

Circuit Court for Prince George's County  
Case No. CT171325X

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2679

September Term, 2018

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THOMAS LEE KEYES

v.

STATE OF MARYLAND

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Kehoe,  
Nazarian,  
Gould,

JJ.

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PER CURIAM

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Filed: April 9, 2020

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

Convicted by a jury in the Circuit Court for Prince George’s County of first, third, and fourth degree burglary, and conspiracy to commit first degree burglary, Thomas Lee Keyes, appellant, presents for our review two questions:

1. Is the evidence sufficient to sustain the convictions for first degree burglary and conspiracy to commit first degree burglary?
2. Must the convictions for third and fourth degree burglary be vacated?

For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Patrick Hickey, who testified that he and his girlfriend reside in a condominium on the fourth floor of a condominium building in Beltsville. At approximately 12:50 p.m. on July 21, 2017, Mr. Hickey and his girlfriend returned from an overnight trip to find the door of their residence open. After asking his girlfriend to call 911, Mr. Hickey “waited outside the door” and “heard a tremendous commotion going on inside [the] unit.” Mr. Hickey entered the residence and saw “two individuals . . . leaving, going through the curtains of [the] sliding glass door” which had been “all knocked in at that point,” and “onto [the] balcony.” Mr. Hickey “walked to the back of [the] unit and [saw] some of [his] guns,” which had been “in a closet . . . in the bedroom area,” “scattered around.” Mr. Hickey returned to “the landing outside the door of” his residence, “which has a clear view down to the front entrance,” and “saw two individuals jump over a railing . . . on [the] bridge that goes into the” building and go “directly into another condominium on the floor below” him. Mr. Hickey ultimately discovered that “at least five handguns were gone,” as were items of his girlfriend’s jewelry.

The State also called Swapna Rozario, who testified that she lives in an apartment directly below Mr. Hickey’s residence. At approximately 12:15 p.m. on July 21, 2017, Ms. Rozario was in her residence “doing . . . chores” when she heard a “really huge noise upstairs.” Hearing “somebody jump,” Ms. Rozario “ran to . . . the balcony” and saw a man wearing blue jean shorts jump from her “balcony to [the] ground.” Ms. Rozario identified the man, at the time and in court, as Mr. Keyes, whom Ms. Rozario knew to live in the “apartment number opposite [her] apartment,” and had seen in the building “[p]retty much every day.” Ms. Rozario “rushed . . . to lock everything,” then “went to the door and [looked] through the peep hole.” Ms. Rozario saw Mr. Keyes, who was wearing an orange shirt, in the company of a second man and two women. The group, which had a “back pack,” was “opening the [front] door” of the building, “peeping around, [and] watching who was coming.”

The State also produced evidence that following the burglary, Prince George’s County Police Detective Ahmed Ali “canvas[ed] the area” around the building “searching for [a] person that was broadcasted for the breaking and entering.” Within “walking distance” of the building, Detective Ali located a person “[w]earing an orange shirt” and “blue short jeans” and carrying “a black book-bag.” Detective Ali identified Mr. Keyes in court as “the person that [the detective] stopped that matched the description of the burglar.” Prince George’s County Police Corporal George Schwaeble subsequently transported Ms. Rozario to Detective Ali’s location, where she identified Mr. Keyes.

The State also produced an audio recording containing three excerpts from telephone conversations between Mr. Keyes and Samantha Ponzter, recorded while Mr.

Keyes was incarcerated. In the first excerpt, Mr. Keyes stated to Ms. Ponzter, who lived on the same floor as Ms. Rozario: “I need you and mom to come to court to testify and say that I don’t live there.” In the second excerpt, Mr. Keyes stated to Ms. Ponzter: “They didn’t find nothing on me, I’m too smart, I didn’t get caught with nothing.” In the final excerpt, Mr. Keyes stated to Ms. Ponzter: “I’m going to be in trouble if the police find that shit in your bag.”

Mr. Keyes first contends that the evidence is insufficient to sustain the convictions for first degree burglary and conspiracy to commit first degree burglary, because “the State was unable to . . . link the burglary to Mr. Keyes,” and “failed to present sufficient evidence of an unlawful agreement to break into Mr. Hickey’s apartment and steal his belongings.” We disagree. At the time of the burglary, show-up, and trial, Ms. Rozario identified Mr. Keyes as the person who, around the time that Mr. Hickey entered his residence, jumped from the area of Mr. Hickey’s balcony to Ms. Rozario’s balcony and thereafter to the ground. Ms. Rozario was familiar with Mr. Keyes because he lived on the same floor as Ms. Rozario, and she had seen Mr. Keyes almost daily. Mr. Hickey testified that after seeing two individuals flee his residence from the balcony, he saw two individuals run into a condominium on the same floor as Ms. Rozario’s residence. Ms. Rozario subsequently saw Mr. Keyes and three other individuals “peeping around” the front of the building and “watching who was coming.” When Mr. Keyes was apprehended, he was wearing the same type of shorts that Ms. Rozario stated had been worn by the person who jumped onto her balcony, and the same color of shirt that Ms. Rozario stated had been worn by Mr. Keyes as he looked out the front door of the building. Finally, Mr. Keyes indicated in his

phone calls to Ms. Ponzter, who lived on the same floor as Ms. Rozario, that he could have been “caught with” something; requested the assistance of Ms. Ponzter in testifying, and recruiting a second person to testify, that Mr. Keyes did not live in the building; and indicated that there were items in Ms. Ponzter’s possession that could cause Mr. Keyes to “be in trouble” with police. We conclude that this evidence was sufficient for the jury to find that Mr. Keyes broke and entered Mr. Hickey’s residence, and that Mr. Keyes reached an agreement with one or more other persons to commit the burglary.

Mr. Keyes next contends that the “convictions for third and fourth degree burglary must be vacated.” (Capitalization and boldface omitted.) Prior to deliberations, the court gave the jury a verdict sheet on which the jury was to indicate its verdicts as to the offenses. The sheet instructed the jury that if they found Mr. Keyes guilty of first degree burglary, they were to skip the verdicts as to third and fourth degree burglary and proceed to the verdict for conspiracy to commit first degree burglary. Despite these instructions, the jury indicated on the sheet that they found Mr. Keyes guilty of all four offenses. When the jury returned to the courtroom, the deputy clerk asked the foreperson whether the jury found Mr. Keyes “not guilty or guilty of burglary first degree.” The foreperson responded: “Guilty.” The deputy clerk then asked the foreperson whether the jury found Mr. Keyes “not guilty or guilty of conspiracy burglary first degree.” The foreperson again responded: “Guilty.” The jury was subsequently polled and hearkened as to those verdicts. At sentencing, the court sentenced Mr. Keyes to a term of twenty years’ imprisonment, all but thirteen years suspended, for the first degree burglary, and stated that the counts of third and fourth degree burglary “merge[] with” the count of first degree burglary.

Mr. Keyes contends that “[b]ecause the jury did not return a verdict for [third or fourth degree burglary] in open court subject to polling and hearkening,” he “was not convicted of” the offenses, and the court erred in merging the counts. We disagree. We have recognized that “the *actus reus* of” first, third, and fourth degree burglary are “identical[,] and the only distinction between the crimes [is] the progressively less culpable *mentes reae*.” *Bass v. State*, 206 Md. App. 1, 7-8 (2012). Hence, third and fourth degree burglary are lesser included offenses of first degree burglary, and in convicting Mr. Keyes of first degree burglary, the jury also convicted him of third and fourth degree burglary. Also, the Court of Appeals has recognized that “[t]here is a presumption of regularity which normally attaches to trial court proceedings[.]” *Harris v. State*, 406 Md. 115, 122 (2008) (citations omitted). In light of the jury’s entries on the verdict sheet, the foreperson’s announcement that the jury had convicted Mr. Keyes of first degree burglary, and the jury’s subsequent confirmation during polling and hearkening that the verdict as to that offense was unanimous, we presume that, had the deputy clerk specifically asked for the verdicts as to third and fourth degree burglary, the foreperson would have responded that the jury had convicted Mr. Keyes of those offenses, and the jury would have confirmed those verdicts during polling and hearkening. Hence, the court did not err in merging the counts of third and fourth degree burglary into the conviction for first degree burglary.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**