Circuit Court for Baltimore City
Case Nos. 116309003, 116309004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 2432
September Term, 2017

IVAN JOHNSON
v.
STATE OF MARYLAND

No. 2579
September Term, 2017

CARRDAI BUTLER
v.
STATE OF MARYLAND

Berger,
Friedman,
Gould,

JJ.

Opinion by Friedman, J.

Filed: February 26, 2020

Appellants Carrdai Butler and Ivan Johnson were tried as co-defendants in the shooting death of Amoni Grossman. After a jury trial in the Circuit Court for Baltimore City, they were each convicted of first-degree murder, use of a handgun in the commission of a crime of violence, conspiracy to commit first-degree murder, and possessing a firearm after a prior disqualifying crime. For the reasons that follow, we affirm their convictions.

FACTUAL BACKGROUND

On the night of September 14, 2016, outside the 300 block of Lanvale Street in Baltimore City, 18-year-old Amoni Grossman was shot 11 times in the head and upper body. Grossman died of his injuries.

At trial, the State presented closed-circuit video footage tracking Butler and Johnson together about 30 minutes before the shooting. Butler was wearing an Orioles hat, a turquoise t-shirt, and two gold chains. Johnson was wearing a red t-shirt. The video footage starts at around 8:15 p.m. and shows Butler and Johnson walking together in the area of Greenmount Avenue and North Avenue. By 8:30 p.m., they are near the intersection of Lafayette Avenue and Guilford Street, about one block from where the shooting occurred.

At Lafayette Avenue and Guilford Street, Butler and Johnson can be seen stopping to greet someone. At trial, Marcia Handy identified herself and the defendants in the video footage. She stated that she knew the men from seeing them around the neighborhood but did not know their names. Following the shooting, Handy identified Butler and Johnson in a photo array as the men she had greeted.

Additional video footage picks up moments later, at approximately 8:32 p.m., showing Amoni Grossman, dressed all in black, meeting up with Johnson and Butler. The group walks down Lafayette Avenue in the direction of Latrobe Street, disappearing from the camera's view. Shots are fired at approximately 8:42 p.m. Additional video footage from residential surveillance cameras then show Johnson and Butler running together out of the alley at Latrobe Street and down the alley next to 302 Lafayette Avenue. In the video, Butler appears to be carrying something that the State argued was a gun.

I. EVIDENCE OF "OTHER CRIMES"

First, Johnson and Butler jointly argue that the trial court erred in granting the State's motion to admit evidence of other crimes as proof of motive. We disagree.

Under the Maryland Rules, evidence that a defendant has committed other crimes cannot be admitted simply to show that a defendant has a criminal character or a propensity for criminal behavior. MD. RULE 5-404(b). To be admissible, evidence of crimes other than the one on trial must be "substantially relevant to some contested issue in the case and be offered for a purpose other than to prove the criminal character of the defendant." *Snyder v. State*, 361 Md. 580, 603 (2000). Some purposes for which evidence of other crimes may be admissible include "proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, [or] absence of mistake or accident." MD. RULE 5-404(b).

The Court of Appeals has established a three-part test for determining when other crimes evidence is admissible. *Snyder*, 361 Md. at 603 (citing *State v. Faulkner*, 314 Md. 630, 634-35 (1989)). *First*, the evidence must fit within an established exception. *Id*. This is a legal determination that we review without deference. *Id*. *Second*, if an exception

applies, the defendant's involvement in the other crime must be shown by "clear and convincing evidence." *Id.* at 604. "We will review this decision to determine whether the evidence was sufficient to support the trial judge's finding." *Id*. *Third*, if the first two criteria are met, the probative value of the other crimes evidence must outweigh the risk of unfair prejudice. *Id*. We review this third step for an abuse of discretion. *Id*.

Prior to trial, the State filed a "Motion to Admit 'Other Crimes' Evidence" that would show that on the day before the murder, Johnson, Butler, and Grossman had acted together in the attempted robbery of Ricky Shaw. Outside the presence of the jury, the trial court held a hearing on the State's motion. At the hearing, Shaw testified that on the afternoon of September 13, 2016, he had been waiting for his friend Amoni Grossman to drive him to the bank because Shaw had recently been approved for a $10,000 loan and needed to open an account in which to deposit the proceeds. When Grossman arrived at Shaw's home, he immediately went into the bathroom and closed the door. Shaw noticed three men walking back and forth in front of the house and asked Grossman if he knew who they were. The fourth time the men passed by, one of them pulled a gun and tried to enter the house. Shaw locked the front door and ran to the kitchen to go out the back door, but the men caught up with him before he could get the back door unlocked. They held Shaw at gunpoint demanding money and drugs. Grossman came into the kitchen telling the men that they should "Blow him now. Blow him now," thus encouraging the men to shoot Shaw.

In a photo array shortly after the robbery and again in court, Shaw identified Butler and Johnson as two of the men who came into his house. Shaw testified that he knew Butler

as "Man-Man" and that he met Butler through Grossman about eight months prior to the robbery. Shaw stated that Johnson and Butler passed the gun between each other several times, but never handed it to Grossman or to the third man who was with them.

When the men demanded money and drugs, Shaw immediately gave them the prescription bottle of Oxycodone he had refilled that morning. They then brought Shaw into the living room and started to search the house for money. Johnson and Grossman stayed with Shaw in the living room, while Butler and the other man went upstairs. At this point, Shaw ran upstairs and jumped out a second story window to escape.

Shaw testified that Grossman knew that he had a prescription for Oxycodone and that he had been approved for the $10,000 loan. Shaw believed that Grossman had brought Johnson and Butler there to rob him, and that Grossman unlocked the front door for them.

We start with Johnson and Butler's argument that the evidence of the robbery did not fit within any exception to the admission of other crimes evidence because it did not offer proof of a motive for them to have killed Grossman. Specifically, Johnson and Butler argue that it was implausible that they would have wanted to kill Grossman if he was their co-conspirator in the robbery. Rather, they insist that it would have made more sense for Shaw to have motive to kill Grossman, or for Johnson and Butler to have motive to kill Shaw. Johnson and Butler assert that, therefore, evidence of the robbery could not have provided any proof of motive for them to have killed Grossman. We are not persuaded.

Although motive is not an element of the crime of murder, it is "the catalyst that provides the reason for a person to engage in criminal activity." *Snyder*, 361 Md. at 604. "Like intent, motive is a mental state, the proof of which necessarily requires inferences to

be drawn from conduct or extrinsic acts." *Id*. (quoting *Johnson v. State*, 332 Md. 456, 471 (1993)). Showing motive is an established exception for the admission of other crimes evidence. *Id*. at 605; *Conyers v. State*, 345 Md. 525, 554 (1997). "To be admissible as evidence of motive, however, the prior conduct must be committed within such time, or show such relationship to the main charge, as to make connection obvious, that is to say they are so linked in point of time or circumstances as to show intent or motive." *Snyder*, 361 Md. at 605 (cleaned up).

Evidence that a victim and a defendant were involved in a criminal enterprise together can provide proof of a motive to kill a former co-conspirator. *See Thomas v. State*, 213 Md. App. 388, 411-12 (2013) (finding that evidence of pending drug charges was relevant to show motive to kill the victim who was a co-defendant and was refusing to accept a plea bargain). According to Shaw's testimony, he believed that Grossman planned the robbery, and that Johnson and Butler expected to walk away with drugs and $10,000. Even if the robbery had gone as planned, Butler and Johnson may have had a motive to kill Grossman to eliminate a co-conspirator. That their criminal endeavor was unsuccessful provides no less of a motive for Butler and Johnson to have killed Grossman, considering they might have blamed Grossman for the failure. In any event, that the scenario could support multiple variations of motive to kill amongst the involved parties does not make the theory offered by the State implausible. The objections raised by Johnson and Butler go to the weight given to the evidence, not to its admissibility. We, therefore, conclude that the trial court did not err in finding that the "other crimes" evidence constituted proof of motive under Rule 5-404(b).

At the second step, the record contains sufficient evidence to support a finding that Johnson and Butler's involvement in the robbery was established by clear and convincing evidence. Shaw provided a detailed account of the robbery and identified both Johnson and Butler as participants. The trial court found Shaw to be a credible witness and we consider Shaw's account of the robbery to be more than sufficient to support the trial court's determination that the robbery was established by clear and convincing evidence.

Finally, at the third step, we are not persuaded that the trial court abused its discretion in concluding that the probative value of the evidence outweighed the risk of unfair prejudice. The challenged evidence established a link between the victim and the defendants and provided an explanation for the killing. *See Thomas*, 213 Md. App. at 412 (noting that where there is otherwise little explanation for why a victim was murdered, other crimes evidence may have "considerable probative value"). In addition to providing strong evidence of a potential motive for the killing, the botched robbery took place just one day before Grossman's murder—creating a close temporal connection between the two events. We conclude that the trial court did not abuse its discretion in finding that the probative value of the evidence outweighed its potential for unfair prejudice.

Having reviewed all three steps, we hold that there was no error in the trial court's admission of the other crimes evidence.

II. ADMISSION OF A WITNESS'S PRIOR STATEMENT

Next, Johnson and Butler both argue that the trial court erred in admitting the prior extrajudicial statement of Kierra Hayes. They argue that because Hayes ultimately acknowledged most of her prior statement (except for a few small details that she said she

couldn't remember), her testimony was not inconsistent, and her prior statement was, therefore, not admissible. Again, we disagree.

Maryland Rule 5-802.1(a) allows a witness's prior inconsistent statement to be admitted as an exception to the prohibition against hearsay, providing that the statement was:

> (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) reduced to writing and was signed by the declarant; or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement.

MD. RULE 5-802.1(a). So long as the witness is available for cross-examination when the statement is introduced, the factual portion of a prior inconsistent statement admitted under this Rule is considered "sufficiently trustworthy to be offered as substantive evidence of guilt." *Nance v. State*, 331 Md. 549, 569 (1993).

Under this Rule, inconsistency can include not only positive contradictions, but also deliberately evasive claims of either partial or total memory loss. *Id*. at 564 n.5. When a witness testifies that she does not remember the events in question, whether that testimony is "inconsistent" with a prior statement within the meaning of Rule 5-802.1(a) depends on whether the witness's memory loss is genuine or contrived. *Corbett v. State*, 130 Md. App. 408, 425-26 (2000). If a witness genuinely does not remember an event, they are not implicitly denying anything about the event or their statement, and the testimony is therefore not considered inconsistent.[1] *Id*. But when a witness pretends not to remember an

[1] In *Corbett v. State*, the Court of Appeals noted:

event to avoid testifying about it, they are implicitly denying the content of the previous statement and their testimony can be considered inconsistent. *Id*. at 425. Inconsistency can be implied "from a witness's failure to testify about a matter entirely when under the circumstances he reasonably would be expected to do so," or from partial testimony when "it is reasonable to infer from the witness's ability to testify partially that he has the ability to testify fully but is unwilling to do so." *Id*. (citing *Hardison v. State*, 118 Md. App. 225, 240 (1997)).

Prior to trial, Hayes gave two statements to the police, the first on the night of the shooting and the second two weeks after the shooting at the photo array. In those statements, Hayes told police that she was walking home from buying beer when she saw four "boys" together in the alley on Latrobe Street. She heard gunshots and saw the shooting from 15 to 20 feet away. She told the police that she believed that the victim and the men who shot him were friends because she had seen "that crowd … hang together" for months before the shooting. She described the shooter as tall and skinny, with big puffy eyes. She stated that one of the men was in a white t-shirt and jeans, with his pants down low and green boxers showing, and the other was wearing a white t-shirt but had another

> When a witness actually lacks memory of an event he once knew about, and thus is unable to testify about it, the past recollection recorded exception to the rule against hearsay will apply, if it is established through the witness that when the writing was made, the events were fresh in his mind, and that the written statement is authentic and accurately reflects the knowledge he once had.

130 Md. App. 408, 426 (2000) (citing *Baker v. State*, 35 Md. App. 593, 598 (1977)).

shirt over his shoulder. She saw the shooter and one of the other men run down the alley and disappear into a house. Hayes told police that although she didn't know their names, she had seen the men together around the neighborhood and would recognize them if she saw them again. When presented with photo arrays two weeks later, Hayes identified the photo of Butler as the shooter.

At trial, however, Hayes testified that she did not remember most of what she had told the police. She asserted that when she gave her first statement she had been intoxicated, and that she also had seizures which affected her memory. Despite repeated attempts by the State to refresh Hayes's recollection with her previous statements, Hayes maintained that she had little memory of the events. Of the things she did remember, there were notable contradictions in her description and identification of the suspects.

Butler and Johnson argue that after the trial court allowed the State to treat Hayes as a hostile witness, she confirmed most of the details of her prior statement and, as a result, her trial testimony was ultimately consistent with her prior statement. Butler and Johnson assert that the trial court therefore erred in finding Hayes's trial testimony to be inconsistent based on the few details that she still failed to recall.

Contrary to Johnson and Butler's argument, whether testimony is inconsistent for purposes of Rule 5-802.1 is not determined by whether the witness's testimony can eventually be brought into line with their previous statement. *McClain v. State*, 425 Md. 238, 249-50 (2012). Rather, it is measured from the moment that it becomes inconsistent. *Id.*; *Wise v. State*, 243 Md. App. 257, 269 (2019). Once the jury has been presented with conflicting testimony, the inconsistency has been established and could influence the jury

regardless of whether the testimony is subsequently amended. *McClain*, 425 Md. at 249-50; *Wise*, 243 Md. App. at 269. Admitting the witness's prior statement into evidence provides the jury with an additional source of information from which to evaluate the credibility of the testimony. *McClain*, 425 Md. at 250 (citing 6 LYNN MCLAIN, MARYLAND PRACTICE: MARYLAND EVIDENCE STATE AND FEDERAL § 613:1(a) (2d ed. 2001) (stating that, when a witness's testimony is inconsistent with a prior statement of the witness, "[t]he inference may then be made that the witness could not have been correct both times and may be wrong at trial, either because of faulty memory or deliberate prevarication")). "When determining whether inconsistency exists between testimony and prior statements, 'in case of doubt the courts should lean toward receiving such statements to aid in evaluating the testimony.'" *McClain*, 425 Md. at 250 (quoting KENNETH S. BROUN, MCCORMICK ON EVIDENCE § 34, p. 153 (6th ed. 2006)).

Because a witness's prior statement is only admissible as substantive evidence when memory loss is contrived, the trial court must first find that the witness's lapses in memory are not genuine. *Corbett*, 130 Md. App. at 425-27. There is, however, no requirement that this finding be made explicitly on the record so long as a reviewing court is able to discern that the finding was made. *McClain*, 425 Md. at 251-52 (citing *Powell v. State*, 394 Md. 632, 641 n.7 (2006)); *Corbett*, 130 Md. App. at 426-27. In the absence of an explicit ruling, the appellate court applies a presumption that the trial court knew the law and applied it properly. *McClain*, 425 Md. at 248.

While Johnson and Butler assert that the trial court never found that Hayes was feigning her memory loss, there is ample evidence in the record showing that, as Hayes's

testimony continued, the trial court found her to be deliberately evasive. The first time the State moved for Hayes's statement to be admitted into evidence, the trial court denied the request and ruled that Hayes's repeated statements that she did not remember were not sufficient to justify admission of her prior statement. Nevertheless, the trial court permitted the State to question Hayes about her statement "bit by bit." As Hayes's testimony continued, the State again moved for her prior statement be admitted into evidence. The trial court again denied the request, but this time allowed the State to lead Hayes through her statement as a hostile witness, finding that "[p]reviously the Court wasn't satisfied that [Hayes] had a sufficient recollection to testify. But now the Court is satisfied at this point (inaudible)."[2] Later, during redirect examination of Hayes, the State again renewed its motion to admit her prior statement into evidence. This time, the trial court granted the motion and allowed portions of Hayes's prior statements to be played for the jury, explaining:

> From what the Court does find is that this woman has not testified with regard to the (inaudible) and noting the inconsistency, and noting the number of times that she has said "I don't know," and even with the Court allowing the State to pose questions and, … be treated as a hostile witness, she has been inconsistent, and she has not – she has given the Court the impression that she has not testified accurately with regard to what she previously testified.

If there were any doubts about whether the trial court had considered Hayes to be feigning her forgetfulness, during the hearing on the motion for new trial the trial judge explained:

[2] The courtroom where the trial was held suffered from faulty bench microphones, and as a result, portions of some of the bench conferences are noted in the transcription simply as "inaudible."

> As for Ms. Hayes' testimony, she appeared as your classic recanting, or reluctant, or recalcitrant … witness. The Court noted her demeanor and attitude when questioned by the State and cross-examined by defendants' counsel. With the State she demonstrated hostility and uncooperativeness with her testimony. With defendants' counsel, she was quite cooperative. … The Court initially denied the State's request to put before the jury her videotaped statement as a prior inconsistent statement pursuant to Maryland Rule 5-802.1. Yet, during the fluidity of the proceedings, the Court was convinced that Ms. Hayes was giving a false appearance to the fact finder in this case.

The record thus shows that Hayes's trial testimony was factually inconsistent and that the trial court found her assertions of memory loss to be disingenuous. As a result, we conclude the trial court did not err in admitting Kierra Hayes's prior statement as substantive evidence.

III. STRIKING OF VENIREPERSONS FOR CAUSE

Next, Butler (but not Johnson) argues that the trial court erred in not granting his motions to strike two venirepersons for cause during jury selection. Butler asserts that because he was required to use peremptory challenges to strike the potential jurors, he was denied his right to a fair and impartial jury. We disagree.

The purpose of the jury selection process is to ensure that a seated jury possesses the basic minimum level of impartiality guaranteed by the Constitution. *Wright v. State*, 411 Md. 503, 508 (2009); *Dingle v. State*, 361 Md. 1, 9 (2000). Maryland intentionally limits the scope of voir dire to questions "directed to a specific cause for disqualification." *Moore v. State*, 412 Md. 635, 646 (2010). While trial judges are entrusted with broad discretion to control the process and content of voir dire, "[o]n request, a trial court must

ask voir dire questions that are reasonably likely to reveal a cause for disqualification involving matters that are liable to have undue influence over a prospective juror. Such matters may be comprised of biases related to the crime or the defendant." *Kazadi v. State*, __ Md. __, No. 11, Sept. Term 2019, slip. op. at *41 (Jan. 24, 2020). Here, Butler is not challenging the questions asked by the trial court, but rather, the trial court's assessment of the jurors' responses.

First, Juror 971 responded when the venire was asked if anyone would be more or less likely to believe a law enforcement officer's testimony simply because that person was in law enforcement. Juror 971 stated that while he would be more inclined to believe a law enforcement officer's testimony, he could be reasonable and consider all the evidence before making up his mind. Also, Juror 971 commented that he lived "[t]oo close for comfort" to the location of the crime. But, Juror 971 repeated that he could be reasonable. Following this exchange, Butler's counsel moved to strike Juror 971 on the basis of his saying that he lived "too close for comfort" to the crime scene. The trial court denied the motion to strike, noting that the panel member had said he would weigh everything before making a decision.

Second, Juror 1050 responded when the venire was asked if a family member had ever been the victim of a crime. Juror 1050 told the court that ten years earlier her son was killed after being shot eight times in the head from behind and the 20-year-old defendant received a life sentence. Juror 1050 was very "emphatic" that despite the similarities between the cases, she could be fair and impartial, and the trial judge determined that she should not be struck for cause.

Disqualifying bias on the part of a prospective juror is a question of fact to be found by the trial judge. *Dingle*, 361 Md. at 15. While certain characteristics of a prospective juror, such as a "professional, vocational or social status" can create a presumption of bias, disqualification is rarely automatic. *Id*. at 12-13. To be disqualified for cause, there must be some "correlation between the juror's status and his or her state of mind" that provides a factual basis for finding actual prejudice on the part of the venire member. *Id*. at 17. It is the responsibility of the trial judge alone to determine whether a prospective juror should be dismissed for cause. *Id*. at 14-15. Moreover, to be discharged for cause, a prospective juror's bias must be shown, not merely presumed. *Id*. at 17.

"The constitutionally impartial juror is not necessarily, from a litigant's point of view, an ideal juror or a perfect juror." *Davis v. State*, 93 Md. App. 89, 108 (1992). Moreover, an "impartial juror in the constitutional sense need not walk into the courtroom already possessed of inherent impartiality; it is enough that the juror be capable of achieving the requisite impartiality." *Id*. Here, despite responding to questions that create a presumption of bias on the part of the prospective jurors, upon further questioning the trial court found that there was no actual prejudice or impartiality on the part of either Juror 971 or Juror 1050. The judge's role "in determining juror bias involves credibility findings whose basis cannot be discerned from an appellate record." *Dingle*, 361 Md. at 15 (quoting *Wainwright v. Witt*, 469 U.S. 412, 429 (1985)). From the record, we see nothing to indicate that the trial court's findings were an abuse of discretion. We, therefore, conclude that the trial court did not err in denying Butler's motions to strike Juror 971 and Juror 1050 for cause.

IV. ADMISSION OF A PHOTOGRAPH FROM FACEBOOK

Next, Butler (but not Johnson) asserts that the trial court erred in admitting a photograph of him from Facebook[3] because it was not properly authenticated. Butler argues that because the photograph came from social media it should have been subjected to the more strict foundational requirements that apply to the admission of digital evidence, rather than the more basic requirements used for a traditional photograph. We are not persuaded.

During Shaw's testimony, the State showed him the photograph of Butler from Facebook. Shaw stated that it looked like the person he knew as "Man-Man" who had participated in the robbery. The trial court reserved ruling on the admissibility of the photograph until it heard testimony from the investigating officer who acquired it. The investigating officer testified that when Butler became a suspect, he searched for pictures of Butler on Facebook. Once he found a picture he wanted, the officer sent a search warrant to Facebook to get a copy of it from Butler's profile. Once the State established how the photograph was obtained, the trial court admitted it into evidence, noting that what to do with it would be "up to the jury."

Under the Maryland Rules, before any item can be admitted it must first be authenticated "by evidence sufficient to support a finding that the matter in question is what its proponent claims." MD. RULE 5-901(a). This process of authentication requires "laying a foundation for the admission of such nontestimonal evidence as documents and objects." *Jackson v. State*, 460 Md. 107, 115 (2018) (quoting HORNSTEIN & WEISSENBERGER,

[3] Facebook is a social networking website that "allows users to build a profile and interact with 'friends.'" *Griffin v. State*, 419 Md. 343, 353 n.9 (2011).

MARYLAND EVIDENCE: 2002 COURTROOM MANUAL, at 306). The relevance of any proffered piece of evidence depends on the proponent establishing that it is what they claim it to be. *Id*. at 122 (citing *Sublet v. State*, 442 Md. 632, 656 (2015)). But the threshold for admissibility is slight. *Id*. at 116. The trial court "need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the jury ultimately might do so." *Id.* The type of foundation that must be laid for the admission of a piece of evidence, therefore, depends on what the evidence is and why it is being offered. *See generally* MD. RULE 5-901.

Photographs are typically authenticated in one of two ways, either as a "silent photographic witness" with independent probative effect, or through the first-hand knowledge of a testifying witness. *Jackson*, 460 Md. at 116. When a photograph serves as a silent witness, the foundation laid must establish the reliability of the evidence. *Id*. at 117. This usually requires details such as "the type of equipment or camera used, its general reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system." *Id.* (cleaned up). When a photograph is authenticated by first-hand knowledge of a testifying witness, the proponent of the evidence typically offers testimony "that the photograph fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time." *Washington v. State*, 406 Md. 642, 652 (2008).

In contrast to photographs where the relevant piece of evidence is typically only the image itself, with electronic information found on social media, sometimes the relevance includes the source of the information—not only what is posted, but who posted it. *Griffin*

v. State, 419 Md. 343, 357-58 (2011) (concluding that printouts from a MySpace[4] page could not be admitted to show that the defendant's girlfriend had threatened a witness unless the printouts were authenticated to establish that she had authored the statements). When the proponent seeks to attribute postings from social media to a specific person, the source of the post must also be authenticated to connect the post to the person who allegedly authored it. *Id*. at 357.

Here, although the picture of Butler was found on a social media website, the State did not make any assertions about when it was posted or by whom. Because the source of the picture was not offered as evidence, it was not necessary for the State to authenticate the source. The photo was purported to be a picture of Butler, and the authentication offered was sufficient for the jury to view the photograph and decide if it was, in fact, a picture of Butler. We, therefore, conclude there was no error in the trial court's admission of the photograph.

V. JURY INSTRUCTION ON WEIGHING THE EVIDENCE SEPARATELY

Next, Johnson (but not Butler) argues that the trial court erred in denying his request to instruct the jury to limit its consideration of evidence "only as it relates to the defendant against whom it was admitted," based on instruction 3:09 of the Maryland Pattern Jury Instructions—Criminal ("MPJI-Cr"). Instruction 3:09 provides:

> There are defendants in this case. Some evidence was admitted only against [one defendant] [some defendants] and not against the other defendant(s). You must consider such evidence only

[4] MySpace is another social networking website similar to Facebook. *Griffin*, 419 Md. at 346 n.2. The popularity of MySpace declined significantly with the rise of competitors such as Facebook.

> as it relates to the defendant against whom it was admitted, as I told you during the trial. Each defendant is entitled to have the case decided separately on the evidence that applies to that defendant.

MPJI-Cr. 3:09 EVIDENCE APPLICABLE ONLY TO ONE DEFENDANT—JURY TO LIMIT CONSIDERATION. We are not persuaded, however, that Johnson's requested instruction was generated by the evidence.

"We review a trial court's decision to give or refuse a jury instruction under the abuse of discretion standard." *Nicholson v. State*, 239 Md. App. 228, 239 (2018). When a party requests a jury instruction, the trial court must give it only if the instruction (1) correctly states the law, (2) specifically applies to the facts and circumstances of the case, and (3) is not repetitive of other instructions already being given. *Preston v. State*, 444 Md. 67, 81-82 (2015).

The instruction requested by Johnson applies in situations where multiple defendants are joined for trial and some evidence is admissible against only one defendant. Under such circumstances, instructions may be given for the jury to limit its consideration of the non-mutually admissible evidence to only the defendant against whom it was admitted. *See, e.g.*, *State v. Hines*, 450 Md. 352, 369-70 (2016). Johnson argues that the DNA evidence linking Butler to the Orioles hat found at the scene and Hayes's extrajudicial statements identifying Butler as the shooter were both pieces of evidence that applied only to Butler and that the jury should have been instructed not to consider that evidence against Johnson. The record does not show, however, that any limitations were put on the consideration of that evidence when it was admitted. Indeed, the DNA evidence

was admitted without any objection. Moreover, while this evidence may have weighed more heavily against Butler, it also weighed against Johnson, who was with Butler at the time. Because the requested instruction was not generated by the facts of the case, the trial court did not err in denying Johnson's request to include it.

VI. SUFFICIENCY OF THE EVIDENCE

Finally, we address Johnson's assertion that the trial court erred in denying his motion for judgment of acquittal because the specific evidence presented against him was insufficient to support a conviction. We cannot agree.

To address a challenge to the sufficiency of the evidence, an appellate court asks 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." *Roes v. State*, 236 Md. App. 569, 582 (2018) (cleaned up). In doing so, we give significant deference to the factfinder's ability to observe the witnesses and assess their credibility, to draw reasonable inferences, and to resolve conflicts in the evidence. *Brice v. State*, 225 Md. App. 666, 692-93 (2015) (quoting *Moye v. State*, 369 Md. 2, 12-13 (2002)). "A conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence." *Hall v. State*, 225 Md. App. 72, 80 (2015) (cleaned up). We do not reweigh the evidence or consider whether the trier of fact would have been persuaded that guilt was established beyond a reasonable doubt. *Roes*, 236 Md. App. at 583; *Hall*, 225 Md. App. at 80. Our only concern is to determine whether the State met its burden of production and produced enough evidence to legally sustain a guilty verdict. *Roes*, 236 Md. App. at 583.

Johnson does not argue that the evidence was insufficient to establish that Butler shot and killed Grossman. Rather, he argues that the evidence connecting Butler to the crime should not be counted against him. As previously noted—and contrary to Johnson's position—all of the evidence was admitted against both Butler and Johnson. While the evidence might weigh differently against each defendant, how much weight it had against Johnson was a question for the jury.

The State presented circumstantial evidence to establish that Johnson and Butler acted together in killing Grossman: they shared the same motive from the botched robbery, they were together in the neighborhood before the murder, they met up with Grossman together only moments before he was shot, and they fled the scene together. How to weigh that evidence and what inferences to make from it was for the jury to decide. It was up to the jury to resolve inconsistencies in the witness testimony. It was up to the jury to determine if the video footage was clear enough to identify Johnson. It was up to the jury to decide if the State's theory of motive was plausible. And it was up to the jury to infer from the evidence that even if Johnson had not held the gun, he was an active participant in Grossman's murder. Viewed in the light most favorable to the State, there was sufficient evidence presented to support that inference and, therefore, Johnson's convictions. We conclude that the trial court did not err in denying his motion for an acquittal.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE DIVIDED EVENLY BETWEEN APPELLANTS.