Circuit Court for Baltimore City
Case No. 116266005

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2218

September Term, 2017

KANEILUS HULL

v.

STATE OF MARYLAND

Fader, C.J.,
Wright,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: April 3, 2019

A jury in the Circuit Court for Baltimore City convicted appellant, Kaneilus Hull, of conspiracy to commit murder. Hull was sentenced to life imprisonment. In this appeal, Hull presents the following questions for our review:

1. Is the evidence sufficient to support Hull's conviction for conspiracy to commit murder?

2. Did the circuit court err in denying Hull's request for a *Franks* hearing or motion to suppress evidence?

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

BACKGROUND

Commencing on August 21, 2017, Kaneilus Hull was tried over the course of six days before a jury in the Circuit Court for Baltimore City, for the murder of Hassan Fields. An autopsy revealed that Fields died of multiple gunshot wounds. Hull was charged with first-degree murder, conspiracy to commit murder, and use of a handgun in the commission of a crime of violence.

During the trial, Stephanie Myers testified that on May 23, 2015 at approximately 9:00 a.m., she discovered the body of Hassan Fields in an alley behind the 100 Block of South Augusta Avenue in Baltimore City. Myers also testified that she told police officers that she heard multiple gunshots during the early morning hours of May 22nd into May 23rd, 2015. She stated that she "guesstimated" that she heard the gunshots "early morning, like 2-ish," and that she did not call the police when she heard the gunshots because this was a "normal occurrence" in that neighborhood.

Frank Vermeiren testified that he resided at 118 South Augusta Avenue, located in front of the entrance to the alley where Fields' body was discovered. He testified that Baltimore City Homicide detectives had visited him at his home to review video footage from his home security surveillance system. Over objection, the video footage was admitted into evidence. The footage showed that on May 22, 2015, at approximately 11:45 p.m.,[1] a car pulled up to the entrance of the alley, two people exited the passenger side of the car and walked toward the alley. The car inched forward, and about one minute later, one person ran back to the car and entered into the passenger side. The car quickly sped away.

Deria Williamson testified that on the evening of May 22, 2015, she and her sister, Infiniti Alston, picked up Hassan Fields in Alston's car. The trio parked on Mt. Holly Street near the cemetery to smoke marijuana. She stated that "two guys came up and approached the vehicle and Hassan got out of the vehicle and they kind of like searched him." When asked what she meant by searched him, she stated, "patted him down, and he left with them" in a black Honda. Williamson described the two men as "a short, dark skinned guy" and an "average height, brown skinned dude" who was thin. In a previous statement to the police, Williamson stated, "the brown skinned boy was driving" and that "it was dark, so [she] couldn't look at his face and see." When showed a photographic

[1] The security footage displayed a timestamp of 12:06:30 a.m. Detective Ryan Diener of the Baltimore Police Department testified that after his review of the security footage, the timestamp on Vermeiren's video was approximately twenty-one to twenty-two minutes fast.

array, Williamson did not identify anyone as either of the men she saw Fields leave with on the night in question.

Following Williamson's testimony, the State called Myron White to the stand, who testified that he was a used car salesman and stated that he purchased a 2006 or 2007 blue or grey two-door Honda Accord at an auction at Manheim on May 19, 2015. White provided his cellphone number was 443-529-2929 at the time.

Letia Bonepart testified that on May 23, 2015, her girlfriend, Umika Smith, was murdered at the front door of her home. Over objection, the State played a recorded statement Bonepart made to the police following Smith's murder. In the statement, Bonepart stated that "Neil" and "Jizzle" came to Smith's mother's house driving a "dark colored car." After being shown photographs, Bonepart identified "Neil" as Kaneilus Hull and the car as a Honda.

Detective Ryan Diener of the Baltimore Police Department testified that as a part of his investigation into the murder of Fields he investigated a Honda Accord. After reviewing three photographs, he was able to zoom in one of the photos and identify the vehicle identification number. He stated that based on this number he contacted Shockley Honda in Fredrick Maryland, which then led him to contact Manheim Auto of Baltimore-Washington, where he obtained documents relating to the vehicle.

The parties stipulated that when Hull was arrested on June 4, 2015, a black LG cellular phone was lawfully recovered from his person. Detective Bryant Fair testified that, in reviewing the contents of the phone, he found a text message had been received from phone number 443-529-2929 (the same phone number as Myron White), which stated, "yo,

do you want dis car." Sergeant Albert Rotell of the Baltimore Police Department testified that after reviewing the phone's data, a voice call on the phone on May 22, 2015 at 11:14 p.m. utilized a cell tower in the vicinity of 200 Mt. Holly Street—the area where Williamson, Alston, and Fields convened to smoke marijuana. On May 22, 2015 at 11:49 p.m., another voice call on the phone utilized a cell tower in the vicinity of a cemetery south of where Fields' body was found. Further, Rotell testified that this data indicated that the phone was "somewhere in between those two towers" and that the data provided a "general idea" of where the phone was located during the specified times.

The Prosecutor then called Infiniti Alston as a witness for the State. Alston testified that on the evening of May 22, 2015, she was in her car with Hassan Fields and Williamson smoking weed. She stated that two individuals approached the driver's side of her vehicle and began talking to Fields. After the Prosecutor's continued attempts to elicit further testimony from Alston, she became a hostile witness. Over objection, Alston's previous recorded statement to the police was played for the jury.

In the recording, Alston stated that she was in her vehicle with Fields and Williamson when two men approached, and Fields "rolled down the window like yo its Hassan." Next, Alston told the police, Fields exited the car and the men "patted him down and like checked him I guess [to] make sure he [didn't] have [any] weapons on him." Alston described one man as short with a dark complexion and the other as tall with a brown complexion wearing a blue hoody. She stated that the tall man "did all the talking," at one point saying, "I put this on my life . . . I don't mean you no harm or anything like that." Alston further asserted that the tall man "was talking to us like I'm [Fields'] brother.

[Y'all] don't gotta worry, I'm [Fields'] brother and all this stuff." Alston indicated that she knew Fields' "whole family," and she had "never seen [the two men] before. We hang around [Fields] every day."

As Alston described the interaction between Fields and the two men, she stated that the conversation between Fields and the taller man "definitely wasn't a normal conversation" and that it was "aggressive." Alston told detectives that the taller man told her to "go ahead and pull off," and that Fields was "good." Alston stated that she did not pull off right away, but Fields eventually said, "I'm good. So [she and Williamson] pulled up the street," leaving Fields with the two men. Alston drove up the block and waited for Fields because she "didn't think he was going anywhere." Shortly after, she saw Fields drive past her in a two-door black car with the two men. She was pretty certain that the "short dark skin" man was driving, the taller man was seated in the passenger seat, and Fields was seated in the rear passenger seat.

Alston testified she was shown a photographic array, in which she identified a photograph of Kaneilus Hull stating, "[h]is facial structure resembles one of the guys. His nose stands out." On cross examination, Alston confirmed that when making this identification she said, "I'm not 100 percent sure that's him."

At the conclusion of the State's case, Hull moved for judgment of acquittal, arguing that there was insufficient evidence as to a conspiracy to commit murder of Fields, stating:

> There's no evidence that there is any concert of action between the dark skinned guy and the brown skinned guy, even if the [c]ourt presumes that these were the two that, ultimately, brought Mr. Fields to his [] demise
> . . . .

> The video doesn't show anything to confirm that this car is a Honda, an Acura or anything else . . . . The video doesn't even verify that there was a shooting in that alley at the time that the State purports to say that happened.

The court denied the motion, stating:

> I do think as a general matter, and I'll go down from there, that there is sufficient circumstantial connective tissue, if you will, for which a rational jury could draw reasonable inferences or rational inferences to satisfy each element of the -- of the crimes charged beyond a reasonable doubt.
> . . . .
> With respect to the conspiracy charge, I don't disagree that the evidence is, um, not overwhelming, but I do think that there is legally sufficient evidence at this time, seeing the record in the light most favorable to the State, to infer a tacit agreement between two people who did act in tandem, if you see the evidence in the light most favorable to the State.

The defense consisted of the jury being allowed to observe Hull's body for the presence of tattoos and other identifying marks. Thereafter, defense counsel renewed his motion for judgment of acquittal, which the court denied. The court proceeded with jury instructions, including, over objection, instructions as to accomplice liability. Ultimately, the jury acquitted Hull of first degree murder and convicted him of conspiracy to murder Fields. Hull filed a Motion for New Trial, contending there was insufficient evidence to support the conspiracy conviction, which was denied without a hearing. Hull was sentenced to life incarceration. This timely appeal followed.

DISCUSSION

I. There is sufficient evidence to support Hull's conviction for conspiracy to commit murder.

When determining whether sufficient evidence exists to support a conviction on appeal, "we will consider the evidence adduced at trial sufficient if, 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." *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). When a sufficiency challenge is made, our concern is not whether the "verdict is in accord with what appears to us to be the weight of the evidence," rather, our concern is "only with whether the verdict [was] supported with sufficient evidence—that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *State v. Albrecht*, 336 Md. 475, 479 (1994); *see also Bible v. State*, 411 Md. 138, 156 (2009).

The jury as fact-finder has the ability to "choose among differing inferences that might possibly be made from a factual situation and [we] 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." *Bible v. State*, 411 Md. 138, 156 (2009) (citation omitted). It is well established that circumstantial evidence is sufficient to sustain a conviction. *Corbin v. State*, 428 Md. 488, 514 (2012) (citation and quotations omitted). However, "the inferences made from circumstantial evidence must rest upon more than mere speculation or conjecture." *Id.*; *see also Bible v. State*, 411 Md. 138, 156 (2009) (stating "[c]ircumstantial evidence is sufficient to sustain a conviction, but not if that evidence amounts only to strong suspicion or mere probability."). "By definition, circumstantial evidence requires the trier of fact to make inferences, but those inferences

must have a sounder basis than speculation or conjecture." *Id.* at 157 (citation and quotations omitted).

Hull contends the evidence is insufficient to support his conviction for conspiracy to commit first-degree murder. Hull maintains that the video surveillance footage fails to show the moments surrounding the murder; the witness identification fails to show his involvement in the murder; and the facts fail to establish an agreement between Hull and another individual to commit murder. In response, the State asserts that "from the concurrence of action between Hull and the other man, a reasonable juror could infer that Hull and the other man agreed to murder Fields, whether tacitly or explicitly."

"A criminal conspiracy is the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means." *Hall v. State*, 233 Md. App. 118, 138 (2017) (citation omitted). The agreement "need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Carroll v. State*, 428 Md. 679, 696–97 (2012) (citations omitted). When addressing the evidence required to establish a conspiracy, we have noted:

> In conspiracy trials, there is frequently no direct testimony, from either a co-conspirator or other witness, as to an express oral contract or an express agreement to carry out a crime. It is a commonplace that *we may infer the existence of a conspiracy from circumstantial evidence. If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may, but need not, infer a prior agreement by them to act in such a way*. From the concerted nature of the action itself, we may reasonably infer that such a concert of action was jointly intended. Coordinated action is seldom a random occurrence.

Jones v. State, 132 Md. App. 657, 660 (2000) (emphasis added).

Here, we hold that sufficient evidence was adduced at trial from which a reasonable jury could have concluded beyond a reasonable doubt that Hull and another man conspired to commit first-degree murder of Fields. At trial, the State's theory was that Fields was taken under duress by Hull and another man, then driven in a Honda Accord to an alley behind the 100 block of South Augusta Street, was led into the alley by one of the men while the other man stayed in the vehicle as a means for a quick escape, and was shot to death—by either Hull or the other man. After which, the shooter ran from the alley and entered into the passenger side of the car before the driver quickly drove off.

Based on this theory, the State presented evidence that on May 22, 2015, at approximately 11:30 p.m., two men approached Fields and an aggressive conversation between them ensued. The State's evidence established that a witness identified one of the men as Hull. Fields then left with the men in a dark grey or black Honda Accord that was then driven to the alley on South Augusta Street. The State admitted into evidence video footage that showed a car consistent with a dark colored Honda Accord pulling up to the entrance of the alley at approximately 11:45 p.m. The video showed two individuals exit the passenger side of the vehicle and walk toward the alley, while another man remained in the vehicle. Within the short period of time the two individuals were out of sight, the car inched forward. Approximately one minute later, one of the individuals ran back to the car and got into the passenger side as the car quickly drove away. From this evidence, a reasonable inference could be drawn that Hull and the other man agreed to pick up Fields, drive him to an alley while one of the men waited in the car near the alley as the getaway driver and the other carried out the murder.

The State also presented evidence that showed at the time of the murder, Hull was in possession of a dark colored Honda Accord. This evidence included the testimony from White and Bonepart; Bonepart's taped statement; a receipt for the sale of a Honda Accord; and text messages between White and Hull discussing the purchase of a car. The vehicle was consistent with the vehicle shown in the surveillance footage. Thus, a reasonable inference could be drawn that it was Hull's vehicle in the video and/or Hull was driving the vehicle in the video. In addition, cell tower data retrieved from cellphone calls on Hull's phone made on May 22, 2015 at 11:14 p.m. and at 11:49 p.m., placed Hull's cellphone near the street where Fields was picked up and the alley where he was murdered. Based on this evidence, a reasonable inference could be drawn that Hull was near the scene of the murder during the time of the murder.

Taken collectively, a reasonable inference could be drawn that Hull and another man agreed to commit the murder of Hassan Fields. Thus, we conclude that evidence presented at trial, direct and circumstantial, was sufficient to support Hull's conviction for conspiracy to commit first-degree murder.

II. The circuit court did not err in denying Hull's request for a *Franks* hearing or motion to suppress evidence.

Prior to trial, Hull filed a Motion for a *Franks* Hearing and Motion to Suppress. Hull asserted the affidavit used in support of the search warrant to retrieve data from his cellphone "contained omissions which were made either intentionally or with reckless disregard for their accuracy." The Fourth Amendment to the United States Constitution protects against "unreasonable searches and seizures," and is applicable to the States

through the Fourteenth Amendment. *Williamson v. State*, 398 Md. 489, 501–02 (2007) (citing *United States v. Sharpe*, 470 U.S. 675, 682 (1985)). The Warrant Clause of the Fourth Amendment further states that "no Warrants shall issue, but upon probable cause[.]" U.S. Const. amend. IV. When reviewing whether there is probable cause to justify the issuance of a search warrant, ordinarily courts are strictly confined to the "four corners" of the affidavit supporting the warrant. *Greenstreet v. State*, 392 Md. 652, 669 (2006). *See also Fitzgerald v. State*, 153 Md. App. 601, 639 (2003), *aff'd*, 384 Md. 484 (2004).

In *Franks v. Delaware*, the Supreme Court set out the only exception to confining a challenge to the issuance of a search warrant to the "four corners" of the warrant application—a *Franks* hearing. *Fitzgerald v. State*, 153 Md. App. 601, 642 (2003). A *Franks* hearing is a "rare and extraordinary exception 1) that must be expressly requested and 2) that will not be indulged unless rigorous threshold requirements have been satisfied." *Id.* at 642. The Supreme Court articulated "a formal threshold procedure [that must be met] before a defendant will be permitted to stray beyond the four corners of a warrant application to examine live witnesses in an effort to establish that a warrant application was tainted by perjury or reckless disregard of the truth." *Id.* at 643

To obtain a *Franks* hearing, a defendant must make "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit." *Franks v. Delaware*, 483 U.S. 154, 155–56. Further, "if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's

request." *Id.* at 156. The Court emphasized that there is a presumption of validity afforded to the affidavit supporting a search warrant, thus to mandate a *Franks* hearing:

> the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient.

Id. at 171.

In the present case, Hull's arguments fail to satisfy the threshold requirements for entitlement to a *Franks* hearing. During the hearing on the motion, Hull argued the affiant failed to include material information in the affidavit supporting the search warrant. After evaluating each omission, the trial court noted that Hull did not meet his "standard by a preponderance of evidence to show that the omissions articulated were made intentionally or with reckless disregard for accuracy."

Hull first pointed to this statement made in the affidavit: "a showing was conducted with witness(es) at which time the suspect Kaneilus Hull . . . was identified as one of the males the victim was seen leaving Mt. Holly Street with[.]" Hull argued this statement was misleading because the affiant did not include that, during the showing, Williamson did not make an identification. Therefore, Hull contends that attaching parenthesis, "(es)" to the end of the word "witness" implied that there was more than one witness identification made, when, in fact, Williamson did not make an identification. We disagree, as we do not find the affiant's spelling of "witness(es)" was a deliberate effort to mislead the issuing

judge. Placing a parenthesis around the plural suffix "es" could be interpreted as there was either one or more witnesses who made an identification. At least one witness, Alston, identified Hull as one of the men the victim left with. Further, the failure to include Williamson's non-identification does not diminish the existence of probable cause demonstrated through other factors, such as Alston's positive identification.

Second, Hull points to the affiant's failure to include information regarding the strength of Alston's identification, specifically that the affidavit fails to mention that Alston qualified her identification by stating, "[h]is facial structure resembles one of the guys. His nose stands out." Again, we are not persuaded such an omission was intentional or a reckless disregard for the truth. As the motions court noted after reviewing Alston's recorded statement to the police, the affiant "could have done a better job of being more fulsome" in the information provided in the affidavit. However, when taken as a whole, Alston's statement could've reasonably been interpreted as a positive identification. During the hearing, the motions court properly observed:

> [W]hen taken in its totality, I think it is reasonably accurate to describe Ms. Alston's statement as one of -- and I realize that word positive is not in the affidavit, but I do think it's a reasonably accurate or correct statement to say that she identified one of the photographs as -- you know, positively.

Furthermore, even if the omitted statement was included, it would not have defeated the finding of probable cause. Thus, we agree with the motions court's finding that the weight of Alston's identification was an issue "ripe for cross-exam but not for a *Franks* issue."

Hull also asserts that the affiant's failure to mention that "an officer responded to the scene shortly after midnight and found . . . no evidence of a shooting," was a material

omission. Hull posits that if this information was included in the affidavit, it would have lacked the necessary probable cause to support the issuance of a search warrant. Again, Hull fails to show that this statement was omitted intentionally and that this omission was necessary to a finding of probable cause. As the motions court noted, the fact that an officer was called to the scene because of a reported shooting and "chalked it up to an unfounded call" was immaterial and was not "of any moment" in the issuing judge's evaluation of probable cause. Furthermore, if this statement was included in the affidavit, it would not have negated the existence of probable cause established through other statements contained in the affidavit.

In conclusion, we hold that the motions court correctly determined that Hull did not meet the required threshold showing to warrant a *Franks* hearing. Moreover, even if the articulated omissions were intentionally excluded from the affidavit, we agree with the court's conclusion that the inclusion of the omitted statements would not have defeated a finding of probable cause to justify the issuance of the search warrant. Accordingly, we affirm the motions court's denial of Hull's request for a *Franks* hearing and motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.