Circuit Court for Somerset County
Case No: C-19-CR-17-000086

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 4

September Term, 2018

MARQUEL DIJION BRUMSKIN

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 7, 2019

After a trial on November 27 and 28, 2017, Marquel Dijion Brumskin was acquitted of first-degree murder, but convicted of second-degree murder, first- and second-degree assault, reckless endangerment, and use of a firearm in a felony or crime of violence. Mr. Brumskin claims on appeal that the evidence was not sufficient to sustain his convictions, and also that the circuit court erred in denying his motion for a new trial. This is a close case, but we affirm the judgment.

I. BACKGROUND

On April 14, 2017, Maryland State troopers found the body of a man identified as Walter Whitehead in the backyard of 32020 Flower Hill Church Road, a house that belonged to Gregory Gosnell Lee. Mr. Lee, a truck driver, was working and was not at home that morning or the night before. Mr. Lee's neighbors, Glenda Shockley and "Kim," called the police when they noticed the body in Mr. Lee's backyard.

Lauren Wood, who lived directly off of Flower Hill Church Road, testified that at exactly 1:30 a.m., she heard "two bangs in quick successions of one another." Initially, Ms. Wood thought that the bangs were batteries exploding from a fire, but she concluded later that they were gunshots.

Roger Christopher, Mr. Whitehead's father, testified that he last saw his son on the evening of April 13, 2017. Mr. Christopher said that his son came to his house in a black Jetta driven by Mr. Brumskin, whom he identified. Michelle Crossan, Mr. Christopher's girlfriend, also identified Mr. Brumskin as the driver of the Jetta. That night, Mr. Whitehead got into a physical altercation with one of his brothers at his father's house

over a dirt bike. Mr. Whitehead and Mr. Brumskin then left Mr. Christopher's house at about 10:00 or 10:30 p.m.

Mr. Brumskin's brother, Diante Brumskin, testified that his grandmother used to live at 31990 Flower Hill Church Road. A search warrant was executed at the property, and officers found boxes and trash that suggested that someone might have been moving. According to the officers, no one appeared to be living there, and the back door was not locked, but items were blocking the door.

The autopsy report concluded that Mr. Whitehead died from two gunshot wounds and that the manner of death was homicide. Sam Woods of the Maryland State Police Crime Scene Section attended the autopsy and took possession of a projectile that was recovered from Mr. Whitehead's left arm. Mr. Woods also assisted with the execution of a search warrant at Mr. Brumskin's home at 402 Barclay Street in Salisbury on April 17, 2017 and found a bullet there as well. Further investigation revealed that both items were 9 millimeter Luger cartridges.

Trooper First Class Scott Sears and Sergeant Jonathan Pruitt interviewed Mr. Brumskin at the Salisbury Police Barrack after advising him of his *Miranda*[1] rights. In the recorded interview, Mr. Brumskin told the detectives that he did not have a cell phone. He said that the phone seized from 402 Barclay Street only played music and was not activated with a phone number. When asked to list his previous residences, he omitted his grandmother's house at 31990 Flower Hill Church Road. He also said that he didn't leave

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

his home after 11:30 p.m. on April 13, 2017.

Sergeant Kyle Clarke, an expert in historical cellular record analysis, examined the cellular record for number 443-735-4584. A phone call was made to that number at 1:36 a.m. on April 14, 2017. The cell tower that facilitated the call was in Eden, 1.57 miles from 32020 Flower Hill Church Road. Another call coming in to that number at 1:48 a.m. utilized a cell tower in Fruitland, north of the tower utilized for the 1:36 a.m. call.

Iesha Collins, the mother of Mr. Brumskin's child, testified that Mr. Brumskin drove her to work in Wicomico County at about midnight on April 13, 2017, and that no one else was in the car with them.

Before trial, Mr. Brumskin moved to suppress statements he made before he was given his *Miranda* rights, statements that he contended were not voluntary. The trial court denied the motion after finding that the statements were made as the troopers drove Mr. Brumskin from the Salisbury Barrack to the Commissioner's office, after the *Miranda* warnings had been given and after Mr. Brumskin had signed off on them.

The jury acquitted Mr. Brumskin of first-degree murder and convicted him of second-degree murder, first- and second-degree assault, and reckless endangerment. Mr. Brumskin was also convicted of the use of firearm in the commission of a felony or a crime of violence.

II. DISCUSSION

Mr. Brumskin presents two issues on appeal. *First*, he contends that the evidence at trial was insufficient to sustain his convictions, and *second*, that the circuit court erred in

denying his motion for a new trial. We hold that the evidence against Mr. Brumskin was sufficient for a reasonable jury to convict Mr. Brumskin of second-degree murder and related charges, and we see no error in the court's decision not to grant him a new trial.[2]

A. The Evidence Was Sufficient To Convict Mr. Brumskin Of Second-Degree Murder And Related Charges.

We review the sufficiency of evidence to support a conviction "in the light most favorable to the prosecution and determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Perry v. State*, 229 Md. App. 687, 696 (2016) (*quoting State v. Smith*, 374 Md. 527, 533 (2003)). Convictions may be based entirely on circumstantial evidence. *Wilson v. State*, 319 Md. 530, 536 (1990) (*quoting Veney v. State*, 251 Md. 182, 201 (1969)). We don't second-guess the judgment where there are "competing rational inferences available." *Manion*, 442 Md. 419, 431 (2015) (*quoting Smith v. State*, 415 Md. 174, 183 (2015)).

Mr. Brumskin argues that the evidence in this case was insufficient for a rational jury to conclude beyond a reasonable doubt that Mr. Brumskin shot and killed Mr. Whitehead. Although this is a close case, we disagree that the evidence fell short of

[2] Mr. Brumskin ostensibly challenges the sufficiency of the evidence for all of his convictions. But he didn't parse the evidence to attack any of his lesser convictions directly—he focused his arguments solely on the sufficiency of evidence to sustain his conviction for second-degree murder. Because he does not articulate any separate arguments, we assume that Mr. Brumskin's position is that if we find the evidence sufficient to sustain his murder conviction, it is sufficient to sustain the related offenses. And, in reality, it is: if the evidence is sufficient for the jury to find from this record that Mr. Brumskin shot Mr. Whitehead and intended to kill him, that same record could support a finding that he assaulted him, endangered him recklessly, and used a handgun to commit a crime of violence or a felony.

the threshold.

The jury heard testimony demonstrating that a dead body with two gunshot wounds was found on Flower Hill Church Road, in a backyard near a house where Mr. Brumskin's grandmother had lived. Mr. Brumskin was the last person to be seen with Mr. Whitehead, the victim. A medical examination revealed that Mr. Whitehead died from a gunshot, and the 9-millimeter projectile recovered from Mr. Whitehead's arm during his autopsy was the same type as the one found during a search at Mr. Brumskin's home. Mr. Brumskin also misrepresented to police that he did not have a cell phone and that he was not familiar with Flower Hill Church Road, where the body was found. During their investigation, the troopers found that Mr. Brumskin in fact had a cell phone that had been used in the area of Flower Hill Church Road at about 1:36 a.m. on April 14. A neighbor testified that she heard two gunshots at about 1:30 a.m. Viewed in totality, a reasonable jury could have found that Mr. Brumskin had a motive to kill Mr. Whitehead, that he used a gun that shot 9-millimeter bullets, that he was present at the scene of the shooting, and that he lied when he told the police otherwise. The evidence was wholly circumstantial, but collectively was sufficient for a reasonable jury to find Mr. Brumskin guilty of murder.

Morgan v. State reached the same conclusion on a similar record. 134 Md. App. 113, 116 (2000). Leonard Morgan was convicted of the second-degree murder of his friend based solely on circumstantial evidence. Mr. Morgan, frightened and angered, called his aunt and told her that someone had been shooting at him and his friends while they were in the victim's car. *Id.* at 117–18. The aunt called the police, and the police found the

victim's body on the side of the road. *Id.* at 118. An autopsy revealed that the victim had been shot twice in the head, once with a 9-millimeter handgun and once with a .44 caliber handgun. *Id.* The victim's car was found later in Washington D.C. with no sign of gunshot damage. *Id.* Testimony from other witnesses revealed that Mr. Morgan was not in the car at the time of the shooting, but was on the porch of the house where the car was parked. Police then traced the telephone number Mr. Morgan used to call his aunt to an apartment, and a search of that apartment yielded a vest stained with blood that was found consistent with the victim's DNA. *Id*. at 118. We affirmed the conviction and held the evidence sufficient.

As here, the evidence in *Morgan* was entirely circumstantial. And there, as here, the jury could find not only that Mr. Morgan was present at the scene of the shooting, but could construe his mental state and the degree of his participation in the shooting. In *Morgan*, such evidence was "the ill-conceived telephone call [he] placed to his aunt . . . given the time line, as a contemporaneous effort to ensure that he and [his co-defendant] avoided detection." *Id*. at 133. And here, such evidence included Mr. Brumskin's misleading of the police about his cell phone and his familiarity with Flower Hill Church Road, in conjunction with the placement of phone calls from his cell phone in the vicinity of Flower Hill Church Road and the inconsistency between his statement to police that he did not leave his house after 11:30 p.m. and Ms. Collins's testimony that he took her to work at midnight. In *Morgan*, as here, the State didn't have to rule out every conceivable theory of innocence—the evidence need only permit a reasonable jury to find the elements of the

offense beyond a reasonable doubt, and we agree with the circuit court that that standard was met here.

B. The Trial Court Properly Denied Mr. Brumskin's Motion for a New Trial.

After the court entered judgment, Mr. Brumskin filed a timely motion for a new trial. At the hearing, he argued that a new trial should be granted because the evidence was insufficient and the verdict was contrary to the weight of the evidence. The trial court denied the motion on sufficiency grounds, but didn't rule on the weight of the evidence. On appeal, Mr. Brumskin renews the latter argument, and the State responds that it isn't preserved because Mr. Brumskin failed to ask for a ruling on that particular ground. Preservation notwithstanding, the decision to grant a new trial lies in the court's discretion. *In re Petition for Writ of Prohibition*, 312 Md. 280, 326 (1988), *disapproved of on other grounds by State v. Manck*, 385 Md. 581 (2005). "Motions for new trial on the ground of weight of the evidence are not favored and should be granted only in exceptional cases, when the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to let the verdict stand." *In re Petition for Writ of Prohibition*, 312 Md. at 326. A trial court's decision to deny a motion for a new trial is "subject to reversal where there is an abuse of discretion." *Merritt v. State*, 367 Md. 17, 28 (2001). We see no such abuse of discretion here.

Mr. Brumskin complains that the circuit court "conflated the questions of sufficiency of the evidence and weight of the evidence." But that is, in essence, what he is doing himself. Unlike in *In re Petition for Writ of Prohibition*, no unfair surprise, newly

found evidence, improper jury instructions, or jury misconduct underlay Mr. Brumskin's motion. 312 Md. at 280; *see also Yorke v. State*, 315 Md. at 583–90 (applying "the teachings of *In re Petition for a Writ of Prohibition* [] in the context of a motion for a new trial grounded upon newly discovered evidence"). Instead, he offers a repackaged version of his sufficiency claim: the weight of the circumstantial evidence presented at trial, he contends, falls heavily against the jury's decision to convict him. But this argument fails for the same reason as the sufficiency argument. As the trial judge explained, Mr. Brumskin was the last person seen with Mr. Whitehead, he lied about his familiarity with Flower Church Hill Road and his cell phone, which was discovered to have been used near a cell tower that served the area where the victim was found and around the time when the perceived gunshots were heard. Mr. Whitehead was shot with a 9 millimeter handgun, and a 9 millimeter cartridge was found at Mr. Brumskin's residence. His statement to police that he did not leave home after 11:30 was inconsistent with Ms. Collins's testimony that he took her to work at midnight. All of these facts, considered together, could lead a reasonable juror to conclude that Mr. Brumskin committed the crimes of which he was convicted, and the trial court did not err in denying him a new trial on sufficiency or weight of the evidence grounds.

JUDGMENT FOR THE CIRCUIT COURT FOR SOMERSET COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.