

Circuit Court for Baltimore City
Case No. 119294021

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2254

September Term, 2023

AARON CLUBB

v.

STATE OF MARYLAND

Tang,
Kehoe, S.
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: November 26, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises from Appellant, Aaron Clubb’s (“Clubb”) convictions for first-degree felony murder, conspiracy to commit armed robbery, and illegal possession of a regulated firearm, following a jury trial in the Circuit Court for Baltimore City. He was sentenced to life imprisonment for first-degree felony murder, 18 years for conspiracy to commit armed robbery, and 5 years for illegal possession of a firearm. Clubb argues that the trial court erred in instructing the jury on accomplice liability, contending that the instructions permitted the jury to convict him of felony murder as an accomplice without first finding him guilty as an accomplice to the underlying predicate felony of armed robbery. Clubb presents one question on appeal:

Did the trial court err in instructing the jury on accomplice liability for felony murder where the instruction stated that the defendant could be guilty of felony murder as an accomplice without explicitly requiring the jury to first find him guilty as an accomplice to the underlying predicate felony of armed robbery?

For the reasons that follow, we hold that the trial court’s instructions, read as a whole, properly conveyed the applicable law and that any error was harmless. We therefore affirm.

BACKGROUND

On July 15, 2019, in the early morning hours, Baltimore City police responded to a shooting at the intersection of North Linwood Avenue and Pulaski Highway. There, officers discovered the victim, Jaquan Johnson, suffering from gunshot wounds; he later died from his injuries. The medical examiner determined that Jaquan Johnson died from two gunshot wounds to the torso, both of which damaged his lungs and were potentially rapidly fatal. The manner of death was ruled a homicide. Approximately one block away,

on East Fayette Street, police found Aaron Clubb, then twenty-two years old, bleeding from a gunshot wound. A black Steph Curry t-shirt had been tied around Clubb's bleeding leg as a tourniquet. He was transported to the hospital for treatment, and later questioned and arrested in connection with the incident.

The police investigation yielded video footage from the Pratt Library showing three individuals—Clubb, Tywon Johnson (no relation to the victim), and a third person—heading toward the corner of North Linwood Avenue and Pulaski Highway prior to the shooting. One person pushed a bicycle, another wore a Steph Curry t-shirt, and another wore a red/orange t-shirt. Clubb later identified himself as the person wearing the red/orange shirt. Additional video showed Jaquan Johnson and Cortez Blackwell (Jaquan Johnson's best friend) walking toward the library. After the shooting, video captured someone running down North Linwood Avenue toward a rear alley.

A firearms expert testified that the two bullets recovered—one from the scene and one from the autopsy of Jaquan Johnson—were fired from the same unknown 9-millimeter firearm. Five fired cartridge casings found at the scene were also 9-millimeter and fired from the same unknown firearm. Police did not recover a gun from Clubb, nor did the State present evidence of gunshot residue on his hands at trial. Police also found shell casings, a bullet, a bicycle, prescription pill bottles, and suspected Xanax pills at the scene.

DNA analysis revealed that Clubb's DNA matched samples from a hat found at the scene, from the Fayette Street sidewalk where Clubb was located, and from the black Steph Curry t-shirt. Tywon Johnson's DNA matched a sample from the bicycle handlebars.

The State charged Clubb with first-degree felony murder, robbery with a dangerous weapon, robbery, conspiracy to commit murder, conspiracy to commit armed robbery, and use of a firearm during a crime of violence. The State proceeded at trial on theories of conspiracy, accomplice liability, and felony murder. The prosecutor told the jury that Clubb could be guilty of murder without firing a shot because “it doesn’t matter who shot because [Clubb] is responsible for the death of [Jaquan Johnson] regardless because he’s the one who committed this robbery and he’s on the hook for it all.”

At trial, Cortez Blackwell testified that he and Jaquan Johnson frequently sold Xanax bars. The two friends would share possession of a 9-millimeter handgun, with one carrying the weapon and the other carrying the pills depending on the day. On the night in question, Blackwell and Jaquan Johnson arranged a sale via Instagram to be consummated at the Pratt Library. That evening, Blackwell carried the pill bottle while Jaquan Johnson carried the 9-millimeter handgun. When they arrived at the library, Blackwell testified they were robbed. He described the robbers as including people who “looked like Mexicans” and people with dark skin. Someone went through Blackwell’s pockets and took the Xanax pills and his phone.

Blackwell testified that a shootout ensued. He ran up the block, and when he turned around, Jaquan Johnson told him, “I got shot.” Blackwell retrieved Jaquan Johnson’s brother and went to the hospital, where they learned that Jaquan Johnson had died.

At trial, the court found that Blackwell was feigning memory loss in response to questioning and allowed the State to play portions of Blackwell’s prior police statement. In that statement, Blackwell stated he and Johnson met three people around 2:00 a.m.

Blackwell had never seen two of them before. When asked if they really had forty bars, Blackwell showed them the pill bottle before returning it to his pocket. Blackwell also told police he saw that the group had a gun when “a dark-skinned man pulled out” what he described as “a rusty ass .38.” The man with the gun said, “you know what time it is,” and “the light skinned one with the cruddy hair” started going through Blackwell’s pockets. This person took the pill bottle and Blackwell’s phone. Jaquan Johnson, who had the gun, said “no I ain’t with that.” Blackwell then heard shots and started running. He looked back and saw Jaquan Johnson fall. Jaquan Johnson told Blackwell to take the gun, which Blackwell did, later returning it to Jaquan Johnson’s family home. Clubb did not testify at trial, asserting his Fifth Amendment privilege against self-incrimination.

During the jury instruction conference, the court discussed with counsel which crimes should be listed with the accomplice liability instruction. Defense counsel objected, stating: “I just think robbery is the only one[,]” and “I think the robbery is the only one that’s relevant.” The court proposed options that included a list of the possible charges that could be incorporated in phrasing the accomplice liability instruction. Counsel agreed to have the charges listed, rather than using general language.

The circuit court began instructing the jury. The court instructed on first-degree felony murder as follows:

The defendant is also charged with the crime of first-degree felony murder. It is not necessary for the State to prove that the defendant intended to kill Jaquan Johnson. To convict the defendant of first-degree felony murder, the State must prove that the defendant or another participating in the crime with the defendant, committed or attempted to commit robbery with a dangerous weapon; that the defendant or another participating in the crime with the defendant, killed Jaquan Johnson; and that the act resulting in

the death of Jaquan Johnson occurred during the commission or attempted commission or escape from the immediate scene or the robbery with a dangerous weapon.

The court also instructed the jury on accomplice liability:

The defendant also may be guilty of robbery with a dangerous weapon, robbery, felony murder and/or use of a firearm in the commission of a crime of violence as an accomplice, even though the defendant did not personally commit the acts that constitute that crime. To convict the defendant of robbery with a dangerous weapon, felony murder, robbery, and/or use of a firearm in the commission of a crime of violence as an accomplice, the State must prove that the robbery with a dangerous weapon and/or robbery and/or felony murder and/or use of a firearm in the commission of a crime of violence occurred, and that the defendant with the intent to make the crime happen, knowingly aided, counseled, commanded or encouraged the commission of the crime or communicated to a participant in the crime that it was ready, willing and able to lend support if needed.

A person need not be physically present at the time and place of the commission of a crime to act as an accomplice. The mere presence of the defendant at the time and place of the commission of a crime is not enough to prove that the defendant is an accomplice. If presence at the scene of the crime is proven, that fact may be considered along with all of the surrounding circumstances in determining whether the defendant intended to aid a participant and communicated that willingness to a participant.

The circuit court instructed the jury on conspiracy to commit armed robbery and conspiracy to commit murder. The court also instructed the jury on robbery, robbery with a dangerous weapon, use of a firearm in the commission of a crime of violence, and illegal possession of a regulated firearm.

Following the instructions, the court reminded the jury not to conduct outside research and instructed on their deliberation procedures. Clubb, through counsel, did not renew his objection to the jury instructions as given. Following deliberations, the jury convicted Clubb of first-degree felony murder, conspiracy to commit armed robbery, and

illegal possession of a regulated firearm. Notably, the jury acquitted Clubb of robbery with a dangerous weapon, as well as conspiracy to commit murder and use of a firearm during a crime of violence. Clubb did not note an objection to the verdict prior to, or subsequent to, the discharge of the jury.

The circuit court sentenced Clubb to life imprisonment for first-degree felony murder, a concurrent eighteen years for conspiracy to commit armed robbery, and a consecutive five years for illegal firearm possession. Clubb timely noted this appeal.

STANDARD OF REVIEW

The Appellate Court reviews, without deference to the circuit court, whether the jury instructions provided were a correct statement of law, but also under an abuse of discretion standard. *See Carter v. State*, 236 Md. App. 456, 475 (2018); *Hayes v. State*, 247 Md. App. 252, 288 (2020) (“Unless the trial court has made an error of law, we review its decision to give a jury instruction for abuse of discretion.”). A court abuses its discretion in giving jury instructions if it commits an error of law in either applying an incorrect statement of law or an incorrect standard. *See Armacost v. Davis*, 462 Md. 504, 523 (2019).

DISCUSSION

I. Read As a Whole, The Instructions Properly Conveyed the Law.

As a preliminary matter, Clubb argues his claim is properly preserved. Clubb concedes an objection was not made after the instructions were read, but maintains he has “substantially complied” with preservation requirements because counsel objected to the court’s accomplice liability instruction during a bench conference.

Second, Clubb argues that the trial court’s accomplice liability instruction was legally erroneous, because it permitted the jury to convict him of felony murder as an accomplice without first finding him guilty as an accomplice to the underlying predicate felony of armed robbery. He contends that since one cannot be an accomplice to felony murder without being an accomplice to the underlying felony, the instruction was incorrect—or at minimum, confusing. Clubb asserts that “[a] person cannot be guilty as an accomplice to felony murder without being an accomplice to the underlying felony” because “the underlying offense is an essential ingredient of felony murder.” He maintains that “[r]egarding accomplice liability, the jurors should have been instructed that they could find Clubb guilty as an accomplice to felony murder only after finding that he was an accomplice to armed robbery.”

Clubb further argues that the jury’s verdict—convicting him of felony murder while acquitting him of armed robbery—demonstrates the confusion caused by the instructions. He contends that the verdict shows “all roads—or at least most roads—to this verdict are impermissible” and that the jury could not have both followed the instructions and reached this verdict. Finally, Clubb asserts that any instructional error was not harmless beyond a reasonable doubt.

The State responds with two principal arguments. *First*, the State contends that Clubb’s claim is unpreserved because he failed to object in accordance with Rule 4-325(f), which mandates a party must object to jury instructions after the court has instructed the jury. Moreover, Clubb has not substantially complied with preservation requirements because his objection at trial—i.e., that “robbery is the only one” relevant to accomplice

liability—was materially different from his appellate argument that the instruction should have clarified the sequencing and consequential relationship between armed robbery and felony murder. The State argues that “there is a qualitative difference” between the trial objection and the appellate contention, and that Clubb “should not . . . consider those contentions because they were not the basis of counsel’s objection at trial.”

Second, on the merits, the State argues that the instructions, read together and as a whole, properly conveyed that the jury could convict Clubb of felony murder only if it found armed robbery occurred and that he was involved. The State emphasizes that the felony murder instruction expressly required the jury to find that “the defendant or another participating in the crime with the defendant, committed or attempted to commit robbery with a dangerous weapon.” When read in conjunction with the accomplice liability instruction requirement that “the crime” must have “occurred,” the State argues the instructions correctly informed the jury that it could not convict Clubb as an accomplice to felony murder without finding that an armed robbery took place. The State also notes that the verdict’s apparent inconsistency does not render the instructions erroneous, as “a judge’s instructions are not *ex ante* rendered improper, erroneous, or confusing because the jury that received them later returned a seemingly inconsistent verdict.”

A. The Instructional Issue Was Not Preserved.

As a threshold matter, we address the State’s argument that Clubb’s claim is unpreserved. Maryland Rule 4-325(e) requires that “[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly

after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.” As noted in *Bowman v. State*, 337 Md. 65, 69 (1994):

“[T]here must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.”

However, under the doctrine of substantial compliance, a party’s failure to renew an objection after the court instructs the jury will not necessarily result in waiver if the record demonstrates that the trial court understood the objection and rejected it. *See Gore v. State*, 309 Md. 203, 209 (1987).

Here, defense counsel objected at the inception of the jury instruction conference, stating: “I just think robbery is the only one[,]” and “I think the robbery is the only one that’s relevant.” The circuit court noted the objection, overruled it, but suggested an alternative option phrasing the instruction by including a list of applicable charges. While we find there is no “qualitative difference” between Clubb’s objection at trial and Clubb’s argument on appeal, we conclude that counsel’s objection ultimately was not sufficient to preserve the general issue of whether the accomplice liability instruction properly applied to the felony murder charge, since he failed to object again once the court provided the instructions to the jury.

Counsel did not provide a clear basis for the objection, which might have preserved the claim. By arguing that “robbery is the only one that’s relevant,” defense counsel took issue with the inclusion of felony murder in the accomplice liability instruction. This objection put the trial court on notice that counsel believed accomplice liability should only

apply to the robbery charge, not to felony murder, which prompted the court’s suggested option of a list of applicable charges. While counsel did not articulate the precise legal theory now advanced on appeal—that the instruction should have specified that the jury must first find Clubb was an accomplice to armed robbery before finding him an accomplice to felony murder—the objection, at that juncture, was sufficient to preserve the question of whether accomplice liability was appropriately instructed with respect to felony murder. *See Bazzle v. State*, 426 Md. 541, 561 (2012) (recognizing that preservation requirement exists “to prevent ‘sandbagging’ and to give the trial court the opportunity to correct possible mistakes in its rulings”) (quotation omitted).

However, once the court considered the objection and asked whether it should include a list of the possibly relevant charges, to which Clubb assented, there was no additional objection noted to the court’s suggested option, nor when the court instructed the jury, nor was an objection lodged once the court completed its instructions to the jury. For the foregoing reasons, we hold Appellant has not properly preserved his argument for appeal.

B. The Circuit Court Did Not Abuse its Discretion in Giving the Instructions Because They, as a Whole, Properly Conveyed the Law.

The heart of Clubb’s argument is that the jury instructions permitted the jury to convict him of felony murder as an accomplice without first finding him guilty as an accomplice to the predicate offense of armed robbery. We disagree. When the felony murder and accomplice liability instructions are read together—as they must be—they adequately conveyed that the jury could convict Clubb as an accomplice to felony murder

only if it found that an armed robbery (or attempted armed robbery) occurred and that Clubb was involved in that robbery.

Judges are accorded broad discretion when giving jury instructions. *Carter v. State*, 366 Md. 574, 587 (2001). “The main purpose of a jury instruction is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict.” *Chambers v. State*, 337 Md. 44, 48 (1994). On review, if the jury instructions, taken as a whole, “correctly state the law, are not misleading, and cover adequately the issues raised by the evidence, the defendant has not been prejudiced and reversal is inappropriate.” *Cost v. State*, 417 Md. 360, 369 (2010) (citations omitted).

The felony murder instruction expressly and unambiguously required the jury to find that “the defendant or another participating in the crime with the defendant, committed or attempted to commit robbery with a dangerous weapon” before it could convict Clubb of felony murder. This instruction made clear that proof of armed robbery or attempted armed robbery and identified what the State had to prove to establish felony murder in this case.

The accomplice liability instruction then informed the jury that to convict Clubb as an accomplice to any of the listed crimes, including felony murder, the State had to prove that “the robbery with a dangerous weapon and/or robbery and/or felony murder and/or use of a firearm in the commission of a crime of violence occurred.” When the word “occurred” is read in conjunction with the felony murder instruction’s definition of that crime, the meaning is clear: for felony murder to have “occurred,” there must have been an armed robbery (or attempted armed robbery) during which someone was killed.

This interpretation finds support in this Court’s decision in *Allen v. State*, 213 Md. App. 28 (2013), *aff’d on other grounds*, 440 Md. 643 (2014). In *Allen*, the defendants challenged the *Sheppard* accomplice instruction, arguing that it allowed conviction for attempted first-degree murder without a finding of premeditation and deliberation. *Id.* at 84. This Court rejected that argument, explaining that the reference to “the crime” in the accomplice instruction necessarily meant the crime charged, even though its elements and the definition of intent were not listed anew. *Id.* at 87. Similarly here, when the accomplice liability instruction referred to “felony murder” as a crime that must have “occurred,” it necessarily incorporated the elements of felony murder as defined in the separate felony murder instruction, including the requirement of an underlying armed robbery.

Read together as a whole, the instructions required the jury to find the following before convicting Clubb as an accomplice to felony murder: (1) that a felony murder occurred, meaning that Clubb or another person participating with him killed Jaquan Johnson during (or in attempted commission of, or in escape from) an armed robbery; (2) that Clubb intended that the armed robbery happen; and (3) that Clubb knowingly aided, counseled, commanded, or encouraged the commission of the crime or communicated his willingness to lend support. Since the commission of armed robbery was “baked into” the felony murder instruction, the jury could not have convicted Clubb of felony murder as an accomplice without implicitly finding that an armed robbery occurred and that he participated in it.

Clubb contends that the instruction should have been more explicit, stating directly that the jury “could find Clubb guilty as an accomplice to felony murder only after finding

that he was an accomplice to armed robbery.” The absence of the additional language did not render the instructions erroneous or insufficient. The law does not require that jury instructions repeat the same point multiple times or spell out every logical implication of the charges. “[S]o long as the law is fairly covered by the jury instructions, reviewing courts should not disturb them.” *Tharp v. State*, 129 Md. App. 319, 329 (1999).

The instructions here fairly covered the law. They informed the jury that felony murder required proof of an underlying armed robbery, and they informed the jury that to convict Clubb as an accomplice, the crime in question (here, felony murder, which necessarily included armed robbery) must have occurred. The jury instructions, considered as a whole, were not “ambiguous, misleading, or confusing” and adequately protected Clubb’s rights. *Smith v. State*, 403 Md. 659, 663 (2008).

We also reject Clubb’s argument that his acquittal on the armed robbery charge demonstrates that the jury instructions were confusing or that “all roads—or at least most roads—to this verdict are impermissible.” While the verdict—convicting Clubb of felony murder while acquitting him of armed robbery—may appear inconsistent at first glance, such apparent inconsistencies do not necessarily establish that the jury instructions were erroneous. As the State correctly notes, “a judge’s instructions are not *ex ante* rendered improper, erroneous, or confusing because the jury that received them later returned a seemingly inconsistent verdict.”

The jury may have concluded, for instance, that while Clubb did not personally commit the armed robbery (thus warranting acquittal on that charge), an armed robbery was committed by his co-participants and Clubb aided or encouraged that robbery—which

would support a conviction for felony murder as an accomplice. Alternatively, the jury may have been convinced that Clubb conspired to commit an armed robbery (as evidenced by the conspiracy conviction) and that the robbery was attempted, even if not completed, thereby satisfying the predicate for felony murder.

Clubb’s conviction for conspiracy to commit armed robbery is particularly significant. The court instructed the jury on conspiracy, explaining that to convict on that charge, the State must prove Clubb agreed with at least one other person to commit the crime and entered into the agreement with intent that the crime be committed. That conviction demonstrates that the jury found Clubb agreed with at least one other person to commit an armed robbery and entered into that agreement with the intent that the robbery be committed. This finding is consistent with the jury’s verdict on felony murder, which required proof that an armed robbery occurred during which Jaquan Johnson was killed. The conspiracy conviction thus provides a permissible basis for the jury to have concluded that Clubb was sufficiently involved in the predicate armed robbery to support his felony murder conviction.

Moreover, challenges to allegedly inconsistent verdicts must be raised before the jury is discharged to be preserved for appellate review. *See Travis v. State*, 218 Md. App. 410, 452 (2014) (“[A] defendant must object before the verdicts are made final and the jury is discharged in order to preserve a challenge to a legally inconsistent jury verdict.”). Clubb did not raise an inconsistent verdict objection below, prior to the discharge of the jury, and we will not use an unpreserved inconsistent verdict claim as a backdoor mechanism to challenge the adequacy of jury instructions.

In sum, the trial court's instructions on felony murder and accomplice liability, when read together as a whole, adequately informed the jury that it could convict Clubb of felony murder as an accomplice only if it found that an armed robbery occurred and that Clubb was involved in that robbery. The instructions were not erroneous, and any lack of specificity in failing to repeat the same requirements multiple times did not rise to the level of reversible error.

CONCLUSION

For the foregoing reasons, we find Clubb has not properly preserved his argument for appeal because counsel failed to object after the entire jury instructions were read. On the merits, we hold that the trial court's jury instructions on felony murder and accomplice liability, considered in their entirety, fairly covered the applicable law and adequately protected Clubb's rights. The instructions properly conveyed that the jury could not convict Clubb of felony murder as an accomplice without finding that an armed robbery occurred and that he participated in it. Accordingly, we affirm.

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