

Circuit Court for Charles County
Case No. 08-K-15-000358

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2118

September Term, 2016

CLYDE JONES

v.

STATE OF MARYLAND

Wright,
Kehoe,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: August 2, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury, in the Circuit Court for Charles County, convicted Clyde Jones, appellant, of five counts of reckless endangerment, one count of unauthorized possession of a firearm, one count of unauthorized possession of ammunition, and one count of wearing, carrying, or transporting a handgun. Jones was sentenced to a total of sixteen years' imprisonment. In this appeal, Jones raises one question, which we have rephrased:¹

Was there sufficient evidence to sustain Jones' convictions?

For reasons to follow, we will affirm the judgments of the circuit court.

BACKGROUND

Clyde Jones was arrested and charged, following a shooting in the Oak Manor neighborhood of Waldorf. At trial, Dale Garvin Jr. testified that, in the evening hours of April 8, 2015, he and his brother, Ronnie Bumpers, were standing outside Mr. Garvin's townhome in Oak Manor when Jones, driving a black Chrysler 300, stopped in front of Mr. Garvin's residence and asked Mr. Garvin where he could find Mr. Garvin's cousin, whom Jones believed "could have done more" to save the life of Jones' sister, who was killed in 2013. Mr. Garvin testified that, when he refused to tell Jones how to get in contact with his cousin, Jones became agitated and drove away, spinning his tires in the process. Mr. Garvin and his brother, Mr. Bumpers, then left the area.

¹ Jones' question as presented reads:

Was the purely circumstantial evidence presented at Appellant's trial insufficient to convince any rational finder of fact that Appellant was guilty of reckless endangerment and possession of a firearm and ammunition as a prohibited person and should hence the lower court have granted his motion for judgment of acquittal for five counts of reckless endangerment and for possession of a firearm and ammunition as a prohibited person?

Mr. Garvin's wife, Amber Speece, testified that, at the time of her husband's interaction with Jones, she was inside the couple's home with her teenaged stepson and two-year-old daughter. Ms. Speece stated that, approximately three or four minutes after Mr. Garvin and Mr. Bumpers left the area, she heard gunshots and glass breaking. After grabbing her two-year-old and retreating into the home's kitchen, Ms. Speece called the police. She testified that she did not see who fired the shots.

Officer Charles Garner of the Charles County Sheriff's Office testified that, following the shooting, he responded to the Garvin residence and spoke with Mr. Garvin, who by that time had returned. According to Officer Garner, Mr. Garvin told the officer that he suspected that Jones had fired the shots. Officer Garner testified that, after speaking with Mr. Garvin, he investigated the scene and observed "impact marks" left by bullets in the Garvin residence. Further investigation revealed that bullets had also struck the home of Tanesha Hill, who lived in the townhome directly next to the Garvin residence.

Ms. Hill testified that she was in bed watching television with her son around the time of the shooting. She also stated that she did not become aware that there had been a shooting or that her house had been hit by gunfire until she was notified by the police. Officer Garner testified that approximately six shots were fired at or near the two townhouses.

Detective Jack Austin of the Charles County Sheriff's Office testified that he also responded to the scene and that he spoke with Ms. Speece, Mr. Garvin, and Ms. Hill. Following those conversations, Detective Austin spoke with the mother of Jones' son, Lura Barber, who lived in a house located just behind the Garner residence. According to

Detective Austin, Ms. Barber informed him that she and Jones were together in his car prior to the shooting and that, after driving Ms. Barber to the liquor store, Jones drove her to her home, where the two parted. Ms. Barber later testified that she did not see or hear the shooting and that she did not see Jones with a gun.²

Jones' neighbor, John Steinbach, who lived only a short drive from where the shooting occurred, testified that, on the evening of the shooting, he was outside in his yard having a cookout with co-workers when he observed Jones in Jones' backyard speaking on the phone. According to Mr. Steinbach, Jones appeared "upset" and was yelling. Mr. Steinbach eventually invited Jones over to his house, and the two spent the remainder of the evening at Mr. Steinbach's house with the other guests eating and watching a movie. Mr. Steinbach testified that each of his guests, including Jones, spent some time alone in Mr. Steinbach's backyard during the cookout.

Mr. Steinbach further testified that, at some point during the evening, one of his guests informed him that the police were outside. After going outside and confirming that the police were indeed in the neighborhood, Mr. Steinbach returned to his home, where he

² At trial, the State attempted to impeach Ms. Barber's testimony with that of Detective Austin, who testified that Ms. Barber had told him that she was in the car when Jones spoke with Mr. Garvin, that Jones said he was going to shoot up the Garvin house, that she saw Jones with a gun, and that she heard the gunshots shortly after Jones drove away. The circuit court later instructed the jury that it could consider Detective Austin's testimony only as it pertained to Ms. Barber's credibility and not as substantive evidence. In his brief, Jones contends that it is "inconceivable" that the jury strictly abided by the court's instruction. Jones, however, does not seek reversal on this basis. In any event, it is axiomatic that "[a] jury is presumed to understand and follow the court's instructions." *Dorsey v. State*, 185 Md. App. 82, 110 n.8 (2009) (quoting *Whittington v. State*, 147 Md. App. 496, 534 (2002)).

observed Jones talking on his phone. According to Mr. Steinbach, Jones then informed him that the police were looking for Jones in connection with a “shooting that went on over there at his girlfriend’s place.” Not long after, the police came to Mr. Steinbach’s home and arrested Jones.

Mr. Steinbach testified that, a few days after the shooting, he was in his backyard when he opened his grill and found a handgun inside of “[l]ike a liquor store bag or something.” Mr. Steinbach also recovered a box of bullets from inside of the grill. Upon finding the gun and ammunition, Mr. Steinbach “freaked out” and hid them. Detective Austin testified that he later learned from a third party that Mr. Steinbach had discovered the gun. Mr. Steinbach eventually informed Detective Austin as to where he had hidden the gun and the ammunition, and Detective Austin recovered those items.³

Dorothy Vernoy, a firearm and toolmark examiner, testified that she analyzed the recovered gun and ammunition. She stated that she compared test-fired bullets to two bullets recovered from Ms. Hill’s residence and determined, initially, that the recovered bullets were too damaged to be compared to the test-fired ones. Approximately three months later, however, she re-examined the bullets and determined that the recovered gun had fired the bullets found in the Hill residence.

Tiffany Keener, a forensic chemist with the Maryland State Police, testified that she tested the recovered gun and the plastic bag in which the gun was found for DNA.

³ Mr. Steinbach was charged with accessory after the fact to first-degree assault. As part of a plea deal, he testified on behalf of the State at Jones’ trial. Pursuant to the terms of the agreement, Mr. Steinbach would receive a prison term of one year.

According to Ms. Keener, the results from the testing of the bag were inconclusive. Ms. Keener testified that she did obtain a DNA profile from the gun and determined that both Jones and Mr. Steinbach could be excluded as contributors of that profile. No other evidence was presented linking Jones to the gun or the ammunition. Jones was ultimately convicted.

STANDARD OF REVIEW

In determining whether a conviction is supported by sufficient 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.’” *Hall v. State*, 233 Md. App. 118, 137 (2017) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). In this analysis, “‘we give due regard to the [fact finder’s] finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.’” *Fone v. State*, 233 Md. App. 88, 115 (2017) (quoting *Larocca v. State*, 164 Md. App. 460, 471-72 (2005)). Stated differently, “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) (emphasis omitted) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004), *aff’d*, 387 Md. 389 (2005)). Furthermore, “[c]ircumstantial evidence [] is entirely sufficient to support a conviction, provided that the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.”

Anderson v. State, 227 Md. App. 329, 346 (2016) (quoting *Benton v. State*, 224 Md. App. 612, 630 (2015)).

DISCUSSION

Jones argues that the evidence was insufficient to support his convictions because the State failed to establish that he was the shooter. Jones maintains that the State’s case rested on “slim and purely circumstantial” evidence, which established “at most a probability or strong suspicion” that he was the person who fired a gun outside the Garvin and Hill residences and then stashed that gun in Mr. Steinbach’s grill. Jones notes that there were no eyewitnesses to the shooting, that his fingerprints were not found on the gun, and that DNA testing of the gun excluded him. Jones also notes that the facts of his case are distinguishable from other cases in which circumstantial evidence was found to be sufficient to establish that the accused had perpetrated the crime.

The State responds that there was sufficient evidence to support Jones’ convictions. The State contends that a rational jury could infer based on the evidence adduced at trial that Jones fired the gun at the Garvin and Hill residences.

“In criminal cases, the State must prove ‘criminal agency (including [the defendant’s] presence at the scene where pertinent)’ beyond a reasonable doubt.” *State v. Simms*, 420 Md. 705, 722 (2011) (citations omitted). “The criminal agency of an accused may be proved directly, as for example by his identification by the victim or an eyewitness, or circumstantially, as for example by his possession of stolen goods.” *Jones v. State*, 10 Md. App. 420, 422 (1970) (internal citations omitted). That is, circumstantial evidence alone may be sufficient to prove that a defendant was the perpetrator of a particular crime,

even where “there were no eyewitnesses to the crime and no physical evidence directly linking [the defendant] to it[.]” *Hines v. State*, 58 Md. App. 637, 663 (1984).

Here, we are persuaded that there was sufficient circumstantial evidence from which a rational fact-finder could conclude that Jones was the shooter. The facts adduced at trial were: that, just prior to the shooting, Jones and Mr. Garvin were involved in a discussion regarding the location of Mr. Garvin’s cousin and that, during that discussion, Jones appeared agitated; that, after Mr. Garvin refused to reveal the location of his cousin, Jones drove away, spinning his tires in the process; that, minutes after Jones drove away, someone fired a gun, striking the Garvin and Hill residences; that, shortly after the shooting, Jones was observed at his neighbor’s (Mr. Steinbach’s) house, which was only a short drive from where the shooting occurred; that, while at Mr. Steinbach’s house, Jones had been left alone in Mr. Steinbach’s backyard; that, also while at Mr. Steinbach’s house, Jones knew the police were looking for him in connection with the shooting; that, several days after the shooting, Mr. Steinbach discovered a gun and ammunition hidden in his backyard grill; and, that the gun found by Mr. Steinbach was later determined to be the same gun used in the shooting outside the Garner and Hill residences.

When viewing those facts in a light most favorable to the State, we conclude that a rational fact-finder could find that Jones, upon confronting Mr. Garvin in front of his home, became upset with Mr. Garvin after he refused to disclose the location of his cousin and that Jones returned to the area and fired a gun at the Garvin residence, striking the Hill residence in the process. A rational factfinder could further infer that Jones then left the area and went to Mr. Steinbach’s home, where he stashed the gun in Mr. Steinbach’s grill

prior to being arrested. Accordingly, we hold that sufficient evidence was adduced to establish beyond a reasonable doubt that Jones was the same person who shot at the two residences and then secreted the gun in Mr. Steinbach’s grill. *See Riggins v. State*, 155 Md. App. 181, 216 (2004) (conviction may be supported by circumstantial evidence if “there are sufficient strands interconnected to establish criminal agency...beyond a reasonable doubt.”) (citations and quotations omitted); *See also Wilder v. State*, 191 Md. App. 319, 336-37 (2010) (finding evidence sufficient to sustain conviction of reckless endangerment where defendant had a verbal altercation with the victim, had previously threatened the victim, and had been seen driving away from the scene immediately after the shooting).

**JUDGMENTS OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**