stamps failed to preserve a hearsay objection to Detective Capalupo's hearsay testimony about both the first and second robberies. According to the State, even though defense counsel objected before the detective related what Ms. Mitchell told him about the first robbery, that general objection was effectively neutralized by the intervening colloquy during which the witness refreshed his recollection of Ms. Mitchell's statement by reviewing his notes. Moreover, the State argues that Stamps waived his objection to the hearsay account of the second robbery by failing to object. In any event, admission of the hearsay account of both robberies "was harmless error because Mitchell testified to all of the same facts when she testified later in the trial."

Under Md. Rule 4-323(a), "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objections become apparent. Otherwise, the objection is waived." This contemporaneous objection requirement prevents error that requires re-trial and precludes "sandbagging" of the trial judge to obtain "a second 'bite of the apple' after appellate review[,]" *Sydnor v. State*, 133 Md. App. 173, 183 (2000), *aff'd on other grounds*, 365 Md. 205 (2001), by "requiring counsel to bring the position of their client to the attention of the lower court at

the trial so that the trial court can pass upon, and possibly correct any errors." *Robinson v. State*, 410 Md. 91, 103 (2009) (citation and quotation marks omitted).

We do not agree that defense counsel was required to renew his objection to the testimony about the first robbery. A general objection preserves all grounds for excluding evidence, including hearsay. *See Gross v. State*, 229 Md. App. 24, 32 (2016). Here, the prosecutor asked a question that elicited hearsay about the first robbery; the court overruled a general objection to that question; and the witness refreshed his recollection in order to answer that question. There was no interjection of "other testimony or evidence" so as to require a renewed objection as in *Hall v. State*, 119 Md. App. 377, 390-91 (1998), cited by the State. Absent any new testimony or evidence, defense counsel's general objection preserved Stamps's hearsay challenge to the detective's testimony regarding what Ms. Mitchell told him about the first robbery.

However, we agree with the State that Stamps did not preserve his objection to Detective Capalupo's hearsay account of Ms. Mitchell's statement concerning the second robbery. After the detective testified about the first robbery, the prosecutor moved on to the second robbery, without objection. The sole issue, therefore, is whether the erroneous admission of hearsay about the first robbery requires reversal.

C.
Harmless Error

The State argues that Detective Capalupo's hearsay testimony is rendered harmless by Ms. Mitchell's trial testimony, which "provided the same information." In

support, the State appends to its brief a copy of the relevant portion of the detective's testimony, annotated by cross-citations to Mitchell's testimony.

Error is harmless when "a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Dorsey v. State*, 276 Md. 638, 658 (1976). Erroneously admitted evidence may be harmless if "'there was sufficient evidence, independent of the [evidence] complained of, to support the appellant['s] conviction'" because the "cumulative evidence tends to prove the same point as other evidence presented during the trial[.]" *Dove v. State*, 425 Md. 727, 743-44 (2010) (citation omitted). Thus, inadmissible testimony may be harmlessly cumulative "when it repeats the testimony of other witnesses introduced during the State's case-in-chief." *Id*. at 744.

Stamps disputes the State's contention that Detective Capalupo's testimony recounting Mitchell's statement about the first robbery was cumulative, arguing that it "included many details not provided elsewhere in the State's case." In particular, Stamps points out that

> Detective Capalupo testified that Ms. Mitchell told him "that [Mr.] Stamps laid out that [Sweeney Building Services] was the intended target" and "what everybody's role was" in the first robbery. By contrast, Ms. Mitchell provided the far less detailed and incriminating testimony that Mr. Stamps "[d]idn't really know Montgomery County" and that Mr. Noel was the one pointing out the business and explaining when his boss would be arriving with the money. . . .
>
> In addition to providing more damning details than those offered directly by Ms. Mitchell, the detective's hearsay testimony improperly bolstered her account through repetition. As this Court has recognized, "mere repetition" of

> a witness's prior statements may act to bolster that witness's testimony. *See Halgreen v. State*, 205 Md. App. 537, 557 (2012).

(Case citation in original) (record citations omitted).

In our view, Detective Capalupo's testimony relating Ms. Mitchell's account of the first robbery did not present the jury with "more damning details" or more incriminatory information than Ms. Mitchell provided in her trial testimony. As shown by the testimony cross-referenced by the State, Mitchell's trial testimony covered all of the material presented in Detective Capalupo's hearsay account of Mitchell's statement about the August robbery. The testimony cited by Stamps does not persuade us otherwise.

To be sure, Detective Capalupo testified that according to Ms. Mitchell, on the night before the August 14, 2014, robbery, all five co-conspirators "drove to Sweeney Building Services, and, essentially, scouted out the business and the robbery." "During that drive," the detective continued, "Mitchell said that Stamps laid out that this was the intended target. That this business was going to be robbed and kind of what everybody's role was." This account is consistent with Mitchell's trial testimony that even before they went on the scouting trip, Stamps had designated her as the driver, asking her "to give . . . [Noel] a ride" the following day. Ms. Mitchell made it clear that it was Noel who knew where SBS was located, as well as when and where the payroll cash would be coming in. And Noel said he had been "waiting for like four years" to rob this business. She explained that Noel and Stamps met at her house and that after they exchanged phone numbers, Stamps brought in Rob and Narce, who were "always together" with Stamps "like the Three Musketeers," to actually commit the robbery. Although Stamps told

Mitchell that she "didn't need to know certain things," he assigned her the job of driving, and Mitchell was aware that the purpose of all five going to Gaithersburg that evening was to see where they would be returning the next morning. During that trip, she learned where and when the black Toyota truck would likely be arriving. Although Mitchell testified that Stamps "doesn't really know Montgomery County," that remark merely explained why they all went on the scouting trip and why, after Stamps drove his Durango to SBS, Mitchell took the wheel on the return trip. After comparing the testimony of Detective Capalupo and Ms. Mitchell, we conclude that their accounts of the scouting mission are overlapping so that the hearsay about the first robbery did not result in the jury considering more detailed or more incriminating evidence than what Ms. Mitchell related in her testimony.

Nor did the detective's hearsay account of the first robbery unfairly bolster the credibility of Ms. Mitchell's trial testimony through repetition. Any bolstering effect that the detective's hearsay testimony about the first robbery may have had was, in itself, cumulative, and therefore harmless, because his account of the second robbery, to which Stamps did not object, presumably bolstered Ms. Mitchell's credibility in the same manner and to the same extent as his account of the first robbery.

On this record, we are persuaded beyond a reasonable doubt that Stamps was not harmed by the erroneous admission of hearsay about the first robbery.

III. & IV.
Sufficiency and Sentencing

In his two remaining assignments of error, Stamps challenges the sufficiency of the evidence, arguing that there is inadequate proof that he was part of an agreement to commit the two robberies. Therefore, he asserts that there are insufficient grounds for any of his convictions or sentences. Alternatively, he argues that if there is such evidence of agreement, it was only a single agreement covering both robberies, which supports only a single conviction and sentence.

The State concedes that the evidence is insufficient to support all four conspiracy convictions and sentences, but maintains there is ample evidence of two separate agreements, corresponding to the two robberies. As explained below, we agree that the evidence supports two conspiracy convictions and sentences.

A.
Standards Governing Conspiracy

"In Maryland, conspiracy remains a common law crime." *Mitchell v. State*, 363 Md. 130, 145 (2001). The Court of Appeals has described the offense as follows:

> "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."
>
> Although a conspiracy may be shown by circumstantial evidence, from which a common design may be inferred, the requirement that there must be a meeting of

> the minds – a unity of purpose and design – means that the parties to a conspiracy, at the very least, must (1) have given sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy – the objective to be achieved or the act to be committed, and (2) whether informed by words or by gesture, understand that another person also has achieved that conceptualization and agrees to cooperate in the achievement of that objective or the commission of that act. Absent that minimum level of understanding, there cannot be the required unity of purpose and design. As other courts have consistently held, therefore, conspiracy is necessarily a specific intent crime; there must exist the specific intent to join with another person in the accomplishment of an unlawful purpose or a lawful purpose by unlawful means.

Id. at 145-46 (citations omitted).

When the State charges a conspiracy offense, "[t]he unit of prosecution is the agreement or combination rather than each of its criminal objectives." *Tracy v. State*, 319 Md. 452, 459 (1990). For this reason, the State "'has the burden of proving a *separate* agreement for each conspiracy.'" *Savage v. State*, 212 Md. App. 1, 15 (2013) (citation omitted). "In the multiple conspiracy context, the agreements are 'distinct' and 'independent' from each other" when "each agreement has 'its own end, and each constitutes an end in itself.'" *Id*. at 17 (citations omitted).

"If a defendant is convicted of and sentenced for multiple conspiracies when, in fact, only one conspiracy was proven, the Double Jeopardy Clause has been violated." *Id.* at 26. The underlying principle "is that, '[t]o convict [him] severally for being part of two conspiracies when in reality he is only involved in one overall conspiracy would be convicting him of the same crime twice.'" *Id.* at 15 (citation omitted).

In reviewing the sufficiency of evidence supporting a conspiracy conviction, we 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.'" *McClurkin v. State*, 222 Md. App. 461, 486 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979)), *cert. denied*, 443 Md. 736, *cert. denied*, 136 S. Ct. 564 (2015). When "applying that standard, we give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Id*. (citation omitted).

B.
Evidence of Separate Agreements

We find sufficient evidence that Stamps entered into separate agreements to commit the two robberies. The two crimes were committed three months apart. The special verdict form delineated between the two different robberies, specifying the two dates on which they were committed.

The jury was entitled to infer a meeting of the minds among Stamps, Mitchell, Robb, Narce, and Noel to rob SBS on August 14, 2014, based on Ms. Mitchell's account of Stamps's involvement in recruiting three of the co-conspirators, scouting the business the night before, providing his vehicle for the robbery, and receiving proceeds of the crime. According to Mitchell, Stamps brought her, Robb, and Narce into the plan, then drove his car on the scouting mission, gave them his car to commit the robbery, and had agreed with Noel on how the proceeds would be split.

Similarly, there was sufficient evidence that Stamps agreed with Robb and Narce to commit the November 6, 2014, robbery, based on the evidence that Stamps excluded Noel after he was "shorted" in the earlier robbery, that Stamps brought Mitchell in at the last minute after his car broke down, and that he instructed her to drive Robb and Narce to "Gaithersburg," which she understood to mean that they were going back to commit another robbery at SBS.

By itself, Ms. Mitchell's testimony provided ample evidence to find that Stamps separately agreed to commit the two robberies. Although a co-conspirator's account of the crime must be corroborated, *see Ayers v. State*, 335 Md. 602, 637-38 (1994), the State presented circumstantial evidence that satisfied this requirement and, at the same time, added to the case against Stamps. As detailed in the above Background, witnesses and surveillance camera images confirmed Mitchell's testimony that she drove Stamps's Durango during the first robbery and her own Explorer for the second one. Surveillance images also corroborated her description of what Robb and Narce were wearing during and just after the second robbery, when she dropped them at the Shady Grove Metro stop. Call logs and expert testimony established that the co-conspirators called each other at critical times, with Stamps's cell phone, for example, making approximately 40 calls to Mitchell, Narce, and Robb on the day of the November robbery. In addition, a police officer confirmed Mitchell's testimony that the next day, she and Stamps cleaned the vehicle used in that robbery to get rid of evidence.

As discussed, the verdict sheet, to which there was no defense objection, asked the jury to decide whether Stamps conspired to rob each of two victims on each of the two

dates. The jury found Stamps guilty of conspiring to commit both robberies and completed the verdict form with guilty verdicts on all four counts. The trial court subsequently imposed consecutive sentences for each of the four convictions – fifteen years for each of the two convictions from the first robbery, and twenty years for each conviction from the second robbery, for a total of seventy years.

As the State concedes, that was error. Because the unit of prosecution for robbery is the individual victim, *see Williams v. State*, 220 Md. App. 27, 45 (2014), *cert. denied*, 441 Md. 219 (2015), four convictions would have been appropriate only if Stamps had been charged with actually committing the two robberies. But Stamps was not present for either robbery, and he was not convicted of those crimes under an aiding and abetting theory. The evidence supports only one conviction with one sentence for conspiring to commit the August armed robbery, and a second conviction and sentence for conspiring to commit the November armed robbery.

Although all four convictions and sentences cannot stand, there is some question about the remedy. We address that problem next.

C.
Remand and Resentencing

Stamps asks us to simply reverse two of the convictions and their associated sentences, leaving two convictions with consecutive sentences of fifteen and twenty years, totaling 35 years of executed time. The State also asks us to reverse two of the convictions, but maintains that we should remand for resentencing, which would leave the trial court free to alter, and perhaps increase, those sentences.

We shall reverse and vacate two of the convictions and remand to the circuit court with instructions to revise the two surviving convictions to reflect that one is for conspiring to commit the August 14, 2014, armed robbery and the other is for conspiring to commit the November 6, 2014, armed robbery. Upon entry of the two revised judgments of conviction, the court shall impose new sentences for each conviction. *Cf*,. *Jordan v. State*, 323 Md. 151, 160-61 (1991) (separate sentences imposed for a single conspiracy are treated as "illegal" sentences that may be corrected "at any time" under Rule 4-345(a)).

We agree with the State that the trial court is not bound by its previous sentences. As explained below, the court may decrease either or both terms of imprisonment, impose the same terms as the previous sentences, or increase the term on the conviction stemming from the first robbery.

Because a conspiracy sentence is derived from the underlying crime, Stamps is subject to a maximum term of twenty years for each conviction for conspiring to commit robbery. *See* Md. Code Ann., Crim. Law ("C.L.") § 1-202 (sentence for conspiracy "may not exceed the maximum punishment for the crime that the person conspired to commit"); C.L. § 3-403(b) (maximum term for armed robbery is twenty years). Although the court imposed maximum twenty-year sentences for each of the convictions stemming from the second robbery, it sentenced Stamps to fifteen years for each of the convictions stemming from the first robbery.

Constitutional principles do not preclude the court from resentencing Stamps to more than fifteen years for conspiring to commit the first armed robbery. As the Court of Appeals recently explained, such

> resentencing does not offend double jeopardy principles. The [Supreme] Court stated in *United States v. DiFrancesco*, 449 U.S. 117, 132, 101 S. Ct. 426, 66 L.Ed.2d 328 (1980), that the prohibition against multiple trials is the controlling principle in double jeopardy cases and the same prohibition precludes appellate review of an acquittal. The double jeopardy prohibition does not preclude either an appeal of a sentence or resentencing. *Id.* at 133, 101 S. Ct. 426. "[T]he pronouncement of sentence has never carried the finality that attaches to an acquittal," *id*.; likewise, resentencing following an appeal does not subject the defendant to "multiple" sentences, *id*. at 138-39, 101 S. Ct. 426.

Twigg v. State, 447 Md. 1, 21 (2016). Moreover, the only due process limitation on imposing a more severe sentence on remand arises when "the record of the new sentencing hearing demonstrates a reasonable likelihood that an increased sentence was the product of actual vindictiveness on the part of the sentencing authority, *or* the defendant 'prove[s] actual vindictiveness.'" *Id*. at 23 (citation omitted) (emphasis in original).

As a result of this appeal, there are two surviving convictions, both of which require revision and resentencing. We do not suggest how the trial court should exercise its sentencing discretion on remand. Our discussion merely clarifies that the trial court has authority to sentence Stamps to more than fifteen years on the first conspiracy conviction, up to the maximum of twenty years for that offense, and may again impose a

consecutive twenty-year sentence on the second conspiracy conviction, for a maximum total of forty years.[5]

CONVICTIONS AND SENTENCES ON COUNTS 2 AND 4 REVERSED. CASE REMANDED FOR IMPOSITION OF REVISED JUDGMENTS OF CONVICTION ON COUNTS 1 AND 3, AND RESENTENCING IN ACCORDANCE WITH THIS OPINION. COSTS TO BE PAID ONE-HALF BY APPELLANT, ONE-HALF BY MONTGOMERY COUNTY.

[5] The sentences imposed on remand will not trigger Md. Code § 12-702(b) of the Courts & Judicial Proceedings Article, because the total of the two sentences cannot exceed the previously imposed sentences totaling seventy years. *See Twigg*, 447 Md. at 26-27, 30.