Circuit Court for Baltimore County
Case No. 03-K-18-000318

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 84

September Term, 2019

TIMOTHY ISIAIH MARSHALL

v.

STATE OF MARYLAND

Arthur,
Gould,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 22, 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.

Appellant Timothy Isiaih Marshall was convicted by a jury in the Circuit Court for Baltimore County of attempted first-degree murder, first-degree assault, use of a firearm in the commission of a crime of violence, wearing and carrying a handgun on a person, and transporting a handgun in a vehicle. Appellant presents the following questions for our review:

> "1. Was appellant's due process right to a fair and impartial court denied where the trial court interrupted the proceedings to accuse a chief witness of lying and to warn him that his plea deal would be revoked unless he testified to what the court thought was the truth, repeatedly made emotional exclamations, and as a result of which the witness changed his testimony?
>
> 2. Was the appellant's conviction against the weight and sufficiency of the evidence where the state's case relied on speculation and no reasonable inference could possibly be drawn that the appellant shot the victim?
>
> 3. Was the court's generic single-line jury instruction enough to cure the prejudice caused to appellant by testimony about a 'beef' between the appellant, appellant's sister, and the victim?
>
> 4. Was the court's charge that Jefferson was an accomplice not supported by the evidence and therefore improper?"

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Baltimore County for attempted first-degree murder, attempted second-degree murder, first-degree assault, use of a firearm in the commission of a crime of violence, conspiracy to commit first-degree assault, and

various handgun possession crimes. The jury convicted him of attempted first-degree murder, first-degree assault, use of a firearm in the commission of a crime of violence, wearing and carrying a handgun on a person, and transporting a handgun in a vehicle. The court sentenced him to a term of incarceration of life with all but twenty-five years suspended for attempted first-degree murder; five years for use of a firearm in the commission of a crime of violence, to be served consecutively and without parole; three years for transporting a handgun in a vehicle, to be conserved concurrently with the five years; and five years of supervision probation.[1]

Appellant lived at 836 Mildred Avenue, Dundalk, Maryland with two housemates—Javon Jefferson and Chris McElveen. Each person had his separate bedroom. Appellant and Mr. Jefferson bought together and shared a 1997 white Mitsubishi Galant, which, at the time of the shooting, was registered to Mr. Jefferson and had a new, "30-day" license plate.

In the evening on December 19, 2017, appellant and Mr. Jefferson left their home and drove to a local "6-Eleven" store. Mr. Jefferson stayed inside the vehicle, and appellant went inside. As appellant left the store, the victim, Tehran Lewis, and his friend entered. Appellant and Mr. Jefferson drove to appellant's mother's house to drop off presents and headed towards their home past the 6-Eleven. Mr. Lewis and his friend were walking back

[1] For sentencing purposes, the court merged the first-degree assault conviction into attempted first-degree murder and wearing and carrying a handgun on a person with transporting a handgun in a vehicle. The court awarded appellant with 442 days of credit for time served prior to sentencing.

to their home from the 6-Eleven when Mr. Lewis was shot five times. Mr. Lewis did not see who shot him. The owner of a restaurant nearby heard the shots and saw a white vehicle, "like the older Buicks," with a "newer tag" drive past, "speeding around pretty fast" as if "they were up to something."

Officer Andrew Minton responded to the scene of the shooting and went to the hospital with Mr. Lewis, who received treatments. At the hospital, Officer Minton recovered a projectile from a bullet on the floor next to Mr. Lewis's bed. At the scene of the shooting, another officer recovered cartridge or shell casings that had fallen out of Mr. Lewis's pants leg. The police also obtained video surveillance from the nearby restaurant, which showed a "white older model vehicle" pulling up to the 6-Eleven around the time of the shooting and the driver entering the 6-Eleven before Mr. Lewis. The license plate number from the vehicle in the video matched that of the vehicle registered to Mr. Jefferson.

The police searched the home shared by Mr. Jefferson, appellant, and Mr. McElveen and seized, in appellant's hamper, a jacket that matched the one worn by the person in the surveillance video. The police arrested appellant nine days after the shooting and found a handgun in his pocket. The State's ballistic expert testified at trial that the cartridge or shell casings that the police recovered from the scene of the shooting and the bullet projectile from Mr. Lewis's hospital bed had been fired by the gun seized from appellant when he was arrested.

The primary issue at trial was who shot Mr. Lewis. The State's theory of the case was that appellant tried to kill Mr. Lewis after learning about a conflict between Mr. Lewis and appellant's sister Ajanae Borden, who were in a relationship. In the State's view, after appellant crossed paths with Mr. Lewis near the 6-Eleven, he returned to the area after he visited his mother's house, laid in wait for Mr. Lewis, and shot him.

The State called fourteen witnesses at trial. Mr. Jefferson's testimony is the cornerstone of appellant's due process argument herein. The State had charged Mr. Jefferson as an accessory-after-the fact.[2] He had pled guilty to that charge, agreed to testify truthfully against appellant in return for a five-year sentence, all but eighteen months suspended, followed by three years supervised probation.

In brief summary, Mr. Jefferson testified that on the day of the shooting, he had been "doing drugs all day" and later went to the 6-Eleven with appellant in their shared vehicle. While he stayed in the vehicle, appellant went into the 6-Eleven. They then went to appellant's mother's house to drop off some presents, and Mr. Jefferson stayed inside the vehicle again. While appellant was outside, Mr. Jefferson heard a "banging" noise, which woke him up as he was falling asleep and scared him. Appellant returned to the vehicle, and they went home.

[2] "An accessory after the fact is one who, knowing that a felony has been committed, harbors and protects the felon or renders him any other assistance to elude punishment." *Watson v. State*, 208 Md. 210, 217–18 (1955), *abrogated on other grounds by State v. Jones*, 446 Md. 142 (2019). In Maryland, an accessory after the fact is not an accomplice. *Id.* at 220.

The State asked Mr. Jefferson about two telephone calls between appellant and unknown persons that he allegedly overheard: one before the shooting in which appellant allegedly learned about a conflict between his sister and Mr. Lewis and one after the shooting in which appellant allegedly confessed to shooting Mr. Lewis.

The exchange about the first phone call began as follows:

> "[THE STATE]: [W]ere you present when the Defendant received a phone call about his sister?
>
> MR. JEFFERSON: Yeah.
>
> [THE STATE]: Okay. And what was the nature of that phone call?
>
> [DEFENSE COUNSEL]: Objection.
>
> [THE STATE]: Your Honor, can we approach?"

At the bench, the court and counsel conversed as follows:

> "THE COURT: What's the issue?
>
> [THE STATE]: It's affect on (inaudible). It's not for the truth of the matter asserted, it's for the (inaudible). The Defendant received a phone call regarding his sister being beaten up by [Mr. Lewis]. [Mr. Jefferson] was present.
>
> THE COURT: Okay. Well, but he wasn't present—he didn't—oh, I guess this deal's not going to be on the table—
>
> [THE STATE]: Unh-huh.
>
> THE COURT: —very much longer for this gentleman.
>
> [THE STATE]: No.
>
> THE COURT: Good heavens. I mean, you're having a good time, but—

[DEFENSE COUNSEL]: Wonderful.

[THE STATE]: So it's not for the truth—

THE COURT: No, no, no, but I—

[DEFENSE COUNSEL]: I think it's—

***

THE COURT: . . . [I]s the phone . . . on speaker?

[THE STATE]: (Inaudible).

THE COURT: —I don't understand how this works. . . . if I'm talking on the phone with . . . somebody, I can't hear what that person's saying.

[THE STATE]: He hears the phone call . . . where [Mr. Lewis] has beaten up the Defendant's sister.

THE COURT: But how do you hear that?

[THE STATE]: We can inquire.

THE COURT: Well, you can inquire and then you can come back. . . .

[DEFENSE COUNSEL]: . . . *Your Honor, I just think it's hearsay. Whatever comes after this, I think it's . . . definitely hearsay.*

***

[I]t's sort of cat-out-of-the-bag type of thing. I mean, I know you have to make your ruling . . . and you have to hear more, except what happens is they heard it. And then I'm—

THE COURT: But I don't know what the it—

[DEFENSE COUNSEL]: —sort of stuck.

> THE COURT: —is yet because Mr. Jefferson does not appear to be constrained by the truth in any way, shape or form.
>
> [DEFENSE COUNSEL]: Can . . . we—
>
> THE COURT: We can all hear him fine when he wants us to, and then he falls into some muttering mess when he doesn't really want us to hear him. . . ."

After interruptions from Mr. Lewis talking over the court, the bench conference concluded as follows:

> "THE COURT: Well, let us go back, let me see where we're going. If we have to come up here again . . . it's very hard to follow is the best I can tell you.
>
> [DEFENSE COUNSEL]: I know. Well, I'm just going to object when [the State] asks the question—
>
> THE COURT: Okay. And I'll be . . . ready for it."

The court warned the courtroom about cell phones going off, and the State resumed its direct examination of Mr. Jefferson as follows:

> [THE STATE]: The question was were you present when the Defendant received a phone call about his sister?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Unless it's on speaker or unless [the Defendant] said something, . . . the question as asked I sustain.
>
> [THE STATE]: Okay. Did there come a time that you became aware of an issue with [Mr. Lewis] and the Defendant's sister?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled. You can answer that one.

***

[THE STATE]: Did there come a time that you became aware of an issue with [Mr. Lewis], the victim, and the Defendant's sister, Ajanae?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

***

MR. JEFFERSON: I don't know the exact date or nothing, but I heard they was beefing. Like they had a—

[DEFENSE COUNSEL]: Objection.

THE COURT: Yeah. You—you—

MR. JEFFERSON: —they had a major problem—

THE COURT: —no, please—

[DEFENSE COUNSEL]: Objection. Move to strike.

THE COURT: Yeah, at this point I grant that request.

[THE STATE]: So on what day did you become aware of that in relation to the shooting?

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MR. JEFFERSON: I don't know. It was before anything happened. Like they had relationship problems. Like it wasn't—like he . . . had put his hands on her. They (inaudible) like—

[DEFENSE COUNSEL]: Objection. Move to strike.

THE COURT: You know, I'm going to give you guys [the jury] a break."

After excusing the jury, the court inquired as to Mr. Jefferson's plea agreement and the requirement contained therein for him to testify truthfully and completely:

> "THE COURT: Before you tear that plea agreement up into teeny, tiny pieces, may I see it? Was there something in there about testifying truthfully?
>
> [THE STATE]: Yes, Your Honor.
>
> THE COURT: . . . The Defendant shall cooperate fully with the State by providing complete and truthful information. The Defendant shall not withhold information which is relevant. The Defendant shall testify truthfully at the trial of any and all co-defendants, including Timothy Marshall.
>
> And if he had chosen to testify truthfully and cooperated and done what he said he would do, you were going to—wow, he was going to enter a plea of guilty to Count 10, accessory after the fact, and you were going to recommend five years suspend all but 18 months.
>
> [THE STATE]: That's correct, Judge.
>
> THE COURT: Wow. All right."

The court continued, addressing appellant directly as follows:

> "THE COURT: What's your issue, sir? What is it—
>
> MR. JEFFERSON: Nothing. I just—
>
> THE COURT: —that you need?
>
> MR. JEFFERSON: —Well—
>
> THE COURT: Do you need water?
>
> MR. JEFFERSON: No. I want to speak to her [his counsel] alone on my time.

[DEFENSE COUNSEL]: Your Honor, I—I would object to that. I—

THE COURT: Well, of course you would. I got that. Yeah.

MR. JEFFERSON: Right.

THE COURT: I mean—

MR. JEFFERSON: I don't care.

THE COURT: —hello. Look—

MR. JEFFERSON: I'm—I'm looking.

THE COURT: Yeah. In my view, you're not doing what you promised to do.

MR. JEFFERSON: But I am though.

THE COURT: No, I don't think so. Not one little bit. And I suspect if we took a poll of the group, everyone would agree with me.

So, I'm going to take a quick break. You're going to stay where you are. You're not going to talk to anybody, and then we're going to come back. And that will give you time. Perhaps you'd like to see your plea agreement again. Perhaps you'd like to look at that and see what you committed to do.

Because if you don't testify truthfully, then that deal is off the table, right?

[THE STATE]: Yes.

THE COURT: That's how I read it. Is that how you read it, [Mr. Jefferson's counsel]? Yeah. If your—if your client does not testify truthfully, there isn't an agreement, is there?

Did I misread it? . . . [H]ave you not seen it? Did you sign it?

[MR. JEFFERSON'S COUNSEL]: I signed it, yes.

THE COURT: Doesn't it say testify truthfully?

[MR. JEFFERSON'S COUNSEL]: The agreement says that.

THE COURT: Okay."

The court brought back the jury, and the State began its inquiry into the second alleged phone call as follows:

> [THE STATE]: I want to switch gears with you. On December the 19th, 2017, did you shoot T.J. Lewis?
>
> MR. JEFFERSON: No.
>
> [THE STATE]: Did you have any reason to shoot him?
>
> MR. JEFFERSON: No.
>
> [THE STATE]: Did there come a time when you heard who did shoot Mr. Lewis?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Sustained.
>
> [THE STATE]: Did you hear the Defendant say that he shot T.J. Lewis?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> MR. JEFFERSON: Not in those exact words, no.
>
> [THE STATE]: Okay. What words did you hear the Defendant say?
>
> MR. JEFFERSON: I did that.
>
> [THE STATE]: And what was the context of the conversation?

> MR. JEFFERSON: . . . he was talking on the phone with his brother for real. He was telling him about what happened. And he . . . was like, Oh, yeah, I did that. . . . [I]t's like you . . . on the phone and you hype . . . you get a hype. . . . [Y]ou move with your hands, you talking to hands and things like that. . . . [H]e told his little brother he did that.
>
> [THE STATE]: And how do you hear that conversation?
>
> MR. JEFFERSON: Through the wall.
>
> [THE STATE]: Where at?
>
> MR. JEFFERSON: In the house."

Defense counsel did not object after the exchange.

Subsequently, as a part of jury instructions, the court instructed the jury as to stricken evidence as follows: "If after an answer was given I ordered that the answer be stricken, you must disregard both the question and the answer." Defense counsel did not object in any way. At defense counsel's request, the court instructed the jury that Mr. Jefferson was an accomplice, stating as follows:

> "You have heard testimony from Jovan Jefferson who was an accomplice. An accomplice is one who knowingly and voluntarily cooperated with, aided, advised or encouraged another person in the commission of a crime."

Following the jury instructions, defense counsel stated that he had no objections.

During the State's closing argument, the State referred to a "domestic situation" between Mr. Lewis and appellant's sister as appellant's motive for the shooting. Defense counsel did not object.

The jury returned guilty verdicts, and the court imposed sentence as noted. This timely appeal followed.

II.

Before this Court, appellant presents four arguments: (1) that appellant was deprived of his due process right to a fair trial; (2) that the evidence was insufficient to support the judgments of convictions; (3) that the jury instruction was insufficient to cure the court's error in admitting the evidence about "a beef" between the victim and appellant's sister; and (4) that the jury instruction telling the jury that Mr. Jefferson was an accomplice was an abuse of discretion because it was not supported by the evidence.

Appellant argues that the trial judge deprived him of due process and a fair trial when it interrupted the proceedings to accuse Mr. Jefferson, a "chief witness" of the State, of lying and to warn him that his plea deal would be revoked unless he testified to what the court thought was the truth. Appellant maintains that the judge's conduct in interrupting direct examination, her review of Mr. Jefferson's plea agreement with him, her accusations of his lying, her urging him to testify differently, and her warning that he must tell the truth coerced Mr. Jefferson to change his testimony, thereby depriving appellant of due process.

Appellant's second argument is that the evidence was insufficient to support his conviction for attempted murder and related charges because the State relied upon "a series of disjointed events requiring indiscriminate speculation and leaps in logic to connect [appellant] to the shooting." In his view, the jury engaged in "wholesale guessing," and

"no reasonable inference that [he] shot the victim could possibly be drawn from the evidence presented at trial."

As to Mr. Jefferson's testimony about "a beef" between appellant's sister and Mr. Lewis, appellant maintains, first, that it was inadmissible, highly prejudicial evidence because it supplied a motive for appellant to kill Mr. Lewis in the State's otherwise weak case with "no evidence that [appellant] had a gun, shot a gun, or met or argued with the victim." Appellant also points out that the court did not rule on one of the defense objections before or after taking a recess and that the State referred improperly to the "domestic situation" in her closing argument. He argues that the court's one-line instruction to the jury to disregard any stricken evidence was not enough to cure all the errors.

Finally, as to the accomplice jury instruction, appellant argues that first, whether Mr. Jefferson was an accomplice was not supported by evidence. In appellant's view, Mr. Jefferson's plea to accessory after the fact was not evidence that he was an accomplice. Second, whether Mr. Jefferson was an accomplice was an issue for the jury to decide, not the court.

The State argues, as a threshold matter on appellant's first, third and fourth issues—*i.e.*, appellant's due process claim, the trial court's treatment of the "beef" testimony, and his accomplice jury instruction claim—that the issues are not preserved for appellate review.

As to appellant's due process claim, the State argues that it is not preserved because he never objected at any time to the court's allegedly improper conduct, and before us, he does not ask this Court to engage in plain error review. We should not exercise our discretion to consider the issues as plain error, the State continues, because first, appellant does not ask us to consider the issue as plain error, and second, any error is not "extraordinary" and not cognizable as plain error.

As to the court's treatment of the "beef" testimony, if the issue is preserved, the State maintains that the evidence was admissible, that the court ruled properly on the objections, and that any objection to the reference to this testimony in the State's closing argument is not preserved because there was no objection below.

The State argues that the evidence was sufficient to support the judgments of convictions and that appellant misconstrues the law as to sufficiency of the evidence. The State points out that the appellate court does not retry the case, that circumstantial evidence may constitute sufficient evidence, and that the question before the Court is not "whether the evidence should have or probably would have persuaded the majority of fact finders but only whether it possibly *could* have persuaded *any* rational fact finder" (emphasis added). The State maintains that the evidence presented could have persuaded a rational fact-finder.

Finally, regarding the jury instructions, the State maintains that appellant's claim is not preserved because defense counsel never objected to any of the instructions. The State points out that in fact, defense counsel specifically requested the accomplice testimony

instruction, which advised the jury to consider an accomplice's testimony with care and caution.[3]

III.

Appellant's claim that he was deprived of a fair trial because of the trial judge's conduct is not preserved for our review. He never objected to the court's questions, comments, or procedures. Difficult as this may be for counsel, our jurisprudence requires that counsel bring to the court's attention the disfavored conduct. Maryland Rule 8-131 states that an appellate court will ordinarily not consider any point or question unless it plainly appears from the record to have been raised in or decided by the trial court. "In the context of a trial court's interrogation of a witness, trial counsel must, at the very least, object to the court's question or comment in order to preserve appellate review of the interrogation." *Smith v. State,* 182 Md. App. 444, 478 (2008). *See also* Hon. Joseph F. Murphy, Jr., *Maryland Evidence Handbook* § 201(A) at 51–52 (3rd ed. 1999) (stating "[w]hen the judge's question will prejudice your client, you must object to preserve error"). In *Diggs v. State*, 409 Md. 260, 294 (2009), the Court of Appeals noted that the failure to object will be overlooked on appeal only when the trial judge exhibits "repeated and

[3] We will not consider the State's argument that appellant was not in a position to attack Mr. Jefferson's role as an accomplice because Mr. Jefferson entered a guilty plea and hence "where witness's participation is conceded, a decision about whether a particular witness is an accomplice is for the trial court." It is clear in Maryland that an accessory after the fact is not an accomplice to a principal in the first degree. *See Gardner v. State*, 6 Md. App. 483, 495 (1969).

egregious behavior of partiality, reflective of bias."

Appellant does not ask this court to notice the due process issue as plain error. Plain error requires the appellant to establish that the trial court committed an error that appellant did not affirmatively waive; that the legal error is clear or obvious; and that the error is material, *i.e.*, that it affected the outcome of the proceedings. *Robison v. State*, 209 Md. App. 174, 203 (2012). Further, the court's discretion in considering the issue should be exercised only if the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Kelly v. State*, 195 Md. App. 403, 432 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 129 (2009)). While we do not condone the trial judge's conduct directed toward Mr. Jefferson, we hold that the issue is not preserved for our review and that it was not clearly erroneous nor material to warrant plain error review.

In *Archer v. State*, 383 Md. 329 (2003), the Court of Appeals considered the extent to which a trial judge may go to persuade or compel a reluctant witness to testify and its impact on the defendant's right to due process of law. Although "a trial court's warning to a reluctant witness concerning contempt sanctions or the penalties of perjury is not, *per se*, a due process violation," the court held that in that particular case, "the trial judge's admonition to the witness was not given *in a judicious manner* and was otherwise excessive," constituting plain error. *Id.* at 335–36; *cf. id.* at 358 ("[A] trial judge may, if the necessity exists because of some statement or action of the witness, excuse the jurors and, *in a judicious manner*, caution the witness to testify truthfully, pointing out to him generally the consequences of perjury[.]" (citing *State v. Locklear*, 306 S.E.2d 774, 778

(N.C. 1983))).

Specifically, the trial judge in *Archer* did the following with respect to the reluctant witness, who had made a plea agreement to testify against his two co-defendants in a murder case: (1) calling, in open court and on the record, another judge and asking him to try and convict the witness for contempt of court and give him the "longest possible sentence the law allows" and (2) advising the witness to testify favorably to defense, irrespective of the witness's obligation to testify truthfully.[4] *Id.* at 336. As a result, the witness's testimony changed; when he retook the stand, he testified inconsistently with the testimony he had given earlier at the trial of his other co-defendant. *Id.* at 343. The Court of Appeals held that "the trial judge's admonition and conduct was so excessive that it likely caused [the witness] to alter testimony in violation of [the defendant's] right to due process." *Id.* at 355.

In the case at bar, although the trial judge did not threaten the witness with perjury,

[4] The trial judge stated as follows:

> "Let me advise him of one last thing that saves him and you all this trouble. You've read Chief Judge Murphy's pocket part on *Nance-Hardy* and the turn-coat witness. Basically, if he testifies favorably to the defendant, there is nothing anybody can do to punish him for that and the State will can cross-examine him about anything he might have said unfavorably in the past. *So, if instead of refusing to testify, he gets on the stand and tries to help the defendant, the defendant benefits and the State benefits. So, he may want to do that rather than run the risk of getting a life sentence from Judge Themelis*."

Id. at 341–42 (emphasis added).

she did in a sense threaten him with the loss or abrogation of his very favorable plea agreement. The judge did essentially tell the witness that she did not believe he was telling the truth —"Yeah. In my view, you're not doing what you promised to do. . . . No, I don't think so. Not one little bit. And I suspect if we took a poll of the group, everyone would agree with me." Even the State concedes, in its brief, that the judge may have exhibited "mild judicial intemperance." Brief of Appellee at 22.

We do not condone the trial judge's demeanor or response to the difficult witness. As with threats of perjury, a judge should not threaten a witness with the withdrawal or abrogation of a plea agreement. Nonetheless, we do not find reversible error here. First, as the State argues, the issue is not preserved. Counsel must bring his objection to the court's attention so that the court may change behavior or correct an error. This never happened here. Second, it is not plain error. The court's remarks to the witness were outside the presence of the jury, and hence, the jury's verdict and assessment of the witness's credibility were unaffected by the court's admonition to the witness. The court's comments to the witness were not pervasive or repeated. And finally, there is no evidence in this record that the witness *changed* his testimony in any way. The witness added details, *albeit* important ones, but did not alter or change his testimony. The trial court's conduct was not so excessive as to violate appellant's due process right.

IV.

When we review the sufficiency of the evidence, we ask "whether, after reviewing

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." *Ross v. State*, 232 Md. App. 72, 81 (2017). We view all rational inferences that arise from the evidence in the light most favorable to the State. *Smith v. State*, 232 Md. App. 583, 594 (2017). In this regard, we give "due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Potts v. State*, 231 Md. App. 398, 415 (2016).

When appellant raises a sufficiency challenge, our concern is not whether the "verdict is in accord with what appears to us to be the weight of the evidence." *State v. Albrecht*, 336 Md. 475, 478 (1994). Rather, our concern is only with whether the verdict was supported with sufficient evidence—*i.e.*, 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." *Bible v. State*, 411 Md. 138, 156 (2009). The jury, as the fact-finder, may choose amongst possible inferences to be drawn from a factual situation, and we give deference to any rational inference, regardless of whether we would have chosen it. *Id.*

Appellant explicitly challenges the sufficiency of his attempted first-degree murder conviction only, considering his other convictions to follow from it. The elements of attempted first-degree murder are the intent to commit first-degree murder—*i.e.*, willfulness, deliberation, and premeditation—and some overt act towards the crime's commission. *State v. Holmes*, 310 Md. 260, 271–72 (1987); *see* Md. Code, Criminal Law,

§ 2-201(a).

We hold that the evidence was sufficient for a fact-finder to find beyond a reasonable doubt that appellant committed attempted first-degree murder. The fact-finder is not required to treat circumstantial evidence and direct evidence differently; circumstantial evidence is entitled to the same weight as direct evidence. *Handy v. State*, 175 Md. App. 538, 562 (2007).

As to whether appellant committed some overt act towards the crime's commission, *i.e.*, shot at the victim, the jury was entitled to consider the following circumstantial evidence: (1) that when appellant was arrested nine days after the shooting, he possessed a handgun that a ballistic expert testified matched the casings the police recovered at the shooting scene and from the hospital; (2) that the police recovered a jacket from appellant's hamper that matched the one worn by the driver of the white vehicle shown in the surveillance video; (3) that the license tag on the vehicle observed near the 6-Eleven at the time of the shooting matched Mr. Jefferson's vehicle, which appellant also drove; (4) that Mr. Jefferson placed appellant at the location of the shooting and heard a "banging" noise while appellant was out of the vehicle; and (5) that Mr. Jefferson testified that he overheard appellant state during a phone conversation, "I did it."

As to whether appellant's attempt to kill was a "deliberate, premediated, and willful" act, the jury considered evidence such as (1) Mr. Jefferson's testimony that appellant's sister and the victim were having problems in their relationship, which provided a motive for appellant to harm the victim, and (2) that appellant returned to 6-Eleven to

shoot at the victim after seeing him there shortly before.

Taking all the evidence presented linking appellant to the crime scene and establishing motive and opportunity, a fact-finder could have found beyond a reasonable doubt that appellant shot at the victim with willfulness, deliberation, and premeditation. *See Martin v. State*, 218 Md. App. 1, 36–37 (2014) (holding that the evidence was sufficient for attempted first-degree murder conviction, pointing to circumstantial evidence that established motive and opportunity and linked the defendant to the crime scene). The evidence was sufficient to support appellant's attempted first-degree murder conviction and, hence, his related convictions.

V.

Defense counsel objected several times during Mr. Jefferson's testimony about an alleged conflict between appellant's sister and Mr. Lewis. First, defense counsel objected when the State asked Mr. Jefferson whether he was present when appellant received a phone call about his sister. The court sustained the objection but did not strike the testimony. Second, as Mr. Jefferson testified that he "heard they was [sic] beefing" and that "they had a major problem," defense counsel objected repeatedly and moved to strike. The court granted that request. Third, as Mr. Jefferson continued his testimony and repeated that it was "[l]ike they had relationship problems. Like it wasn't—like he . . . had put his hands on her," defense counsel again objected and moved to strike. This time, the court recessed without ruling on the motion.

Regarding the first instance, defense counsel did not move to strike the testimony. Regarding the third instance, he never brought to the court's attention any failure to rule on his objection. *See White v. State*, 23 Md. App. 151, 156 (1974) (holding that a party cannot complain about the court's failure to rule on a pending motion unless it has brought it to the court's attention). While the court should ordinarily rule on objections in a timely manner, the judge had a lot going on, including cell phones going off repeatedly in the courtroom and Mr. Jefferson's evasiveness and interruptions. If appellant was dissatisfied with the court's actions and manner of addressing the issue, it was incumbent upon counsel to make that known to the court.

As to the State's closing argument referencing the "domestic situation," defense counsel did not object and the issue is not preserved for our review. The same holds true for any argument about the jury instructions. The court gave the standard instruction that the jury should not consider evidence that has been stricken by the court. Counsel's failure to object or to bring to the court's attention any claimed inadequacy of the instructions waives the issue.

VI.

We turn to appellant's accomplice jury instruction. We hold that issue is not preserved for our review. Appellant asked specifically for this instruction, and following the jury instructions, he indicated to the court that he had no exceptions. He cannot complain here that the jury was improperly charged as to Mr. Jefferson's status as an

accomplice when he requested the specific instruction and made no objection following the instructions. *See State v. Rich*, 415 Md. 567, 581 (2010); Rule 4-325(e).

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.