

Circuit Court for Prince George's County
Case No. CT200230A

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 145

September Term, 2022

TERRENCE MCNATT

v.

STATE OF MARYLAND

Friedman,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: March 22, 2023

* 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.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Terrence McNatt, appellant, was convicted following a jury trial in the Circuit Court for Prince George’s County of second-degree murder, home invasion, attempted home invasion, and conspiracy to commit home invasion. The jury acquitted Mr. McNatt of first-degree murder, the use of a firearm in a crime of violence, and conspiracy to commit first-degree premeditated murder.

QUESTIONS PRESENTED

Mr. McNatt presents two questions for our review, which we rephrased and recast as follows:¹

1. Was the evidence legally sufficient to convict Mr. McNatt of second-degree murder, home invasion, attempted home invasion, and conspiracy to commit home invasion?
2. Was the jury’s verdict legally inconsistent?

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

¹ Mr. McNatt phrased the questions presented as follows:

1. Where Appellant was merely present at the scene, was there sufficient evidence to convince a rational trier of fact that Appellant was guilty beyond a reasonable doubt of any crime where Appellant was merely present at the scene?
2. Where there was not proof beyond a reasonable doubt that Appellant committed a predicate crime of violence, was there sufficient evidence to convince a rational trier of fact that Appellant was guilty of home invasion?
3. Whether the verdict reached by the jury as legally inconsistent?

BACKGROUND

On January 6, 2020, members of the Prince George’s County Police Department and Fire Department responded to an apartment located in Temple Hills, Maryland. There, Brian Gibbs was discovered suffering from gunshot wounds to the head and leg. Mr. Gibbs was later pronounced dead at Prince George’s County Hospital. At the scene, Officer Demetryus Ellis pursued a vehicle matching the description of a vehicle believed to be involved in the shooting. After that vehicle crashed, two of the occupants fled on foot and were later apprehended. Mr. McNatt remained in the vehicle suffering from injuries from a gunshot wound. A handgun was located on the floor of the vehicle.

On February 20, 2020, Mr. McNatt was indicted for murder, use of a firearm in a crime of violence, armed robbery, home invasion, conspiracy to commit murder, conspiracy to commit armed robbery, attempted home invasion, and conspiracy to commit home invasion.

A jury trial was conducted from November 29, 2021 to December 3, 2021. A witness who lived in the apartment building where the shooting took place, testified that she saw a minivan, that she had never seen before, arrive and back into a parking spot. According to the witness, one of the people in the minivan jumped out and approached Mr. Gibbs as Mr. Gibbs exited his apartment to walk his dog. The witness testified that she then saw Mr. Gibbs kneeling down as another man put a gun into the back of his neck. After retreating back into her apartment, the witness heard gunshots, people “running down the steps out the front door,” a van start up, and another person run down the stairs a couple of minutes later. When she looked out of her window, she saw the van

had started to drive off, but it waited for another man who was running towards the van, missing a shoe.

The same witness also testified that she knew Mr. Gibbs' apartment to have a lot of foot traffic and she suspected the apartment was being used to sell "weed." Lowuan Woods, a crime scene investigator with the Prince George's County Police Department, corroborated this assertion when he testified that controlled dangerous substances were found in Mr. Gibbs' apartment after the incident.

Joseph Rose, a forensic chemist with the Prince George's County Police Department's Forensic Science Division's DNA Laboratory, testified that Mr. McNatt was the main contributor of DNA on a weapon and cartridges found in the van, and on a shoe found in Mr. Gibbs' residence.

After the State presented its evidence, Mr. McNatt moved for judgment of acquittal arguing that the evidence showed "mere presence." The trial court granted the motion as to the armed robbery counts but denied it as to the murder and home invasion counts.

The jury then convicted Mr. McNatt of second-degree murder, home invasion, attempted home invasion, and conspiracy to commit home invasion. The jury acquitted Mr. McNatt of first-degree murder, the use of a firearm in a crime of violence, and conspiracy to commit first-degree premeditated murder. The circuit court imposed the following sentences: for second degree murder, 40 years, suspend all but 30; for home invasion, 25 years, suspend all but 5, consecutive to the second-degree murder sentence;

and for conspiracy to commit home invasion, 25 years, concurrent to the second-degree murder sentence.

DISCUSSION

I. THE EVIDENCE WAS LEGALLY SUFFICIENT TO CONVICT MR. McNATT.

Mr. McNatt argues that there was insufficient evidence to support the jury’s conviction because the evidence only indicated Mr. McNatt was merely present at the scene. Further, Mr. McNatt argues that because Mr. McNatt was merely present, a rational trier of fact could not have concluded that Mr. McNatt committed a crime of violence. Thus, according to Mr. McNatt, he could not be convicted of home invasion because home invasion requires a predicate crime of violence.

The State argues that the jury was well aware of the mere presence rule and there was strong circumstantial evidence that Mr. McNatt was not merely present at the scene of the crime. Further, the State argues that the evidence allowed the jury to make reasonable inferences that could reasonably lead to the conclusion that Mr. McNatt was acting in concert rather than merely being present.

“It is the responsibility of the appellate court, in assessing the sufficiency of the evidence to sustain a criminal conviction, to determine ‘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.’” *State v. Manion*, 442 Md. 419, 430 (2015) (quoting *Taylor v. State*, 346 Md. 452, 457 (1997)).

“[O]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant’s guilt of the

offenses charged beyond a reasonable doubt.” *Taylor*, 346 Md. at 457. “[I]t is neither our duty nor our role to assess the credibility of the witnesses who testified nor to weigh the evidence presented. Rather, we shall only review that evidence which supported the State’s case in order to determine whether any rational trier of fact could have convicted the defendant of the crimes charged.” *Howling v. State*, 478 Md. 472, 507 (2022) (quoting *State v. Albrecht*, 336 Md. 475, 487 (1994)).

Mr. McNatt was convicted of second-degree murder, home invasion, conspiracy to commit home invasion, and attempt to commit home invasion. “Second degree murder is the killing of another person without legal justification, excuse, or mitigation, and with either the intent to kill or the intent to inflict grievous bodily harm.” *Banks v. State*, 92 Md. App. 422, 439 (1992) (citing *Tate v. State*, 236 Md. 312, 317 (1992)). Home invasion is the “break[ing] and enter[ing] the dwelling of another with the intent to commit a crime of violence.” Md. Code Ann., Crim. Law § 6-202(b). The question of Mr. McNatt’s intent to murder before entering the residence was a jury question and the jury could draw inference from the facts and circumstances. *See Allen v. State*, 387 Md. 389, 405 (2002) (“The question of whether the defendant had the intent to kill at the time of the taking is usually a jury question and the jury may infer from the facts and circumstances”); *Ashton v. State*, 185 Md. App. 607, 615 (2009) (“Despite the lack of direct evidence, a jury could still conclude that [the defendant] had the requisite intent based on the circumstantial evidence presented.”).

“[I]t is elementary that the mere presence of a person at the scene of the crime is not, of itself, sufficient to establish that that person was either a principal or an accessory

to the crime.” *Tasco v. State*, 223 Md. 503, 509 (1960) (citations omitted). The jury was well-aware of this rule as it was given the following instruction:

A person’s presence at the time and place of a crime without more is not enough to prove that the person committed the crime. The fact that a person witnessed the crime, made no objection or did not notify the police does not make that person guilty of a crime. However, a person’s presence at the time and place of a crime is a fact in determining whether the defendant is guilty or not guilty.

The jury heard many facts that could lead to reasonable inferences that Mr. McNatt was more than merely present at the scene and that, instead, Mr. McNatt was a participant and guilty of the crimes of which he was convicted. For instance, Mr. McNatt and two other people arrived together at the scene in a minivan and parked by backing into a parking spot, the same people were in the apartment building at the time of the shooting, and the trio exited the building and drove off together after waiting for Mr. McNatt to catch up because he was “missing a shoe” and “struggling to get into the van.” Additionally, Mr. McNatt was a “major contributor” to the DNA profile on a shoe found in the victim’s residence.

The jury also heard evidence that a police officer observed a handgun on the floor of the van when Mr. McNatt was apprehended. Mr. McNatt was a “major contributor” to the DNA profile on that weapon and on the cartridges associated with it. Further, drugs were found in Mr. Gibbs apartment and the apartment was known to be “selling weed.”

The evidence against Mr. McNatt on which his convictions were based, viewed in a light most favorable to the State, supports a rational inference that Mr. McNatt was

more than merely present and had the requisite intent for home invasion and second-degree murder. Therefore, the evidence supports his convictions.

II. MR. MCNATT’S ARGUMENT OF A LEGALLY INCONSISTENT VERDICT WAS NOT PRESERVED.

Mr. McNatt argues that the jury rendered a legally inconsistent verdict. According to Mr. McNatt, the verdicts are inconsistent because home invasion requires premeditation and Mr. McNatt was acquitted of first-degree premeditated murder. In his reply brief, Mr. McNatt extends this argument and contends that the jury’s guilty verdict for second-degree murder is legally inconsistent with the jury’s not guilty verdict for use of a handgun in a crime of violence.

The State argues that Mr. McNatt “failed to preserve an inconsistent-verdict claim because he did not raise it before the jury was discharged.” The State further argues that even if the argument is addressed, the verdicts were not legally inconsistent and were, at most, a logical or factual inconsistency.

“[T]o preserve for review any issue as to allegedly inconsistent verdicts, a defendant in a criminal trial by jury must object to the allegedly inconsistent verdicts or otherwise make known his or her position before the verdicts become final and the trial court discharges the jury.” *Givens v. State*, 449 Md. 443, 472-73 (2016). A “jury may render [] legally inconsistent verdict[s] to show lenity to [a] defendant.” *Givens*, 449 Md. at 476 (quoting *Price v. State*, 405 Md. 10, 40 (2008) (Harrell, J., concurring)).

“[W]e should not permit the defendant to accept the jury’s lenity in the trial court, only to seek a windfall reversal on appeal by arguing that the [] verdicts are inconsistent.” *Id.*

In rare circumstances, an appellate court can exercise its discretion to review unpreserved issues under plain error review. *Wright v. State*, 247 Md. App. 216, 228 (2020) (citing *Morris v. State*, 153 Md. App. 480, 507 (2003)). However, such review is “reserved for those errors that are ‘compelling, extraordinary, exceptional, or fundamental to assure the defendant fair trial.’” *Wright*, 247 Md. App. at 228 (quoting *State v. Hutchinson*, 287 Md. 198, 203 (1980)). Before an appellate court can review for plain error, four prongs must be satisfied. *Givens*, 449 Md. at 480. The four prongs are as follows: (1) “there must be an error or defect that the defendant has not intentionally relinquished or abandoned, i.e., affirmatively waived,” (2) “the legal error must be clear or obvious, rather than subject to reasonable dispute,” (3) “the error must have affected the defendant’s substantial rights,” and (4) “the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.*

In *Givens*, the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)² declined to exercise plain error review when the defendant “did not object to the allegedly inconsistent verdicts while the jury was still present, and filed a motion to strike the convictions a little over an hour after the circuit court discharged the jury.” 449 Md. at 481. In that case, the defendant was convicted of felony murder

² At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . .”).

but was not convicted of the predicate felony. *Id.* at 442. According to the Court, the error was not clear or obvious because, if given the opportunity, the jury may have convicted the defendant of a requisite predicate felony, in addition to felony murder. *Id.* at 481-82. Therefore, it may have been a strategic choice to not give the jury an opportunity to change its decision from acquittal to conviction on the predicate felony. *Id.*

Here, Mr. McNatt did not preserve his argument that the verdicts were legally inconsistent because Mr. McNatt did not object to the verdicts before the verdicts became final. Instead, the following interaction ensued after the jury returned its verdict:

THE COURT: Can the jury be discharged? You both have seen the verdict sheet, correct?

[PROSECUTOR]: Yes, Your Honor.

[DEFENSE COUNSEL]: Thank you, Your Honor.

THE COURT: Okay. Thank you.

The circuit court then thanked the jury for its service and dismissed the jury. Then, the circuit court asked, “Is there anything that anyone wants to put on the record?” Defense counsel responded, “No.” Because Mr. McNatt did not object to the jury’s verdict before the verdict became final and the jury was dismissed, Mr. McNatt’s claim of legal inconsistency is not preserved.

Further, we decline to address the issue under plain error review. Similar to the *Givens* case discussed above, the error is not clear or obvious because if the circuit court had given the jury an opportunity to change its verdict based on the argued inconsistency,

the jury may have found Mr. McNatt guilty of first-degree murder and use of a firearm in a crime of violence.

Because the legal inconsistency claim was not preserved and we decline to exercise plain error review, the judgment of the circuit court is affirmed.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**