Circuit Court for Carroll County
Case No. 06-K-16-047782

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2476

September Term, 2018

EUGENE J. NEAL

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 27, 2020

Eugene "Joe" Neal was convicted of second-degree burglary, conspiracy to commit burglary, theft of property valued under $1,000, and conspiracy to commit theft after a jury trial in the Circuit Court for Carroll County. He argues on appeal that the evidence was insufficient to sustain his burglary conviction, that the trial court erred by refusing to give a jury instruction he requested regarding his permission to access the business, that the court erred in admitting his conspirator's, Zachary Escolopio's, prior consistent statement, and that the court erred in merging his convictions and sentences for the two conspiracy charges. We agree that the court erred in merging, rather than vacating, the conviction for conspiracy to commit theft, but otherwise affirm.

I. BACKGROUND

A. The Theft

Mr. Neal and Mr. Escolopio worked for Hughes Trash Removal ("Hughes"), a trash collection business with around fifty employees. Mr. Neal was a mechanic who serviced the company's vehicles and Mr. Escolopio was a "pitcher" who collected trash on the company's routes. Hughes gave Mr. Neal a key to the garage and the code to the alarm system because he would "open up sometimes" on Saturdays. and sometimes worked overtime.

Sandra Lee Hughes, the company treasurer, kept petty cash in a lock box under her desk. On September 26, 2016, she noticed that around $400 was missing from the petty cash box. The police investigated and reviewed surveillance video from Sunday, September 25, 2016, that showed two men entering the business.

B. Trial and Sentencing

At trial, Ms. Hughes identified Mr. Neal and Mr. Escolopio on the September 25th surveillance video from "the way they walked," their "tattoos," "their height," and "their build." Ms. Hughes testified that although Mr. Neal did work overtime, he wasn't authorized to come and go as he pleased:

> [DEFENSE COUNSEL]: Okay, so [Mr. Neal] had authorization to come in and work at times when the business wasn't open?
>
> MS. HUGHES: Not freely like that, no.
>
> [DEFENSE COUNSEL]: When you say not freely like that, what does that mean?
>
> MS. HUGHES: I mean like if he – like Saturday mornings we would work and you know if he got there before everybody else, that was fine he opened up. But I mean, Sunday and Sunday nights was not a night for –
>
> [DEFENSE COUNSEL]: Was there something that said to him that was you can't be here on a Sunday?
>
> MS. HUGHES: We just don't work on Sundays.

Joshua Hughes, another Hughes employee, testified that he knew Mr. Neal and Mr. Escolopio in passing, and he identified them in the video. He testified that he authorized overtime requests and that Mr. Neal never worked overtime on Sundays.

Mr. Escolopio testified at trial under an agreement with the State to receive a reduced sentence in an unrelated case. He testified that he didn't know the alarm code or have a key himself, and that he and Mr. Neal "unlocked the door" to the main office to get into the garage that day. He stated that they were at the business for around a half-hour and took $400 from Ms. Hughes's lock box. The pair then went to the city to buy drugs. Defense counsel questioned Mr. Escolopio's truthfulness and motives during cross-examination:

[DEFENSE COUNSEL]: So you said that when you were interviewed about this case that involved Hughes, . . . that you lied to the police, correct?

MR. ESCOLOPIO: Correct.

[DEFENSE COUNSEL]: And when you say you lied to them, you said you had nothing to do with it, correct?

MR. ESCOLOPIO: I did.

***

[DEFENSE COUNSEL]: All right, now before you sign the [cooperation] agreement . . . , did [the State] say to you that hey you are looking at time over and above what you are doing now?

MR. ESCOLOPIO: That was part of my agreement.

[DEFENSE COUNSEL]: Well, I know it was part of your agreement but did they say to you, hey look you have got this charge, this rogue and vagabond, **you either play ball with us**—

MR. ESCOLOPIO: Yes, they said—

[DEFENSE COUNSEL]: —**or you are going to be doing more time?** Did that come up maybe not in the words but you know what I am saying?

MR. ESCOLOPIO: Basically yes.

[DEFENSE COUNSEL]: Yes, **so you were kind of in a corner, weren't you?**

MR. ESCOLOPIO: Yes.

[DEFENSE COUNSEL]: You didn't want to do any more time?

MR. ESCOLOPIO: No.

[DEFENSE COUNSEL]: **So you were going to do whatever they wanted you to do?**

MR. ESCOLOPIO: Yep.

[DEFENSE COUNSEL]: Okay and what they said to you is that if you agree to be a witness against Mr. Neal, and of course if you agree to tell the truth, you already lied to them once, right?

MR. ESCOLOPIO: To the police officers?

[DEFENSE COUNSEL]: Yes.

MR. ESCOLOPIO: Initially yes.

(emphasis added).

Detective Brian Moore testified at trial that he interviewed Mr. Escolopio on November 1, 2017 and obtained a written and verbal statement. When the State attempted to enter a copy of the written statement into evidence, the defense objected:

> [DEFENSE COUNSEL]: So – my objection to the statement that is being offered is that I don't know on what track we are into the introduction of this statement but Mr. Escolopio testified he was cross examined. I didn't ask him about any statement that he gave to the police about this incident. And I don't think it is the appropriate way to get Escolopio's statement in through a police officer. And I think that if there was an appropriate way, would be through Mr. Escolopio and the State would have to be able to say why it was using his written statement and it could use it because I certainly tried to impeach him.
>
> But I never mentioned the statement and I don't think that this is an appropriate time and I think it is [] hearsay.
>
> THE COURT: So what is your theory of admissibility?
>
> [THE STATE]: The theory is under 5-802.1(b), it is a prior consistent statement. What [defense counsel] did is he impeached Mr. Escolopio based upon his cooperation agreement. As you can see on November 1, 2016, written statement was given well before any cooperation agreement. So it is a prior consistent statement that will rehabilitate Mr. Escolopio and it comes in as substantive.
>
> THE COURT: You wish to be heard?
>
> [DEFENSE COUNSEL]: Yes. **I didn't go near his statement.** The only thing I said to him is that you lied to the police isn't that correct? And he said he did. And then I think [the State] even said and then you gave the police information. But I mean I never visited that. Certainly I impeached him through the agreement but it had nothing to do with the statement.

> Everything I asked was boy he is getting a nice ride here with all of the probations and suspended sentences and everything else.
>
> THE COURT: **But I think what you are saying is that the motive to falsify originated on August 28 when the cooperation agreement was made.** He has an agreement from November 1 in which he is saying not the same detail but some of the same things that he said on August 28. . . . I think it is admissible to rehabilitate.

(emphasis added). The court responded that defense counsel broadened the scope for this evidence to come in when he created an implication about Mr. Escolopio's agreement with police:

> [DEFENSE COUNSEL]: My cross examination was hey, you lied to the police, you are a liar. You lied to the police.
>
> THE COURT: That was part.
>
> [DEFENSE COUNSEL]: I understand—
>
> THE COURT: The other part is, it was a pretty sweet deal. **In other words, he was trading his testimony and implicitly that because he is a liar, he wasn't telling the truth.**
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> [DEFENSE COUNSEL]: Well, I do agree with that. But I think there is a difference between me just simply saying he is a liar and as the Court says, my implication that he falsified things. I didn't say he falsified anything. I said you got a sweet deal here. And I don't know that anybody in this room could say that he hasn't had a sweet deal.
>
> THE COURT: Well I—
>
> [DEFENSE COUNSEL]: The whole room would agree that he has a sweet deal.
>
> THE COURT: I think [] one of the inferences that the jury could draw from all of this besides the fact that he has a sweet deal is that he falsified his statement on August 28. So I think this is admissible to rehabilitate. So I will overrule the objection.

(emphasis added). The court admitted the statement into evidence.

Defense counsel moved later for acquittal, arguing that "there [was] clear evidence that [Mr. Neal] had a code and a key and the authority to work overtime at off hours," and therefore, "he had the authority from the ownership to enter" and couldn't be a burglar. The State countered that Ms. Hughes had testified that "no one had permission to be in the business" on the night of the theft, that no one was working that Sunday night, that the garage was closed on Sundays, and that no one worked overtime on Sundays. Defense counsel argued that Mr. Neal had the authority to enter but not the authority to steal, and that it didn't matter what time he entered. The court ruled that the potential permission to enter was a jury issue:

> I think whether there was a right to enter 24/7 which is really what the Defense is arguing is a – an aspect of permission and that is a jury issue. That is not for the Court to determine as a matter of law. So, I will deny the motion.

When the defense rested, defense counsel renewed the Motion without changing his argument. The court again stated that the issue should go to the jury and denied the motion.

Finally, the court instructed the jury. Defense counsel had submitted a written instruction regarding Mr. Neal's permission to enter Hughes, which the court declined to give. Defense counsel noted an exception:

> [DEFENSE COUNSEL]: Judge, we have one [exception]. And that would be the written instruction, not the pattern instruction, that I supplied the Court dealing with the consent or authorization of the Defendant, Mr. Neal, to enter the premises. We discussed it in Chambers. I gave you the instruction and the supporting case law that I found that is appropriate. The Court has made its decision not to allow that instruction to be given to the jury. I believe it should be. And I note my exception.

> I think if it has not already been placed in the file I would like my instructions to become part of the file so that written instruction would be available--
>
> THE COURT: Is—it is in the file.
>
> [DEFENSE COUNSEL]: --should there be an appeal.
>
> THE COURT: And from the Court's prospective [*sic*] – the Court has read the Martin case which cites the general rule that there is no breaking if a person has a right to enter or if he enters with the consent of the owner.
>
> This is a different case than certainly the Martin case was. **And the Court finds that the general rule does not control when as here, the right to enter is limited to business purposes.** Okay.

(emphasis added).

The jury found Mr. Neal guilty of (1) second-degree burglary, (2) theft less than $1,000, (3) conspiracy to commit burglary in the second degree, and (4) conspiracy to commit theft less than $1,000. The court merged Mr. Neal's conviction for theft less than $1,000 into his conviction for second-degree burglary and merged his two conspiracy convictions. It sentenced Mr. Neal to eight years for second-degree burglary and two years for conspiracy to commit second-degree burglary, to run consecutively.

II. DISCUSSION

Mr. Neal raises four questions on appeal that we rephrase.[1] *First*, was the evidence

[1] Mr. Neal identified four Questions Presented in his brief:

> 1. Was the evidence insufficient to sustain the convictions for second-degree burglary and conspiracy to commit second-degree burglary?
>
> 2. Did the circuit court err by not instructing the jury that it could take into account whether Appellant had permission to

sufficient to support Mr. Neal's convictions for second-degree burglary and conspiracy to commit second-degree burglary? *Second*, did the trial court err when it declined to give Mr. Neal's proposed instruction about his permission to enter Hughes's building? *Third*, did the court err when it admitted Mr. Escolopio's written statement as a prior consistent statement? *Fourth*, did the court err when it merged Mr. Neal's conspiracy to commit theft under $1,000 into his conviction for conspiracy to commit second-degree burglary rather than vacating it?

A. There Was Sufficient Evidence To Support Mr. Neal's Convictions For Second-Degree Burglary And Conspiracy To Commit Second-Degree Burglary.

First, Mr. Neal argues the evidence was insufficient to support his convictions for

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> be on the premises at the time of the alleged incident?
>
> 3. Did the circuit court err by admitting State's Exhibit 23 as a prior consistent statement?
>
> 4. Did the circuit err in merging, as opposed to vacating, Appellant's conviction and sentence for conspiracy to commit theft?

The State rephrased those Questions Presented as:

> 1. Was the evidence sufficient to support Neal's convictions for second-degree burglary and conspiracy to commit second-degree burglary?
>
> 2. Did the trial court act within its discretion in declining to give Neal's requested jury instruction that was not generated by the evidence?
>
> 3. If not waived, was the admission of Zachary Escolopio's prior consistent statement harmless error?
>
> 4. Should Neal's conviction for conspiracy to commit theft be vacated?

second-degree burglary and conspiracy to commit second-degree burglary. He asserts that the State failed to prove that Hughes told him that he couldn't enter the premises on Sundays, and absent that affirmative action, the State couldn't prove that a breaking occurred, as second-degree burglary requires. The State responds that a reasonable fact-finder could have found that a breaking occurred. We agree with the State.

When we review a conviction for 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." *Hall v. State*, 225 Md. App. 72, 80 (2015) (*quoting State v. Coleman*, 423 Md. 666, 672 (2011)) (emphasis added). As an appellate court, it is not our role to re-try the case:

> [The Court's] concern is not whether the verdict is in accord with what appears to be the weight of the evidence, but rather is only with whether the verdicts were 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) (citations omitted). This is because "the finder of fact has the 'ability to choose among differing inferences that might possibly be made from a factual situation . . . .'" *Smith v. State*, 415 Md. 174, 183 (2010) (*quoting State v. Smith*, 374 Md. 527, 534 (2003)). We don't need to agree with the inferences made by the jury; we just assess whether the inferences were reasonable. *Hall*, 225 Md. App. at 82.

Maryland Code (2002, 2012 Repl. Vol.), § 6-203 of the Criminal Law Article ("CL") outlines the crime of burglary in the second degree: "A person may not break and

enter the storehouse of another with the intent to commit theft, a crime of violence, or arson in the second degree." Under the statute and at common law, a "breaking" is an essential element of the crime. *Jones v. State*, 2 Md. App 356, 359 (1967). There are two kinds of breakings: actual and constructive.[2] *Id.* at 359–60. "Actual breaking means unloosing, removing or displacing any covering or fastening of the premises. It may consist of lifting a latch, drawing a bolt, raising an unfastened window, *turning a key or knob, pushing open a door kept closed merely by its own weight*." *Id.* at 360 (*quoting Dorsey v. State*, 231 Md. 278, 280 (1963)) (emphasis added). The "turning of a key or knob" is an actual breaking when it's trespassory. *Id.*; *see Holland v. State*, 154 Md. App. 351, 367 (2003). Put another way, using a key to open a locked door is an actual breaking if it's done without the owner's consent. *Martin v. State*, 10 Md. App. 274, 279 (1970); *see Hobby v. State*, 436 Md. 526 (2014) (evidence that defendant used keys and a garage door opener, obtained without the owner's consent, was sufficient to establish a breaking in first-degree burglary prosecution).

Here, the State provided evidence that Hughes didn't consent to Mr. Neal's access to the business the night of the theft. Sandra Hughes testified that Mr. Neal had the key and security access code because "[h]e would open up" early some Saturdays, a regular work day. But according to Ms. Hughes, nobody should have been in the business on Sunday the 25th at 9:12 p.m. So even though Mr. Neal could access the building to work overtime, his

[2] Constructive breaking, not at issue here, is an "entry gained by artifice, fraud, conspiracy or threat." *Jones v. State*, 395 Md. 97, 119 (2006).

right of access was limited:

> [DEFENSE COUNSEL]: Okay, so he had authorization to come in and work at times when the business wasn't open?
>
> MS. HUGHES: **Not freely like that, no.**
>
> [DEFENSE COUNSEL]: When you say not freely like that, what does that mean?
>
> MS. HUGHES: I mean like if he – like Saturday mornings we would work and you know if he got there before everybody else, that was fine he opened up. But I mean, Sunday and Sunday nights was not a night for –
>
> [DEFENSE COUNSEL]: Was there something that someone said to him that was you can't be here on a Sunday?
>
> MS. HUGHES: **We just don't work on Sundays.**

(emphasis added). Joshua Hughes testified that employees need permission to work overtime, and that although Mr. Neal had worked overtime in the past, he had never gotten permission to work overtime on a Sunday. On the other hand, Mr. Neal's sister Amber Neal, his sole witness, countered that she had dropped Mr. Neal off at Hughes on Sunday two or three times in the past. Based on the evidence, a reasonable factfinder could conclude that Mr. Neal didn't have permission to use his key and access code to enter Hughes that night, and the record contained evidence sufficient to support the jury's conclusions that Mr. Neal committed burglary and conspiracy to commit burglary.

B. The Trial Court Did Not Err When It Declined To Give Mr. Neal's Proposed "Permission" Instruction.

Next, Mr. Neal argues that the court erred when it didn't give his proposed instruction regarding permission to enter the business. The State responds that the evidence didn't generate the instruction. Again, we agree with the State.

Although the court read the jury the pattern instruction on second-degree burglary substantively, Mr. Neal requested an additional, non-pattern instruction:

> If you find that the Defendant, Eugene J. Neal, was given permission by Hughes Trash Removal Service to enter upon their premises by means of a key and/or a passcode, you must find that there is no breaking of the premises in that Mr. Neal had the right to enter in that he had the right to enter with the consent of the owner. *Martin v. State*, 10 Md. App. 274, 269 A.2d 182 (1970).

Maryland Rule 4-325 governs jury instructions in criminal cases generally:

> The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a requested instruction if the matter is fairly covered by the instructions actually given.

A trial court "must give a requested jury instruction where '(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in the instructions actually given.'" *Holt v. State*, 236 Md. App. 604, 620 (2018) (*quoting Cost v. State*, 417 Md. 360, 368–69 (2010)). "[T]he standard for reversible error places the burden on the complaining party to show both prejudice and error." *Farley v. Allstate Ins. Co.*, 355 Md. 34, 47 (1999) (*citing Harris v. Harris*, 310 Md. 310, 319 (1987)).

In this case, the trial court found that the instruction didn't apply because Mr. Neal's right to enter was limited to business purposes:

> [F]rom the Court's [perspective] – the Court has read the Martin case which cites the general rule that there is no breaking if a person has a right to enter or if he enters with the consent of the owner.

> This is a different case than certainly the Martin case was. And the Court finds that the general rule does not control when as here, the right to enter is limited to business purposes. Okay.

Walls v. State, 228 Md. App. 646 (2016), provides a useful comparison because, as here, it turned on whether a requested instruction was generated by the evidence in a burglary case. In *Walls*, the defendant had requested an instruction that stated "in order to find that he had committed a breaking and entering . . . , the State had to prove beyond a reasonable doubt that he did not 'reasonably believe[] that he had the authority, license, privilege, or invitation to enter'" the property. 228 Md. App. at 682. He argued that this "reasonable belief" instruction was supported by evidence in the record that he previously lived at the property, had some personal items there, had previously moved out and back in, and that he was listed as a tenant. *Id.* We disagreed and held that Mr. Walls "did not adduce any evidence to show that he actually believed he had the right to enter [the property] without the permission of [the owners]," *id.* at 686, so the instruction wasn't generated by the evidence.

As in *Walls*, there was no evidence that Mr. Neal had affirmative permission from Hughes to enter the garage on a Sunday night. His sole witness, Amber Neal, testified that she had dropped Mr. Neal off at Hughes two or three times on Sundays when the business was closed. But whether Ms. Neal dropped Mr. Neal off on Sundays in the past doesn't address whether *Hughes* had given him permission to be there that night. The only evidence in the record as to Hughes's permission was provided by the State, *i.e.*, that Mr. Neal could enter to open the business early on Saturdays and could enter to work previously approved

overtime. Mr. Neal relies heavily on the fact that the State didn't produce evidence that Hughes specifically informed Mr. Neal that he couldn't go on the premises unless the business was open. But Sandra Hughes made clear that Mr. Neal was given the key and access code for the specific purpose of opening the business *when he arrived early*, not so that he could enter "freely."

In effect, Mr. Neal asks us to hold that an employee with a key cannot, as a matter of law, commit a breaking unless his employer has notified him, in so many words, that those keys may be used only for business purposes. We decline the invitation. We agree with the State that Mr. Neal failed to introduce sufficient evidence to generate the instruction or that he was prejudiced by the court's decision not to read it.

C. The Trial Court Erred When It Admitted Mr. Escolopio's Written Statement To Rehabilitate Him, But The Error Was Harmless.

Next, Mr. Neal argues that the circuit court erred when it admitted Mr. Escolopio's prior consistent statement. He contends that Mr. Escolopio's handwritten statement to police was inadmissible under Maryland Rule 5-802.1(b) because Mr. Escolopio had a motive to fabricate when he made the statement. The State concedes that the statement couldn't have come in as a prior consistent statement because Mr. Escolopio was under investigation when he made the statement but argues that the error was harmless.[3] We

[3] The State contends that Mr. Neal waived this argument when he failed to object during *Mr. Escolopio's* testimony. But the State didn't attempt to enter the written statement during Mr. Escolopio's testimony; instead, it entered it during the Trooper's testimony. A party opposing the admission of evidence "shall" object "at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent" otherwise the objection

agree.

Mr. Neal is correct that the court erred when it admitted the written statement. Mr. Escolopio indeed had a motive to fabricate when he wrote it. During cross-examination of Mr. Escolopio, counsel for the defense questioned Mr. Escolopio about his cooperation agreement with the State. Later, during State witness Deputy Brian Moore's testimony, the State attempted to introduce Mr. Escolopio's written statement as a prior consistent statement under Rule 5-802.1(b) because Mr. Escolopio had been impeached during cross. The Rule reads:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule: (b) A statement that is consistent with the declarant's testimony, if the statement is offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive.

The statement was collected by police when Mr. Escolopio was brought in for questioning on November 1, 2016. The short statement reads, verbatim:

> At 7:00 pm Sunday at 9/25 I was picked up from Towson by Niel drove to Hampstead to go to Hughes to steal cash from the office witch happened at 8:00 pm and after that Neil drove me home wich was around 9:30 and thats where I stayed for the rest of the night

Following the defense's objection on hearsay grounds, the trial court admitted the statement to rehabilitate Mr. Escolopio after he was impeached during cross-examination:

> THE COURT: I think [] one of the inferences that the jury could draw from all of this besides the fact that [Mr. Escolopio]

is waived. Md. Rule 4-323(a). Here, the defense's failure to predict the later admission of the statement during the Trooper's testimony is not waiver.

> has a sweet deal is that he falsified his statement on August 28. So I think [the written statement] is admissible to rehabilitate. So I will overrule the objection.

Here, the court erred because Mr. Escolopio had a motive to fabricate when he wrote that statement, which is expressly forbidden in Rule 5-802.1(b). Although an exception to the hearsay rule allows prior consistent statements to be admitted where a witness's credibility had been attacked by implication of fabrication or improper influence of motive, the statement cannot come in if it was made *after* the alleged improper influence or motive existed. *Holmes v. State*, 350 Md. 412, 417 (1998). Here, Mr. Escolopio's statement was made on November 1, 2016, after he had been brought in for questioning on the burglary and theft. At that point, he already had a motive to fabricate, and the court erred in admitting the statement.

Still, the error is harmless. An error is harmless when, upon an independent review of the record, we can "declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict . . . ." *Dorsey v. State*, 276 Md. 638, 659 (1976); *see Davis v. State*, 207 Md. App. 298 (2012) (in a burglary prosecution, the trial court's error in admitting the recorded statement of a co-defendant, which violated defendant's Sixth Amendment rights, was harmless when defense counsel failed to object to its admission and counsel consented to playing the entire recorded statement). Mr. Escolopio's testimony and credibility was not remotely the sole evidence of Mr. Neal's guilt. The State submitted powerful videotape evidence of the burglary and had two witnesses, Sandra and Joshua Hughes, identify Mr. Neal in the video. We are convinced beyond a reasonable doubt that the court's error

in admitting the brief written statement and consequently bolstering Mr. Escolopio's credibility did not influence the verdict.

D. The Trial Court Erred When It Merged, Instead Of Vacating, Mr. Neal's Conviction For Conspiracy To Commit Theft.

Finally, Mr. Neal argues that the court erred when it merged Mr. Neal's sentence for conspiracy to commit theft because Mr. Neal had already been found guilty of conspiracy to commit burglary. The State agrees, and so do we.

Mr. Neal was convicted of two counts of conspiracy: conspiracy to commit burglary in the second degree and conspiracy to commit theft less than $1,000.00. "It is well settled in Maryland that only one sentence can be imposed for a single common law conspiracy no matter how many criminal acts the conspirators have agreed to commit." *McClurkin v. State*, 222 Md. App. 461, 490 (2015) (*quoting Jordan v. State*, 323 Md. 151, 161 (1991)). A unit of prosecution "is the agreement or combination rather than each of its criminal objectives." *Id.*

Here, there was only one conspiratorial agreement between Mr. Neal and Mr. Escolopio—to break into Hughes and steal cash. From that agreement, multiple criminal acts flowed: burglary and theft, plus their associated conspiracy charges. We leave intact Mr. Neal's conviction for conspiracy to commit burglary, the more serious offense, and vacate his conviction and sentence for conspiracy to commit theft less than $1,000.00.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY FINDING MR. NEAL GUILTY OF CONSPIRACY TO COMMIT THEFT LESS THAN $1,000.00 VACATED. JUDGMENTS AFFIRMED IN

ALL OTHER RESPECTS. APPELLANT AND APPELLEE TO SPLIT COSTS EQUALLY.