Circuit Court for Baltimore City
Case No.: 119042010

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2030

September Term, 2019

ISAIAH EMANUEL KINGSTON

v.

STATE OF MARYLAND

Reed,
Friedman,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: December 28, 2020

Appellant, Isaiah Kingston, was indicted in the Circuit Court for Baltimore City and charged with armed carjacking, carjacking, armed robbery, robbery, first-degree assault, second-degree assault, theft, motor vehicle theft, use of a handgun in the commission of a crime of violence, and conspiracy to commit each of these offenses. Following a jury trial, appellant was convicted of theft, conspiracy to commit carjacking, conspiracy to commit robbery, conspiracy to commit second-degree assault, conspiracy to commit motor vehicle theft, and conspiracy to commit theft. The jury was unable to reach a verdict on the remaining counts, and those counts were later nol prossed by the State. Appellant was sentenced to 30 years with all but 15 years suspended for conspiracy to commit carjacking, and a concurrent 15 years for conspiracy to commit robbery, with the remaining counts merged, to be followed by four years supervised probation. On this timely appeal, appellant asks us to address the following questions:

> 1. Did the trial court err in admitting for impeachment purposes Appellant's prior inconsistent statement to the police?
>
> 2. Was the evidence sufficient to convict Appellant?
>
> 3. Was Appellant improperly convicted of multiple counts of conspiracy?

For the following reasons, we shall vacate all but one of appellant's conspiracy convictions and, otherwise, affirm the judgments.

BACKGROUND

On November 15, 2018, Bishnu Kandel, the on-duty delivery driver for Lombardi's Pizza, located near Loch Raven Boulevard and Taylor Avenue in Baltimore City, received an order to deliver to 1623 Ramblewood Road. At around 2:40 p.m., Kandel drove his

own white Toyota Corolla to the address to deliver the order. He parked in front of the residence, called the phone number associated with the order and informed the individual, described as having a "young person voice," that he was outside with his delivery order. After waiting several minutes, Kandel got out of his vehicle and tried to deliver to the front door. When no one answered, he returned to his car, noticing that a young male was approaching from the side of the street.

After Kandel got back into his vehicle to call the number associated with the order, this same individual opened the passenger side door and got into Kandel's vehicle, holding a black handgun. At the same time, a second male stood outside Kandel's driver's side door. Kandel was then robbed at gunpoint and these two individuals took his wallet, containing approximately $700.00, his cellphone, his identification, and his Corolla. Kandel was unable to identify his assailants.

Five days later, on November 20, 2018, at around 10:30 a.m., Baltimore City Police Detective Brian Ralph, assigned to the Regional Auto Theft Task Force, a.k.a., R.A.T.T., was on patrol in West Baltimore, randomly looking for stolen vehicles. As he drove down the 500 block of Robert Street, the detective's automatic license plate reader alerted, indicating that a stolen vehicle was parked nearby. Detective Ralph then identified an unoccupied 2015 white Toyota Corolla, bearing Maryland tag 4BX 4609, and verified that the car was reported stolen on November 15th after checking the National Crime Information Center ("NCIC") database. Detective Ralph notified other officers in the area, parked his vehicle, and waited.

Approximately ten minutes later, while he kept the Corolla under surveillance, Detective Ralph observed a young man, identified in court as appellant, approach the Corolla, unlock it and get inside, then drive out of the area. Detective Ralph followed the stolen car and stopped it a few blocks away in the 300 block of Pressman Street. After several other officers responded, Detective Ralph instructed appellant to exit the vehicle and he was placed under arrest.

Detective Steven Mahal, another officer with the R.A.T.T. team, responded and assisted with appellant's arrest. Detective Mahal seized marijuana and an operable, loaded 22 caliber, semi-automatic handgun from appellant's pocket during the search incident to his arrest.

Appellant was transported to the police station, where he was interviewed by Detective Evan Zimrin, the detective from the Baltimore Citywide Robbery Unit assigned to Kandel's carjacking case shortly after it was reported five days earlier. Detective Zimrin obtained personal information from appellant as part of the booking process and from records from the Maryland Motor Vehicle Administration. Appellant's address was identified in those records as being 1623 Ramblewood Road, the address identified for the pizza delivery. Appellant also provided a phone number and an emergency contact, namely, his mother, Nicole Queen. Records from T-Mobile listed Queen as the subscriber for that phone, the same phone used to call Lombardi's Pizza to make the delivery order in this case. In addition, and consistent with the victim's testimony, the cell phone records indicated that Mr. Kandel called the cell phone number associated with appellant that same

afternoon. Appellant waived his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and gave a recorded statement denying his involvement in the carjacking.

Appellant testified on his own behalf and denied any involvement in the underlying carjacking. We shall include additional detail in the following discussion.

DISCUSSION

I.

Recognizing that the State sought to admit appellant's prior recorded statement for impeachment purposes, appellant asserts that the statement was inadmissible "because Mr. Kingston acknowledged making the statement and because much of it was not inconsistent with his testimony." The State responds that the issue was not properly preserved and that, in any event, the trial court properly exercised its discretion in admitting the evidence. We agree.

Appellant testified on direct examination and denied calling Lombardi's Pizza on the day in question. However, he agreed that the phone number that was connected to the evidence in this case was the same. He also testified that, at some point, he let a friend borrow his phone, although he claimed he did not know who that friend called. He denied that he lived at the address associated with the delivery order, 1623 Ramblewood Road, although he admitted that he used to live there with his family when he was younger. He also testified that he had returned to Baltimore from college in Mississippi at the time because he "decided to take the semester off to work and get a car[.]"

Appellant denied carjacking the victim, Kandel; denied pointing a gun at him; and, denied even as much as approaching him on the day in question. He did admit that he was

arrested in a vehicle, but claimed he thought it belonged to a friend, testifying that "it was Derek's vehicle." He explained:

> Q. So how did you come into possession of that vehicle?
>
> A. Because the day prior to that, I asked Derek to come pick me up and he agreed to. And on our way home, he wasn't living far from me at 2506 Edgecombe, so we was carpooling home. On the way to our house, I got a text message from a female friend of mine, came to the conclusion that I wanted to go see her tonight. Being that she lived on Monument and Port Street, he was kind of hesitant with taking me all the way over East Baltimore, so we came to the conclusion, "Let me hold the vehicle and I can go take care of what I have to take care, and I'll come get you in the a.m., in the morning," and that was the conclusion that we came to.
>
> On my way to go return the vehicle to Derek, go pick him, I was arrested by the RAT team on the 300 block of Preston (indiscernible – 10:02:04).

Appellant admitted that he possessed marijuana and a handgun when he was arrested. He explained that, after he was charged, he "was confused of possession of stolen property being that I was under – I mean, if I felt as though it was his vehicle, so at first, I was a little confused, but I understood the handgun charge."

Thereafter, on cross-examination, appellant agreed that he spoke with Detective Zimrin on November 20, 2018, and that he knew that the interview was recorded. Appellant testified that he did not recall what he told the detective about the ownership of the car in that statement. He did not recall telling him that he bought the car from a "fiend," meaning an unidentified drug addict, on the street for $150.00, two days before he was arrested. But, when asked whether he remembered making the statement, appellant then testified "upon you reiterating it, yes, I remember, but no, I didn't." In addition, appellant

denied that he lied to the detective about being home from college for Thanksgiving break at the time.

At that point, the State played part of appellant's recorded statement for the appellant's view, but with the audio turned off.[1] Appellant then agreed that he told the detective that he bought the car from a drug addict, and that "I told him that because I was trying to protect my innocence . . . [a]nd at the time I was confused to the vehicle being stolen." Appellant denied that he knew that the vehicle was stolen, until after he was arrested, but that he then decided to lie about how he came into possession of the vehicle. Cross-examination continued as follows:

> Q. Okay. So you lied?
>
> A. Yes, in an attempt to protect my innocence.
>
> Q. Okay. So you lied to protect your innocence because you knew that the car was stolen?
>
> A. No.
>
> Q. Because you were the one who took it in a carjacking, right?
>
> A. Are you telling me or are you asking me?
>
> Q. I'm telling you; isn't that correct?
>
> A. No, it's not.
>
> Q. Okay. And you didn't say anything at all to the detective about somebody using your phone back on the 15th, right?
>
> A. Are you asking me [or] are you telling me?

[1] The prior recorded statement is included with the record on appeal; however, the Court was only able to listen to the audio recording.

Q. It sounded like a question to you, correct?

A. No. I don't recall.

Q. You don't recall whether or not you told the detective that?

A. No. It's been a year since that interrogation, so I don't recall everything.

Q. Okay. Well, you've never told anybody before the story that you told the jury today, right?

A. No.

The questioning then continued on different matters:

Q. And back on November 20th when you spoke to Detective Zimrin, he asked you about 1623 Ramblewood, right?

A. Yes, he asked me did I live there.

Q. And he also asked you whether or not you'd ever been there before, right?

A. I don't recall the details of that interrogation. It was a year ago.

Q. So you don't recall that you told him you didn't know anything about 1623 Ramblewood, right?

A. No, I don't recall.

Q. You don't recall that?

A. No.

Q. And since you didn't have anything to do with this, you have no reason to lie about that, right?

A. About the car – what, the carjacking or having anything to do with 1623?

Q. With anything.

A. No, I have no reason to lie.

Thereafter, appellant agreed that the recording was of his interview with Detective Zimrin and the State sought to admit that recording over the following objection by defense counsel:

> [DEFENSE COUNSEL]: Your Honor, I would object. This was not introduced, obviously, through the detective. And it's my understanding the State is using it for impeachment purposes. And so he's certainly allowed to question him, but I'm not sure that that entitles him to admit the entire statement under the circumstances.
>
> THE COURT: You're not looking to admit the entirety of it, are you?
>
> [PROSECUTOR]: I mean, I'm looking to play about 40 minutes of it, Your Honor. I mean –
>
> THE COURT: Forty, 4-0?
>
> [PROSECUTOR]: About 40 minutes. He tells a completely different story than what he told her on the stand today. The entire thing is a hearsay exception. It's also –
>
> THE COURT: I mean, it is –
>
> [PROSECUTOR]: Yeah.
>
> THE COURT: --- and he did authenticate it. I'm just wondering, I mean –
>
> [PROSECUTOR]: There may be sections I can skip through. I have it pretty well delineated.
>
> THE COURT: All right. The objection is noted, but respectfully overruled.[2]

In his recorded statement, appellant told Detective Zimrin that he had been home from college for a week for Thanksgiving break. Turning to his knowledge of how he

[2] The recorded interview was played in court and the playback was transcribed for the record. But, the recording was interrupted at various times so the prosecutor could question appellant, while he was on the stand, about that statement.

came into possession of Kandel's vehicle, appellant told Detective Zimrin in his statement that he bought the car for $150.00 from a "fiend," meaning, according to appellant, a drug addict. He also told the detective that he knew the car was stolen but did not know the underlying circumstances.

The prosecutor paused the playback of appellant's statement. He then asked appellant, while he was on the stand, about how he obtained the car. Appellant informed the jury that he borrowed the car from a person named "Derek" two days earlier, but that he told the detective he bought the car from a drug fiend on the street. He testified that he was told the car was stolen by the detective, and that he did not steal the car. Appellant further testified:

> Q. You were not worried on November 20th, 2018, that the car was stolen, right?
>
> A. After finding out it was stolen from the detectives, no, I wasn't worried about it being stolen because I didn't steal it, so I wasn't –
>
> Q. Okay.
>
> A. – too concerned about it being stolen.
>
> Q. Okay. So the story that you gave to Detective Zimrin is that you bought a car that you knew was stolen from a drug addict, right?
>
> A. Well, he asked me, "Hey, you knew it was stolen. You just – you didn't know what was up with it." And I said, "I didn't know what was up with it." That's what I said.
>
> Q. But you knew even if it's a story, if you buy a 2015 passenger vehicle from a drug addict for $150, you're not dumb, you know that's a stolen vehicle, right?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE WITNESS: Because of the fact that I never bought the vehicle.

THE COURT: Overruled. You can answer.

THE WITNESS: Because of the fact that I never bought the vehicle from the fiend the whole entire story was fabricated.

In addition to how he obtained the car, the State also inquired, both during the statement and during trial, as to appellant's connection to 1623 Ramblewood. In his statement, he initially denied any knowledge of this address. After Detective Zimrin showed appellant a Maryland identification card, appellant indicated that it had been years since he had been at the residence on Ramblewood. During trial, and in contrast to his initial denial during his statement, appellant agreed that 1623 Ramblewood was listed on his Maryland identification. And, he maintained, in both his statement and his trial testimony, that he had not been there for at least three years.[3]

On appeal, appellant concedes that the State could cross-examine him about discrepancies between his prior statement and his direct examination. The error, appellant contends, occurred when the trial court admitted the recording of his prior statement as extrinsic evidence. Appellant asserts that "the statement was inadmissible because Mr. Kingston acknowledged making the statement and because much of it was not inconsistent with his testimony." Appellant also argues that the statement was unfairly prejudicial because it contained evidence that he exercised his right to remain silent and included other crimes evidence.

[3] Appellant testified that his current driver's license listed an address in North Carolina.

The State responds that these grounds were not raised at trial, that appellant did not challenge any specific portions of his prior statement as it was played back for the jury, did not ask for a continuing objection and that the only objection was to permitting the State to play back the entire prior recording.

Maryland's appellate courts ordinarily will not consider "any issue 'unless it plainly appears by the record to have been raised in or decided by the trial court.'" *King v. State*, 434 Md. 472, 479 (2013) (quoting Md. Rule 8-131 (a) ("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. . . .")). The purpose of the preservation rule "is to 'prevent[] unfairness and requir[e] that all issues be raised in and decided by the trial court.'" *Peterson v. State*, 444 Md. 105, 126 (2015) (quoting *Grandison v. State*, 425 Md. 34, 69 (2012)). Furthermore, "where an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal." *Perry v. State*, 229 Md. App. 687, 709 (2016) (citing *Klauenberg v. State*, 355 Md. 528, 541 (1999)), *cert. dismissed*, 453 Md. 25 (2017). As the Court of Appeals has explained: "An appeal is not an opportunity for parties to argue the issues they forgot to raise in a timely manner at trial. Nor should counsel 'rely on this Court, or any reviewing court, to do their thinking for them after the fact.'" *Peterson*, 444 Md. at 126 (quoting *Grandison*, 425 Md. at 70).

Here, appellant never raised the specific grounds now being asserted on appeal. Indeed, he even notes that his arguments that his prior statement included an alleged assertion of his right to remain silent and other crimes evidence was not raised at trial. His trial objection was specific. After noting that the statement was not introduced during

Detective Zimrin's trial testimony and was only being used for impeachment, defense counsel simply stated that the prosecutor was "certainly allowed to question him, but I'm not sure that that entitles him to admit the entire statement under the circumstances." After hearing this objection, the State responded by indicating it would only play portions of appellant's statement. That there was no further objection persuades us that appellant's objection was concerned with issues of redaction and not the specific objections raised now concerning whether his prior statement was even inconsistent to begin with, or that he failed to admit having made the statement. The issue was not properly preserved for our review.

Even if preserved, we agree that the evidence was admissible extrinsic evidence to impeach appellant's trial testimony. Generally, we review a trial court's rulings on the admissibility of evidence for abuse of discretion. *Newman v. State*, 236 Md. App. 533, 556 (2018) (quoting *Kelly v. State*, 162 Md. App. 122, 143 (2005)). "A court's decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Wheeler v. State*, 459 Md. 555, 560 (2018) (internal citations and quotations omitted).

Generally, "Maryland Rule 5-802.1 (a), a codification of this Court's holding in *Nance v. State*, admits prior inconsistent statements as substantive evidence under certain circumstances." *Wise v. State*, __ Md. __, No. 73, Sept. Term, 2019 (filed November 24, 2020) (slip op. at 7) (citing *Nance v. State*, 331 Md. 549, 569 (1993)). As has been explained, admission of prior inconsistent statements "is not based on the assumption that the present testimony is false and the former statement true but rather upon the notion that

talking one way on the stand and another way previously is blowing hot and cold, and raises a doubt as to the truthfulness of both statements." *Wright v. State*, 349 Md. 334, 363 (1998) (Chasanow, J., concurring and dissenting) (quoting 1 John W. Strong, *McCormick on Evidence* § 34, at 114 (4th ed. 1992)).

The issue presented does not concern admission of such a statement substantively, but rather, the extent to which a prior inconsistent statement may be used for purposes of impeachment. A witness's credibility may be impeached by offering evidence that the witness made a prior statement that is inconsistent with his or her in-court testimony, if a sufficient foundation has first been established. *See Stewart v. State*, 342 Md. 230, 236 (1996); *McCracken v. State*, 150 Md. App. 330, 342-43 (2003). Moreover, Maryland Rule 5-616 (b) (1) provides that "[e]xtrinsic evidence of prior inconsistent statements may be admitted as provided in Rule 5-613 (b). Maryland Rule 5-613, in turn, provides:

> (a) Examining witness concerning prior statement. A party examining a witness about a prior written or oral statement made by the witness need not show it to the witness or disclose its contents at that time, provided that before the end of the examination (1) the statement, if written, is disclosed to the witness and the parties, or if the statement is oral, the contents of the statement and the circumstances under which it was made, including the persons to whom it was made, are disclosed to the witness and (2) the witness is given an opportunity to explain or deny it.
>
> (b) Extrinsic evidence of prior inconsistent statement of witness. Unless the interests of justice otherwise require, extrinsic evidence of a prior inconsistent statement by a witness is not admissible under this Rule (1) until the requirements of section (a) have been met and the witness has failed to admit having made the statement and (2) unless the statement concerns a non-collateral matter.

The Court of Appeals has interpreted Rule 5-613 as establishing four "basic conditions that must be satisfied in order for a party to offer extrinsic evidence of a prior

allegedly inconsistent oral statement of a witness." *Brooks v. State*, 439 Md. 698, 716 (2014). Those conditions are: (1) that the content of the statement, and the circumstances under which it was made, including the person(s) to whom it was made, must be disclosed to the witness before the conclusion of that witness's examination; (2) that the witness must be given an opportunity to explain or deny the prior statement; (3) that the witness must fail to admit having made the statement; and (4) that the statement must concern a non-collateral matter. *Id*. at 717.

Appellant's complaint only concerns the third requirement, that "the witness has failed to admit having made the statement." On direct examination, appellant testified that, when he was arrested inside the stolen vehicle, that he had just borrowed the car from a friend named, "Derek." But, looking to the appellant's cross-examination, although he agreed that he spoke to Detective Zimrin on November 20th, appellant testified that he did not recall what he told the detective about how he obtained the car in question. He also did not recall telling the detective that he bought the car from a drug "fiend" for $150.00 two days earlier. Upon further questioning, he eventually remembered making these statements to the detective, but that that prior statement was false and that he lied. [4]

On a different subject, appellant testified on direct examination that he had taken a semester off from college in Mississippi when this incident happened. But appellant

[4] In his recorded statement, appellant informed Detective Zimrin that he bought the car from a "fiend" who sold it to him on the street for $150.00.

admitted, during his cross-examination, that he misled the detective and lied concerning the duration of his break from college.[5]

Another discrepancy concerned who called for the pizza delivery on the day of the incident. On direct examination, appellant claimed that he let "Derek" borrow his cell phone and that he did not know who Derek called or for what reason. However, during cross, appellant did not recall informing the detective that someone else used his cellphone.

In addition, and as he concedes on appeal, appellant was not truthful about his connection to the residence in question, 1623 Ramblewood Road. During direct examination, he admitted he lived at that address until he was 16 years old, but simply denied living there at the time at issue. In contrast, on cross-examination, appellant did not recall telling the detective that he did not know anything about that address, and further, that he did not even recall the "details of that interrogation."[6]

As the Court of Appeals has stated, "[i]f the witness denies making the designated statement or asserts that he does not remember whether he made it, the foundation contemplated by the general rule for the introduction of the statement has been satisfied." *State v. Kidd*, 281 Md. 32, 46 n. 8 (1977) (citations omitted); *accord McCracken*, 150 Md. App. at 342-43. Based on our review of the record, we are persuaded that appellant failed

[5] In his recorded statement, appellant stated that he had only been home for a week, and that Thanksgiving break was two-and-a-half weeks long.

[6] In his statement, when asked about the "Ramblewood address," appellant replied, "[w]hat Ramblewood address?"

to admit that he made certain statements during his recorded interview and that the foundational requirements of Rule 5-613 were met. Accordingly, even if preserved, we conclude that the trial court properly exercised its discretion.[7]

II.

Appellant next asserts that the evidence was insufficient to convict him of his theft and conspiracy convictions on the grounds that there was insufficient proof of his criminal agency. The State disputes appellant's assertion and responds that the evidence supported his convictions. We concur.

In considering a challenge to the sufficiency of the evidence, 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.'" *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "[W]e defer to the fact finder's 'resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Riley v. State*, 227 Md. App. 249, 256 (quoting *State v. Suddith*, 379 Md. 425, 430 (2004)), *cert. denied*, 448 Md. 726 (2016). In doing so, the jury is free to "accept all, some, or none" of a witness's testimony. *Correll v. State*, 215 Md. App. 483, 502 (2013), *cert. denied*, 437 Md. 638 (2014).

Further, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.'" *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138,

[7] Because of our resolution of this issue, we decline to address the State's harmless error argument.

156 (2009)). This Court has noted that in this undertaking, "the limited question before us is not 'whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004), *aff'd*, 387 Md. 389 (2005)).

Finally, we will not reverse a conviction on the evidence "'unless clearly erroneous.'" *State v. Manion*, 442 Md. 419, 431 (2015). This applies to cases based upon both direct and/or circumstantial evidence because, as the Court of Appeals has explained, "[a] valid conviction may be based solely on circumstantial evidence." *State v. Smith*, 374 Md. 527, 534 (2003) (citing *Wilson v. State*, 319 Md. 530, 537 (1990)).

The evidence before the jury included evidence concerning appellant's criminal agency. This included, but was not limited to, evidence that the address for the pizza order, 1623 Ramblewood Road, was connected to appellant as previously indicated. Furthermore, the phone number he provided during booking, the one associated with his emergency contact, *i.e.*, his mother, matched the number used to make that same order.

There was also evidence supporting a criminal conspiracy. The victim, Kandel, indicated that two people robbed him at gunpoint of his car and personal effects. The evidence afforded the rational inference they were acting in concert to achieve that objective. As the Court of Appeals has explained:

> 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 agreement at the heart of a conspiracy need not be formal or spoken, provided there is a meeting of the minds reflecting a unity

> of purpose and design. The crime is complete when the agreement is formed, and no overt acts are necessary to prove a conspiracy.

Carroll v. State, 428 Md. 679, 696-97 (2012) (internal citations and quotation marks omitted).

Moreover, as even appellant appears to recognize, there was evidence that appellant was in possession of recently stolen property, Kandel's car, when he was arrested while armed with a loaded handgun, a few days after the carjacking. "The permitted inference, of course, is that the unexplained possessor of the recently stolen goods was the actual original thief, who picked up the stolen goods and carried them away in the first instance." *Molter v. State*, 201 Md. App. 155, 168 (2011). Notably, appellant's own statements and testimony even support a credible inference that he, at minimum, knew the car was stolen. *See, e.g., Anello v. State*, 201 Md. 164, 167-68 (1952) ("[I]ntent to deprive the owner of his possession includes future possession and is not limited, as in common-law larceny, to a taking out of present possession. Therefore, participation in the continued use of the car after the original taking would manifest an intent to deprive the owner of his possession during such participation").

As for appellant's version of events denying culpability, ultimately, the jury could reject appellant's evidence. As the Court of Appeals has explained, our "deference is accorded, in part, because it is the trier of fact, and not the appellate court, that possesses a better opportunity to view the evidence presented first hand, including the demeanor based evidence of the witnesses, which weighs on their credibility." *State v. Manion*, 442 Md. 419, 431 (citing *Walker v. State*, 432 Md. 587, 614 (2013)); *see also Turner v. State*, 192 Md. App. 45, 81 (2010) (observing that the jury is "free to discount or disregard totally [a

defendant's] account of the incident") (citation omitted); *Gilbert v. State*, 36 Md. App. 196, 209 (1977) ("The prerogative of disbelief resides always in the fact finder"). We are persuaded that appellant's arguments concern the weight of the evidence and not its sufficiency.

III.

Finally, appellant asks us to vacate all but one of his conspiracy convictions because the evidence showed but one conspiracy. The State agrees, as do we.

The Double Jeopardy Clause of the United States Constitution, made applicable to the States via the Fourteenth Amendment, provides that no person shall "be subject to the same offence to be twice put in jeopardy of life or limb." U.S. Const., Amend. V. *See also State v. Baker*, 453 Md. 32, 47 (2017) (double jeopardy applies through the Due Process clause, citing *Benton v. Maryland*, 395 U.S. 784, 794 (1969)). "Under the prohibition on double jeopardy, a court cannot subject a defendant to multiple trials and sentences for the same offense." *Scott v. State*, 454 Md. 146, 167 (2017), *cert. denied*, 138 S. Ct. 652 (2018).

The unit of prosecution for a conspiracy is "the agreement or combination rather than each of its criminal objectives." *McClurkin v. State*, 222 Md. App. 462, 490-91 (2015) (citation omitted, vacating conviction and sentence for conspiracy). A conspiracy "remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy." *Martin v. State*, 165 Md. App. 189, 210 (2005) (citation omitted), *cert. denied*, 391 Md. 115 (2006). The conviction of a defendant for more than one conspiracy turns, therefore, "on whether there exists more than one unlawful agreement." *Savage v. State*, 212 Md. App. 1, 13 (2013). Where the State fails to establish

a second conspiracy, "there is merely one continuous conspiratorial relationship . . . that is evidenced by the multiple acts or agreements done in furtherance of it." *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.

Here, we agree with the State that "[a]lthough their conspiracy had multiple objectives, there was no evidence of more than one agreement. Accordingly, only Kingston's conviction for conspiracy to commit carjacking should remain."

CONVICTIONS FOR CONSPIRACY TO COMMIT ROBBERY, CONSPIRACY TO COMMIT SECOND DEGREE ASSAULT, CONSPIRACY TO COMMIT MOTOR VEHICLE THEFT, AND CONSPIRACY TO COMMIT THEFT VACATED.

JUDGMENTS OTHERWISE AFFIRMED.

COSTS TO BE ASSESSED ONE HALF TO APPELLANT AND ONE HALF TO MAYOR AND CITY COUNCIL OF BALTIMORE CITY.