Circuit Court for Montgomery County
Case No. C-15-CR-22-000275

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0018

September Term, 2024

JACKSON ALEXANDER GARCIA

v.

STATE OF MARYLAND

Arthur,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 29, 2026

*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 Rule 1-104(a)(2)(B).

This case requires us to determine whether there was enough evidence at trial to instruct the jury on "afterthought robbery" in a felony murder prosecution. Following a jury trial in the Circuit Court for Montgomery County, Jackson Alexander Garcia ("appellant") was convicted of first-degree felony murder, armed robbery of a Louis Vuitton bag, use of a firearm in the commission of a crime of violence, and conspiracy to commit armed robbery.[1] On appeal, appellant presents one question for our review:

> Did the trial court commit reversible error by refusing to propound the Maryland pattern jury instruction regarding felony murder—afterthought robbery?

Because there was "some evidence" that any intent to steal the bag arose after appellant's co-conspirator, Malik Jefferson, had shot the decedent, we hold that the court erred in failing to instruct the jury on afterthought robbery. As a result, we shall vacate appellant's conviction for first-degree murder, remand for a new trial on that count, and remand for resentencing on all remaining counts.

BACKGROUND

On February 17, 2022, appellant arranged through text messages to purchase $100 worth of marijuana from the decedent, Jose Osvaldo Genao Romero. The State theorized that appellant drove to Genao's apartment complex with Malik Jefferson as appellant's

[1] The court sentenced appellant to life imprisonment, suspending all but 40 years of executed incarceration for first-degree murder; a consecutive ten years of executed incarceration for the use of a firearm, the first five without parole; a consecutive ten years of executed incarceration for conspiracy to commit armed robbery; and five years of supervised probation.

passenger. Surveillance video from the apartment complex recorded Genao getting into the backseat of appellant's vehicle.

According to the State, when Genao entered the car, he was wearing a bag around his shoulders. The three men then traveled to a secondary location in a Rockville residential neighborhood around midnight. At that second location, appellant's vehicle stopped near a three-way intersection.

A nearby resident's motion-activated surveillance camera recorded the following events.[2] Appellant and Jefferson exited the vehicle, went to an area directly behind the vehicle, then stood next to the rear passenger door where Genao sat. The camera then stopped recording for approximately one minute.

When recording resumed, the camera showed Genao on the ground, already shot. The video substantially confirms the prosecutor's description of the events: Jefferson entered the driver's seat of the vehicle, appellant struck Genao in the head with an object before entering the front passenger seat, and then appellant and Jefferson fled the scene in the vehicle. Particularly relevant to this case, the video also shows appellant picking up an item after the shooting and placing it over his shoulder before entering the front passenger seat.[3] Genao briefly staggered down the residential street before collapsing in a front yard

[2] This Court has reviewed the available video evidence depicting the events before and after the shooting.

[3] The video also arguably shows Garcia throwing an item or two into the front seat after interacting with Genao in the back seat prior to the shooting. This sequence of events does not impact our analysis.

and calling 9-1-1. Genao died after sustaining three gunshot wounds, including two wounds to his abdomen.

As noted, the video did not capture what occurred during the critical minute when Genao was shot.

When officers executed a search warrant at Jefferson's house, they recovered Genao's Louis Vuitton bag in Jefferson's bedroom.

A. Appellant's Police Statement

Police arrested appellant on February 21, 2022. The police recovered a loaded Springfield Armory .45 caliber handgun from appellant's bag as a result of the arrest. A firearms examiner determined that both the bullet recovered from Genao's body and the cartridge casing found at the scene were consistent with test-fired samples from the handgun recovered from appellant. The State's theory at trial was that Jefferson, not appellant, shot and killed Genao.

Appellant waived his *Miranda* rights and gave three versions of events to police. First, he claimed he had taken the gun from someone who tried to rob him. Second, he falsely confessed to shooting Genao himself. Third, after the detective said that he thought appellant was lying, appellant provided another version of events, admitting that Jefferson shot Genao.

In his third account, appellant stated that after Genao entered the car, appellant drove, made a U-turn, and pulled over. Appellant opened the backseat door and searched

Genao for marijuana. Finding no marijuana, appellant punched Genao in the face. Genao fought back and stated that he did not have marijuana.

During the struggle on the ground, appellant saw Genao had a knife. As appellant and Genao wrestled, Jefferson hit Genao in the face with the handgun. Appellant told detectives he "was just trying to leave" at that point in the encounter with Genao.

Moments later, Jefferson shot Genao. Appellant and Jefferson then entered the car and left the scene.

When the detective asked about Genao's bag, appellant replied: "I wasn't paying attention to the bag." Pressed further, appellant stated: "I don't know where the bag went. . . . I have no idea what was in the bag." When asked if he had seen the bag, appellant could only confirm that the bag was a Louis Vuitton bag.

At the scene of the shooting, police recovered a knife on the ground. Genao also had a knife on his person when he arrived at the hospital.

B. Trial Proceedings

The State proceeded on two theories of first-degree murder, informing the jury that it could convict appellant as an accomplice to Jefferson's premeditated murder of Genao or as a felony murder if it determined that the killing had occurred during an armed robbery or robbery. Defense counsel argued that appellant intended only to purchase marijuana and that the physical evidence pointed to Jefferson as the sole actor in both the shooting and the theft of the bag.

Defense counsel requested the pattern jury instruction on afterthought robbery (Md. Crim. Pattern Jury Instruction 4:17.7.1). Defense counsel argued that appellant's repeated denials about the bag, combined with the discovery of the bag in Jefferson's bedroom, were circumstantial evidence that Jefferson shot Genao and then robbed him of the bag.

The prosecutor asserted that the instruction had not been generated by the evidence, arguing that "[t]here's nothing to suggest that the robbery, the force, and the taking of the property occurred after the killing." The trial court denied appellant's request to give the afterthought robbery instruction, ruling that there was insufficient record evidence to generate the instruction.

The jury convicted appellant on all counts.

STANDARD OF REVIEW

"[A] requested jury instruction is required when (1) it 'is a correct statement of the law;' (2) it 'is applicable under the facts of the case;' and (3) its contents were 'not fairly covered elsewhere in the jury instruction[s] actually given.'" *Jarvis v. State*, 487 Md. 548, 564 (2024) (quoting *Rainey v. State*, 480 Md. 230, 255 (2022)). "On appeal, we review the overall decision of the trial court for an abuse of discretion, but the second requirement (whether the instruction is applicable in that case) is akin to assessing the sufficiency of the evidence, which requires a *de novo* review." *Id*. When evaluating the sufficiency of the evidence to generate an instruction, "we review the evidence in the light most favorable to the accused." *Johnson v. State*, 266 Md. App. 518, 542 (2025).

DISCUSSION

The State concedes that the afterthought robbery instruction is a correct statement of the law. Thus, our review centers on whether there was sufficient evidence to generate the instruction and whether the instruction was fairly covered in other instructions given to the jury.

I. Felony Murder and the Afterthought Robbery Instruction

"The common law doctrine of felony murder arose in England in the late 16th and early 17th centuries and has been a part of Maryland common law since the State's founding." *Harris v. State*, 479 Md. 84, 102 (2022). Under the felony murder doctrine, "a person's conduct bringing about an unintended death in the commission or attempted commission of a felony [is] guilty of murder." *State v. Jones*, 451 Md. 680, 696 (2017). "A murder is a malicious killing; it is the mental state of malice that transforms a homicide into the crime of murder." *State v. Allen*, 387 Md. 389, 402 (2005). When one commits felony murder, "the malice involved in the underlying felony is permitted to stand in the place of the malice that would otherwise be required with respect to the killing." *Id.* "To obtain a conviction for felony-murder in Maryland, the State must prove the underlying felony and that the death occurred during the perpetration or in furtherance of the felony." *Jones*, 451 Md. at 696-97.

Felony murder "retains its common law definition, even though the General Assembly has divided murder into degrees of culpability for penalty purposes." *Yates v. State*, 429 Md. 112, 125-26 (2012). By statute, first-degree felony murder "is . . .

committed in the perpetration of or an attempt to perpetrate . . . [several enumerated felonies, including] robbery under § 3-402 or § 3-403 of this article[.]" Md. Code, CRIM. LAW § 2-201.

Felony murder requires "the intent to commit the underlying felony . . . *prior to or concurrent with* the performance of the act causing the death." *Allen*, 387 Md. at 402 (emphasis added). In *Allen*, the Court held that an afterthought felony cannot be a predicate felony for felony murder. *Id*. at 396. In so holding, the Court discussed the rationale for the felony murder doctrine: "to deter dangerous conduct by punishing as a first degree murder a homicide resulting from dangerous conduct in the perpetration of a felony, even if the defendant did not intend to kill." *Id*. at 398. If the accused lacked intent to commit the underlying felony at the time of the killing, the doctrine's deterrence purpose is not served. *Id*. at 400.

Surveying out-of-state authorities, the Court sided with the majority view,[4] which holds that the intent to commit the underlying felony must arise before or concurrently with the act causing the victim's death. *Id*. at 397-99, 402. Thus, "[a]n afterthought felony will not suffice as a predicate for felony-murder." *Id*. at 402.

The afterthought robbery pattern jury instruction reflects *Allen*'s holding. The relevant portion of the instruction is as follows:

[4] The minority view adopts a *res gestae* theory: "a killing may be a felony-murder where the intent to commit the underlying felony arises after the victim is dead, so long as there is a continuity of action to constitute one continuous transaction." *Allen*, 387 Md. at 399.

> When a person is charged with felony murder based on an alleged robbery, the sequence of events can be important.
>
> To convict the defendant of robbery, the State does not have to prove that the defendant decided to rob (name) before or at the same time as the commission of the act(s) that killed (name). For robbery, it is sufficient if the State proves that the act(s) of force and the robbery were parts of the same general event, even if the defendant made the decision to rob (name) as an afterthought, after the commission of the act(s) that caused the death of (name).
>
> The law as to felony murder is different. To find the defendant guilty of felony murder, the State must prove that the defendant had the intent to rob before or at the same time as the commission of the act(s) that killed (name). When the decision to rob the victim is an afterthought, made after the commission of the act(s) that caused the victim's death, a defendant may not be convicted of felony murder.

Md. Crim. Pattern Jury Instruction 4:17.7.1.

II. The Afterthought Robbery Instruction Was Applicable Under the Facts

To generate jury instructions, the threshold is fairly low. Indeed, the court must give a requested jury instruction if the requesting party has "produce[d] 'some evidence' sufficient to raise the jury issue." *Jarvis*, 487 Md. at 564 (quoting *Arthur v. State*, 420 Md. 512, 525 (2011)). This threshold "is satisfied by the existence of any evidence, from any source, and from either party, that, if believed, would supply a factual basis for the instruction." *Johnson*, 266 Md. App. at 541. *See also Hollins v. State*, 489 Md. 296, 311 (2024) (reaffirming that the word "some" retains its everyday meaning in this context and that the level of evidence produced need not even rise to a mere preponderance of the evidence to generate an instruction).

The evidence here clears this modest hurdle. During the prosecution's case-in-chief, the court admitted into evidence appellant's recorded statement to detectives. During that statement, appellant stated that he merely intended to buy marijuana from Genao. As to the Louis Vuitton bag, he repeatedly denied knowledge about the bag's taking, as he told the detectives he "wasn't paying attention to the bag[,]" didn't know "where the bag went[,]" and had "no idea what was in the bag." In addition, police recovered the bag in Jefferson's bedroom.

Significantly, the surveillance video's one-minute gap creates uncertainty about the sequence of events during the shooting. The video shows appellant and Jefferson outside the rear passenger seat where Genao sat, then resumes with Genao on the ground and already shot. Without footage of the shooting, a rational jury could infer that Jefferson shot Genao as appellant and Genao fought (while Genao was armed with at least one knife), and then Jefferson and/or appellant formed the intent to take the bag after the shooting. Indeed, the video appears to show appellant picking up an item *after* the shooting and placing it over his shoulder before he enters the car.

In summary, we are persuaded that there was "some evidence" from which the jury could conclude that appellant did not form an intent to rob until after the shooting. Appellant told detectives that the purpose of the encounter was to purchase marijuana and that he and Genao got into a physical fight when Genao stated he did not have any marijuana. In addition, appellant repeatedly denied knowledge about the bag. Moreover, the jury could infer from the video that appellant and/or Jefferson formed the intent to take

the bag after Genao was lying on the ground with a gunshot wound, ultimately resulting in the bag being recovered in Jefferson's bedroom. *Cf. State v. Martin*, 329 Md. 351, 363-65 (1993) (affirming that an imperfect self-defense instruction had not been generated when the defendant testified that his intoxication caused complete memory loss as to the encounter at issue and there was no other evidence of the defendant's state of mind during that encounter to infer that that the defendant acted in self-defense).

The State also contends appellant was already robbing Genao when Jefferson shot him, citing appellant's admission that he searched Genao for marijuana. This argument conflates two distinct acts. Appellant's search for marijuana that he had arranged to purchase, even if forceful, does not establish intent to steal Genao's bag. Critically, the indictment charged appellant with armed robbery and robbery of the bag, specifically. Appellant's evidence of afterthought relates to armed robbery and robbery of the bag, as charged in the indictment. That there may have been *sufficient evidence* to convict appellant of a robbery related to his search for marijuana does not alter our conclusion that appellant met the threshold of *some evidence* of an afterthought robbery as to the taking of the bag.[5]

[5] We note that the State attempts to uphold the felony murder conviction based on uncharged predicate offenses (armed robbery or robbery of personal property other than the bag), which would violate principles of due process. To be sure, the indictment charged appellant with *conspiracy* to commit armed robbery of Genao's personal property, more generally. However, conspiracy is a common law misdemeanor and cannot be a predicate offense for felony murder.

III. The Instruction Was Not Fairly Covered Elsewhere

The accomplice liability and felony murder instructions informed the jury that appellant could be convicted of murder only if Jefferson killed Genao "in furtherance of or during the escape from" or "during the commission of" the robbery or armed robbery. The State maintains that those instructions adequately addressed the temporal requirement for felony murder under *Allen*, and thus the omitted afterthought robbery instruction was fairly covered elsewhere in the instructions. We disagree.

A jury could reasonably understand the phrases — "in furtherance of or during the escape from" and "during the commission of" the robbery — to mean that the shooting was generally connected to the robbery, without understanding that the intent to rob must have been formed before or concurrent with the shooting.

Under the evidence presented at trial, the jury could have found that appellant and Genao got into a physical altercation when Genao failed to produce marijuana as planned. During the altercation, Jefferson shot Genao. Seeing Genao wounded, Jefferson (with appellant's assistance) or appellant of his own volition decided to take the bag. Under these circumstances, appellant would be guilty of armed robbery. But under *Allen*, this sequence would not support felony murder because the robbery intent formed after the shooting. Without the afterthought robbery instruction, the jury lacked guidance on this critical distinction and could have convicted appellant of felony murder based solely on his post-shooting participation in the robbery.

IV. The Error Was Not Harmless

The State argues any error was harmless because the jury's conspiracy conviction "necessarily determined" that appellant and Jefferson formed the agreement to rob Genao of the bag before the shooting. We disagree. "[U]nless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated." *Dorsey v. State*, 276 Md. 638, 659 (1976). The burden is on the State to show that the error was harmless beyond a reasonable doubt. *E.g.*, *Perez v. State*, 420 Md. 57, 66 (2011).

Conspiracy remains a common law crime and is described as follows:

> A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The essence of a criminal conspiracy is an unlawful agreement. The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design. In Maryland, the crime is complete when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown.

Mitchell v. State, 363 Md. 130, 145 (2001) (quoting *Townes v. State*, 314 Md. 71, 75 (1988).

Appellant stated in his police interview that he got into a fight with Genao when Genao said that he didn't have any marijuana. The video corroborates that some altercation took place between appellant and Genao in the back seat of the car. Although the third count of the indictment charged appellant specifically with robbery of the Louis Vuitton bag, the fourth count charged appellant with conspiracy to commit robbery of Genao's

"personal property." Thus, the jury could have found appellant guilty of conspiracy to rob Genao of marijuana or other "personal property" in his pockets or on his person without concluding that appellant conspired to rob Genao of the Louis Vuitton bag. Under this scenario, the conviction for conspiracy would be unrelated to the robbery of the bag and the afterthought robbery instruction would be an appropriate instruction. Accepting the State's harmless error analysis would require impermissible appellate speculation about the jury's verdict. In our view, the error was not harmless.

CONCLUSION

The trial court erred in declining to give the afterthought robbery instruction. At trial, there was "some evidence" that any intent to commit robbery of the Louis Vuitton bag formed after Jefferson shot Genao. Because we cannot determine that the jury would have convicted appellant of first-degree murder absent this error, we must vacate and remand for a new trial on the first-degree murder count.

As a result, we also vacate appellant's remaining sentences and remand to the circuit court for resentencing pursuant to *Twigg v. State*, 447 Md. 1 (2016). The purpose of the remand as to the remaining convictions is to provide the circuit court with "maximum flexibility" to "fashion a proper sentence," so long as it does not exceed the original aggregate sentence. *Id*. at 26-30 & n.14.

FIRST-DEGREE MURDER CONVICTION VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR A NEW TRIAL AS TO FIRST-DEGREE MURDER. REMAINING SENTENCES VACATED AND CASE

REMANDED FOR RESENTENCING ON ALL REMAINING CONVICTIONS. COSTS TO BE PAID BY MONTGOMERY COUNTY.