

Circuit Court for Baltimore County
Case No. 03-K-16-004625

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 203

September Term, 2018

TRAVIS ELLEBY

v.

STATE OF MARYLAND

Berger,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 4, 2019

*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.

Cherice Ragins disappeared in February 2010. She was only 24 years old. Her boyfriend at the time, Appellant Travis Elleby, was the last person on record to see her.

Following Cherice’s disappearance, Elleby abruptly stopped his usual practice of “obsessively” calling and checking in on Cherice. He also lied to the police and his mother about where he and Cherice were on the date of Cherice’s disappearance. Further, a forensic investigation of Elleby’s phone records uncovered a text message sent from Elleby’s phone to an unknown recipient shortly before Cherice’s disappearance stating that he was “ready to permanently get away from her, . . . I’m [sic] just want to kill this bitch.”

Six years after the investigation into Cherice’s disappearance began, Elleby was indicted for the murder of Cherice in the Circuit Court for Baltimore County. Following a bench trial, the court found Elleby guilty of second-degree murder on the basis that, although there was no body or forensic evidence offered at trial, there was ample circumstantial evidence indicating that Elleby murdered Cherice. The court sentenced Elleby to 30 years’ incarceration with all but 25 years suspended and five years’ supervised probation.

Elleby noted a timely appeal. He claims the evidence was insufficient to sustain his conviction for second degree murder. We disagree, based on the totality of the circumstances, and hold that there was sufficient circumstantial evidence to support the trial court’s judgment.

BACKGROUND

On September 7, 2016, a grand jury sitting in Baltimore County indicted Elleby for first-degree murder. Elleby waived his right to a jury trial and stood trial before the

Honorable Judith C. Ensor from November 27 to 29, 2017. The following facts were adduced at trial.

A. The Disappearance of Cherice Ragins

Cherice Ragins was last seen on February 21, 2010.¹ At the time of her disappearance, she had been dating Elleby, whom she met while working as a sales clerk at Party City. They had been dating for approximately one year. Cherice was unemployed and lived with her mother, Clariese Ragins (“Ragins”). Cherice did not have a car, bank account, credit cards, or a mobile phone. Ragins and her daughter were “very, very close” and spoke every day.

Ragins testified that, during Cherice’s relationship with Elleby, Elleby was “very possessive” and “constantly called [Cherice] on a daily basis, multiple times.” Ragins explained that Elleby visited with Cherice at her home at least three times a week and that the pair often spent weekends together at Elleby’s home in Catonsville. Whenever Cherice left Elleby’s house to return home, Elleby would call her home three to four times to “see if [Cherice] had arrived home yet.” Ragins knew a serious argument had taken place between her daughter and Elleby in February 2010, but she was not home at the time and did not witness it.²

¹ This fact was included in an agreed stipulation presented at trial.

² Elleby’s March 23, 2010, interview revealed that this argument took place after an individual by the name of Edward Maurice Holmes, known as “Marcus,” stopped by the Ragins home to visit with Cherice. At the time of Marcus’s visit, Elleby had gone out to the store and Cherice was home alone. Marcus appears to have left the Ragins home just as Elleby was returning. The police were called to respond to the argument that ensued..

Ragins last saw Cherice at approximately 4:30 p.m. on Friday, February 19, 2010, when Cherice and Elleby left the Ragins home. Cherice left home wearing her winter coat and a small handbag; the rest of her possessions remained in her room. Ragins expected Cherice home later that day. When Ragins did not hear from Cherice on February 20 or 21, she became concerned, because they rarely went a weekend without speaking to one another. Ragins also found the fact that Elleby had not yet called her home to be very unusual, since “[Cherice] had not come home” when expected and Elleby “constantly called on a daily basis, obsessively.” Ragins reported making several attempts to call Elleby’s mobile phone and landline on both February 20 and 21, to no avail. Finally, on February 22 or 23, Ragins spoke to Elleby’s mother, Gail Elleby (“Gail”), and explained that she had not seen Cherice since February 19. Gail told Ragins that she had seen Cherice and Elleby leave the Elleby home on February 21 at approximately 5:00 p.m. Ragins asked that Gail have Elleby call her.

After no word from Elleby or Cherice, Ragins filed a missing person report at the Woodlawn police station on February 24. The next day, Elleby called Ragins and claimed that “he and [Cherice] left his home on Sunday [February 21] and went to the bus stop on Route 40 and Rolling Road,” and that Cherice “made a phone call and left the bus stop with Marcus.” Ragins did not know Marcus.

B. The Investigation

Detective Phillip G. Marll was assigned to investigate Cherice’s disappearance on March 2, 2010. After speaking with Ragins, Det. Marll began his investigation by interviewing Elleby.

1. Elleby Interviews

On March 2, 2010, Det. Marll and Corporal Gick arrived unannounced at Elleby's home in Catonsville. Gail Elleby answered the door, and Det. Marll explained that they were investigating the disappearance of Cherice and were interested in talking to her son. Mrs. Elleby invited the officers in, and a few moments later, Elleby entered the room and to talk to them. Elleby told Det. Marll that he and Cherice had spent the weekend of February 19 to 21 at his home; that they'd left his house for Cherice's home at about 5:00 pm on Sunday, the 21st; that they walked to the bus stop at Rolling Road and Route 40; and that, on the way there, they argued because Cherice was angry that Elleby did not have a car. Elleby further explained that upon arrival at the bus stop, Cherice went to a nearby payphone and called someone named Marcus. Elleby claimed that he tried to talk Cherice out of leaving with Marcus, but that 20 to 25 minutes later, at approximately 5:30 p.m., Marcus arrived to pick up Cherice in a red Chevy Tahoe. Elleby said that after Cherice left, he did not know what to do and simply walked home. Elleby also explained that he had seen Marcus only once before this incident and that Marcus was approximately thirty years old.

The next day, Det. Marll arranged to have Ragins make a recorded phone call to Elleby. The call was admitted into evidence and played for the court. During the call, Elleby recounted the same story he'd told Det. Marll on March 2: he and Cherice had left his home on Sunday afternoon to go to the Ragins home; neither of them had a car or any money, so they planned to take the bus from the bus stop at the Giant at Rolling Road and Route 40; Cherice got angry with him for not having a car; at the bus stop, Cherice went to

a nearby payphone and called Marcus; then, Marcus picked up Cherice at approximately 5:30 p.m. in a red Chevy Tahoe. In this version, however, Elleby added that he did not walk home after Cherice departed, but decided instead to call his father from a payphone to ask for a ride. According to Elleby, he used a payphone because his mobile phone was broken. Elleby further explained that when Cherice got into the car with Marcus, he “figured [his] relationship [with her] was over” and that her actions had “broke[n] his heart.” He explained that this was why he had not been following his usual pattern of calling the Ragins home three or more times a day. He promised to call Ragins if he heard anything.

On March 8, 2010, Det. Marll called Elleby at home and recorded the conversation. This conversation was also admitted into evidence and played for the court. During this conversation, Elleby agreed to accompany Det. Marll to the Giant to show him where Cherice had used the payphone, where Marcus had picked her up, and to point out the approximate route the Tahoe took when entering the parking lot. Later that day, while visiting the Giant, Elleby told Dets. Marll and Childs that Marcus had arrived to retrieve Cherice at approximately 6:00 p.m. Det. Marll described Elleby’s level of recollection as “adamant” and detailed.

After this outing, Dets. Marll and Childs took Elleby to police headquarters to “continue the interview with him in reference to the disappearance of [Cherice].” Elleby repeated his story to the detectives as he had in his three previous tellings, but with some notable differences. In this interview, Elleby stated that Marcus had arrived to pick up Cherice at 6:00 or 6:15 pm. Elleby also stated that he had never seen Marcus before Marcus

arrived to pick up Cherice and would not be able to identify Marcus if he saw Marcus on the street. Elleby also noted that, during their relationship, if Cherice wanted to make Elleby “mad and jealous,” she would mention Marcus and her prior relationship with him.

On March 23, Dets. Marll and Childs interviewed Elleby again. On this occasion, they asked him to view surveillance footage that they’d obtained from four cameras mounted on the front of the Giant store. The footage covered the area in front of the Giant, including the payphone where Elleby claimed Cherice had called Marcus. Det. Marll testified that the video he obtained ran from approximately noon to 9:00 p.m. on February 21. Neither Elleby nor Det. Marll was able to identify Elleby, Cherice, or the Chevy Tahoe anywhere on the surveillance tapes. Det. Marll then informed Elleby that, although there was a record of the call Elleby had made to his father,³ there was no record of any call made by Cherice to Marcus on the pay phone Elleby had indicated. Additionally, Marcus had told Det. Marll that he was at work on February 21, and that Cherice didn’t have his mobile phone number and would not have recognized his truck. Det. Marll questioned Elleby further on the validity of his story, stating that the police had been unable to prove any of Elleby’s claims and asserting that the “story that [Elleby] told [the police] didn’t happen.”

Faced with additional questioning, Elleby changed his story again. No longer did he claim that Cherice called Marcus and left in a red Tahoe; instead, he claimed that he and

³ Det. Marll testified that the bank of payphones from which Elleby called his father is not visible on any cameras, unlike the phones on which Elleby claimed Cherice called Marcus.

Cherice had taken a bus to Baltimore and Carey Streets to buy weed. Elleby said that he had not admitted to this previously out of fear of getting into trouble with the police. Elleby stated that the last place he saw Cherice was at the “New York Fried Chicken, outside the bus stop across from it.” He then explained that he took the bus back to the Giant at Route 40 and Rolling Road, where he called his father for a ride. After the interview, Elleby accompanied Dets. Marll and Childs to Baltimore and Carey Streets and showed them the New York Fried Chicken restaurant and the location of his marijuana purchase.

Det. Marll interviewed Elleby a final time on April 22, 2010, after Elleby was arrested for an unrelated offense. Marll attempted to determine why Elleby had lied initially; Elleby stated simply that he did not know why he’d lied and claimed that he did not do anything to Cherice.

2. Marcus

On March 3, about a week after Ragins reported Cherice missing, Det. Marll tracked down and interviewed Edward Maurice Holmes, or ‘Marcus.’ Marcus informed Det. Marll that he worked on February 21, 2010. Det. Marll confirmed this with Marcus’s boss, Monroe Zeffert, who also testified at trial. According to Zeffert, a caterer, Marcus worked for him for approximately 10 years between 2005 and 2015. Zeffert testified that on February 21, the business was booked to cater three events, two of which were in Baltimore City. Zeffert confirmed that Marcus had indeed worked that day, punching in at 2:55 p.m. Zeffert explained that they then worked together for approximately nine hours, after which Marcus punched out at 11:51 p.m. Zeffert stated that Marcus did not leave his presence

for an extended period at any time during their nine-hour day. Det. Marll also obtained Marcus’s phone records, which confirmed that he was not in the Catonsville area on February 21.

3. Phone Records

Because Elleby’s phone was not working on February 21, 2010, Det. Marll was unable to use cell tower or cell phone records to pinpoint Elleby’s whereabouts on that day. Det. Marll testified, however, that he obtained phone records from Elleby’s phone and both Ragins’s home and mobile phones. He stated that, between January 1 and March 1, 2010, the phones exchanged 946 calls (about 16 per day). Of these calls, 604 were calls from Elleby to Cherice, whereas 342 were from Cherice to Elleby.

Additionally, Officer Zachary Brocato⁴ testified that, despite Elleby’s phone being broken, he was able “extract a file system” from it using a program called “bitpim.”⁵ Officer Brocato then gave the file system to Christopher Kollmann, a digital forensics supervisor with the Baltimore County Police Department, who testified as an expert in digital forensics. Kollmann testified that he used a file extraction program to “run a couple keywords to see if there was something [they] could find that might point Detective Marll in the right direction.” Kollmann searched for “the victim’s name, Cherice” and keywords

⁴ At the time of the search, Officer Brocato worked for the police in the Forensic Services and Records department as a part of the Digital Multi-Media Evidence Unit.

⁵ Officer Brocato noted that the phone’s contents were not altered by bitpim, since, “before the phone is turned on, it’s placed into a stronghold box, which blocks any signal from going to the phone,” meaning that no information could be “added or deleted from the cell phone.”

including “words that may be associated with homicides, such as kill, murder, shoot [and] stab.” His search revealed the word “kill” in a text sent from Elleby’s phone reading, “No, I’m ready to permanently get away from her, nothing, I’m just want to kill this bitch.” Kollmann stated that, while there was “no date and time officially associated with this file,” he was able to narrow down a time frame for the text message based on what the phrase was “sandwiched between.” The time frame for this message was determined to be anywhere between February 10, 2010, at 1:06 am and February 11 at 10:27 am. Kollmann acknowledged that, although he was certain this message had been sent from Elleby’s phone, he was not able to determine to whom it was sent or that person’s phone number. Kollmann also testified that there were 68 messages stored on Elleby’s phone from the period between January 22 and February 17, 2010. Of these, four messages were to Cherice and six were from her.⁶

4. United States Marshal Search

Seven years later, on November 8, 2017, Detective Gary Childs of the Baltimore County Police Department’s Homicide Unit asked Rick Henry, an inspector with the United States Marshal Service, to help search for Cherice. Henry was an inspector with

⁶ The six messages from Cherice include the following pertinent messages: (1) a message sent on January 22, 2010, at 4:26:06 pm, reads: “I see your phone died, but you chose to ignore me up til it did. Guess saving your battery for your ride, but you really had, you really have showed me that you can’t make me happy, you don’t;” (2) a message sent on January 22, 2010, at 4:26:26 pm, says: “You don’t care to, tried making it work, Plan B, moving on. I really do love you but I’m tired of the hurt and senseless frustration;” (3) a message sent January 22, 2010, at 5:57:55 pm, reads: “I’m sure you’re completely unconscious, still you’ve write, well, I’m out of here, bye;” (4) a message sent February 11, 2010, says: “Know this, I did love you but all we have is hate. You’re no longer welcome in my life, just walk away, goodbye.”

the Maryland Fugitive Task Force and had broader access to relevant databases than the county police. Henry’s search for Cherice included “passport history, airline history, motor vehicle records for all fifty states and also credit history.” His search showed no activity in five years in any of the areas that he searched, apart from one joint car loan that had been paid in full.

Decision and Sentencing

On November 29, 2017, Judge Ensor found Elleby not guilty of first-degree murder because the only evidence of premeditation was a text message sent from his phone to an unknown recipient 10 days before Cherice’s disappearance. Judge Ensor, however, found Elleby guilty of the lesser-included offense of second-degree murder. She found that the evidence was sufficient to convict Elleby of Cherice’s murder because evidence such as the 946 phone calls in less than two months indicated that their relationship was “intense and...volatile;” that there was an argument that led to the police being called on February 17th; that the couple had serious arguments over Marcus; that “Elleby was possessive” of Cherice but then appeared “completely unconcerned when she was missing;” and that Elleby had “proven himself to be a liar.”⁷ The judge stated in relevant part:

Cherice had never gone away for more than one day without letting her mother know. . . . She left her mother’s on February 19th with just the clothes on her back and a small purse that was not large enough to contain any clothes. . . I am absolutely positively convinced that if Cherice Ragins were alive, she would have been in touch with her mother these last years, and the fact that no body was found tends to eliminate a cause of death other than homicide. The unlikelihood of a voluntary disappearance is

⁷ Judge Ensor ruled that she “didn’t find him guilty because he’s a liar,” but that she did note that “absent guilt, there would have been no need to create this literally elaborate ruse.”

circumstantial evidence entitled to weight equal that of blood stains and concealment of evidence. I'm convinced beyond a reasonable doubt that Travis Elleby murdered Cherice Ragins. He was in a relationship with her, there were nine hundred and forty-six calls between them in less than two months. . . . [Elleby] was all over the place in his interviews. . . . But it was clear to me that this relationship was intense and that it was volatile. There was an argument that led to the police being called on February 17th. Marcus was clearly a bone of contention. Mr. Elleby said that he didn't know him and hadn't met him, but that was plainly false. Ms. Cherice Ragins broke his phone, sent him unpleasant text messages, he sent a text about want her to be permanently gone from his life . . . The fourth SMS message was sent January 25th of 2010 at 9:47:15 p.m. Cherice, I love you with all my heart, mind and soul, can you please pick up once? That's not finished. At least not from Mr. Elleby's perspective. In fact, I find that Mr. Elleby was upset enough about Marcus that he was perfectly willing to serve him up to the police as a suspect in Cherice's disappearance. There was evidence that I believe that Mr. Elleby was possessive, very invested in the relationship. I found credible the testimony from Mrs. Ragins that when Cherice was coming home from Mr. Elleby's house, he would call three or four time to see if she had gotten home yet. That's in stark contrast to the fact the he seemed completely unconcerned when she was missing.

* * *

He lied to the police about using the pay phone. He lied to the police about calling Marcus. He lied to the police about waiting twenty to twenty-five minutes for Marcus to show up. He lied about sticking around with Cherice waiting for Marcus. He said he was trying to convince her to stay. That's all false. He lied about her getting into the red Tahoe. He lied about the directions they took. . . . Mr. Elleby lied, he lied repeatedly and perhaps, most importantly, he lied incredibly convincingly.

* * *

I've got a stipulation, that's Exhibit 36, that says Gail Elleby, the Defendant's mother, told the police that her son, the Defendant, and Cherice Ragins, left the Elleby residence on February 21st, 2010 at . . . approximately 5:00 p.m. There was testimony from the police, and I saw it on the video myself, that Mr. Elleby said they left around 5:00. I understand completely 5:00 could mean something around 5:00. Five o'clock-ish. But it's probably something between quarter of five and quarter after five, and really, more realistically, it's probably something of ten of five to ten after, because if it's a quarter of, you say quarter to five. But what it doesn't mean is 4:30. Four thirty means 4:30. And if you do the math, there's no way that they take a 5:00 bus, because you can't leave Carly Court at ten of five and get to the bus stop[.] There's no way if you leave the house around 5:00, you're getting a 5:00 bus. It is . . . impossible . . . So the second story makes no, it makes

no reasonable sense[.] It doesn't make sense that they had this casual break up there and it's impossible, given the two times we know and those two times are leaving around, leaving Carly Court around 5:00 and making that phone call from the pay phone at 6:27:44.

* * *

If he said he went into the City, he would have to tell about the marijuana. I, that's, that's completely incredible. It also wouldn't explain why Mr. Elleby was so quick to blame Marcus, so, the whole Marcus story was totally a ruse[.] But really, I think, when you come right down to it, one of the things that's most damning in this case is the fact that Mr. Elleby came home at 6:30, when his mom asked here Cherice was, he said she had gone with Marcus[.] But, so I believe he was already weaving his alibi at that point. I would also note he, he never appeared to be worried about her . . . he was perfectly happy to have the police chase leads he knew were completely false. He showed absolutely no interest in finding out where Cherice was. I believe that's because he already knew.

On February 16, 2018, Judge Ensor sentenced Elleby to 30 years incarceration with all but 25 years suspended, followed by five years of supervised probation.

DISCUSSION

I.

Sufficiency of the Evidence

Elleby contends that the State's case against him rests exclusively on circumstantial evidence and that, while the evidence might present a basis for strong suspicion, it cannot support a finding beyond a reasonable doubt that Elleby killed Cherice. First, he argues that evidence that he lied to the police can show consciousness of guilt but cannot, on its own, establish guilt. Second, Elleby admits that evidence relating to a defendant's conduct can be relevant as a circumstance indicating consciousness of guilt but proffers that evidence that he appeared unconcerned about Cherice's disappearance is too ambiguous and equivocal to support an inference of consciousness of guilt. Third, Elleby argues that

evidence that his and Cherice’s relationship was volatile and intense is minimal and provides only a slender basis for suspicion that he may have killed Cherice. Finally, Elleby argues that the text message on his phone unearthed by Kollmann stating that “I’m just want to kill this bitch” lacked context and cannot shed light on the issue of whether he murdered Cherice.

The State responds that the totality of the evidence is sufficient to sustain Elleby’s conviction for second-degree murder. Although the State concedes that evidence of Elleby’s lies is, by itself, insufficient to establish guilt, it maintains that the other items of evidence presented at trial were probative. According to the State, the consciousness-of-guilt evidence—including Elleby’s apparently unphased reaction to Cherice’s disappearance, his abrupt cessation of his usual practice of repeatedly calling and keeping tabs on Cherice, and the lies that Elleby told to the police and Ragins—was overwhelming. The State further insists that evidence of fights Elleby and Cherice had over Marcus provided a motive for Elleby to kill Cherice. Especially in this context, the State contends, Elleby’s attack on the text message saying, “I’m just want to kill this bitch” goes only to the weight and not the sufficiency of this piece of evidence.

Standard of Review

When an “action has been tried without a jury, the appellate court will review the case on both the law and the evidence.” Md. Rule 8-131(c). We will not “set aside the judgement of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.* Specifically, when we are asked to determine whether “sufficient evidence exists to sustain

a criminal conviction,” we review the evidence “in the light most favorable to the State,” giving “due regard to the trial court's finding of facts.” *State v. Albrecht*, 336 Md. 475, 478 (1994). Because the “fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.” *Redkovsky v. State*, 240 Md. App. 252, 262-63 (2019) (quoting *Tracy v. State*, 23 Md. 1, 12 (2011)). We are not concerned with whether the “trial court’s verdict is in accord with what appears to us to be the weight of the evidence” and are instead focused solely on whether the “verdicts were supported with sufficient evidence—that is, 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.” *Id.* at 478-79.

A. Second-Degree Murder

Appellant was convicted of second-degree murder under § 2-204 of the Maryland Criminal Code, which defines murder in the second degree as “a murder that is not in the first degree.” Maryland Code (2002, 2012 Repl. Vol., 2018 Supp.), Criminal Law Article (“CL”), § 2-204. The Maryland Criminal Jury Instructions elaborate and define murder in the second degree as an “unlawful killing of a human being while acting with extreme indifference to the value of human life and consciously disregarding an obvious risk of causing death or such serious bodily harm that death would be the likely result.” Maryland Pattern Jury Instructions—Criminal (“MPJI-Cr”) 4:17.8 HOMICIDE—SECOND

DEGREE DEPRAVED HEART MURDER AND INVOLUNTARY MANSLAUGHTER
(GROSSLY NEGLIGENT AND UNLAWFUL ACT) (2018).

B. Circumstantial evidence

Appellant does not contest the fact that Ragins is dead.⁸ Instead, his sole argument is that the evidence was insufficient to prove that he was the person who killed Ragins. Although it is “certainly more difficult to establish the *corpus delicti* of homicide when the victim’s body is missing, it is not impossible.” *Riggins v. State*, 155 Md. App. 181, 212 (2004) (citation omitted). In a homicide case, “the proof of the *corpus delicti* is sufficient if it establishes the fact that the person for whose death the prosecution was instituted is dead, and that the death occurred under circumstances which indicate that it was caused criminally by someone.” *Tetso v. State*, 205 Md. App. 334, 395 (2012) (quoting *Lemons v. State*, 49 Md. App. 467, 473 (1981)). Maryland courts have “repeatedly said that the independent evidence of the *corpus delicti* may be circumstantial in nature when direct evidence is not available.” *Id.* at 391 (citations omitted).

⁸ It was reasonable for the trial court to infer that Cherice is, in fact, deceased and that her death was criminally caused. When Cherice was last seen on February 21, 2010 she had no money, no credit cards, and only the clothes on her back. Despite having spoken to her mother nearly “every day,” Cherice has not communicated with her mother since February 19, when she left her mother’s house with Elleby. Further, a search by the U.S. Marshal service found no records of Cherice since her disappearance. *See Tetso v. State*, 205 Md. App. 334, 393 (2012) (“Worldwide communication and travel today are so facile that a [fact-finder] may properly take into account the unlikelihood that an absent person, in view of h[er] health, habits, disposition, and personal relationships would voluntarily flee, ‘go underground,’ and remain out of touch with family and friends.”) (citations and quotations omitted).

Circumstantial evidence “may support a conviction when the circumstances, taken together, do not require the trier of fact to resort to speculation or mere conjecture.” *Morgan v. State*, 134 Md. App. 113, 124 (2000) (citation omitted). From the perspective of a finder of fact, to support a conviction in a case that is “purely circumstantial,” the evidence “must be such that, in conjunction with weighing the evidence and assessing the credibility of the witnesses, there are sufficient strands interconnected to establish criminal agency and *corpus delecti* beyond a reasonable doubt.” *Id.* at 127. Thus, a conviction may be “based on circumstantial evidence alone.” *Id.* at 121.

Further, facts “constituting the circumstantial evidence” should not be perceived as “disconnected and independent” facts to be proved beyond a reasonable doubt; they should be considered together and in the context of the totality of the evidence. *Id.* at 123. Maryland’s “cases make clear that circumstantial evidence does not ‘depend upon one strand, but is made up of a union and combination of the strength of all its strands.’” *Sewell v. State*, 239 Md. App. 571, 614 n.12 (2018) (quoting *Hebron v. State*, 331 Md. 219, 228 (1993)). Circumstantial evidence also does not need to be such that “no possible theory other than [the defendant’s] guilt can stand,” nor must a fact-finder be “satisfied beyond a reasonable doubt of each link in the chain of circumstances relied upon to establish the defendant’s guilt.” *Id.* (citation omitted).

C. Consciousness of Guilt

Elleby concedes that his lies to the police and others and his apparent lack of concern regarding Cherice’s disappearance could potentially be considered evidence of

consciousness of guilt. Nevertheless, he argues that neither of these pieces of evidence are, by themselves, sufficient to conclusively establish guilt.

A person’s behavior “after the commission of a crime” may be relevant as “circumstantial evidence from which guilt may be inferred.” *Thomas v. State*, 372 Md. 342, 351 (2002). This kind of “circumstantial evidence is referred to as ‘consciousness of guilt.’” *Id.* “Post-crime behavior” is often “considered relevant to the question of guilt because the particular behavior provides clues to the person’s state of mind.” *Id.* at 352.

Although consciousness of guilt is admissible evidence in Maryland courts, the Court of Appeals has “emphasize[d] the importance of connecting a defendant’s consciousness of guilt to a consciousness of guilt for the *specific crime alleged*,” and required that there be an “evidentiary basis, either direct or circumstantial, to connect a defendant’s consciousness of guilt to the particular crime charged.” *Id.* at 354-55 (emphasis added). To establish the probative value of circumstantial evidence, courts usually rely on

the degree of confidence with which four inferences can be drawn: (1) from the defendant’s behavior to [defendant’s action or state of mind]; (2) from [defendant’s action or state of mind] to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.

Id. at 352 (quoting *U.S. v. Myers*, 550 F.2d 1036, 1049 (5th Cir. 1977)). Accordingly, “[i]f relevant, circumstantial evidence regarding a defendant’s conduct may be admissible . . . , not as conclusive evidence of guilt, but as a circumstance tending to show a consciousness of guilt.” *Snyder v. State*, 361 Md. 580, 593 (2000). Conversely,

circumstantial evidence that “merely tends to create in the minds of [finders of fact] the impression that the defendant is of questionable character and has a propensity for bad acts and probably acted accordingly on the charged occasion” should not be considered probative. *Bedford v. State*, 317 Md. 659, 668 (1989).

The Court of Appeals’ decision in *Thomas v. State* helps illustrate the distinction between consciousness of guilt generally, as opposed to consciousness of guilt of the crime charged. In *Thomas*, police investigating a three-year-old murder approached the defendant with a warrant to collect hair and blood samples. 372 Md. at 346. Defendant resisted collection and was forcibly restrained to allow police to obtain their samples. *Id.* At trial, the State argued that “the refusal to give the blood sample was admissible as evidence to show consciousness of guilt.” *Id.* at 347-48. Defendant replied that the evidence was not relevant because (1) the “police attempted to take the blood sample over three years after the murder” and “many innocent reasons other than consciousness of guilt could explain a person resisting police attempts to procure a blood sample;” (2) the “evidence of his refusal was ambiguous and therefore irrelevant” and (3) the evidence’s “prejudicial effect outweighed its probative value.” *Id.* at 348.

The Court of Appeals agreed with the defendant and held that there was no evidence “either direct or circumstantial, that [defendant] was aware that the police wished to test his blood in connection with the [historic] murder investigation.” *Id.* at 357. The court reasoned that to infer consciousness of guilt *concerning the crime charged* from consciousness of guilt generally, it is important that a defendant know that he or she is “suspected of the charged crime . . . because the value of the conduct lies in the culprit’s

knowledge that he or she has committed the charged offense and in his or her fear of apprehension.” *Id.* at 354. The court held that no inference of guilt was permitted to be drawn from defendant’s “conduct unless the conduct was related to the murder investigation,” which, based on the evidence, could not be determined. *Id.* at 358.

Unlike the defendant in *Thomas*, Elleby understood that police were investigating the disappearance of Cherice and that the interviews he participated in were connected directly to the investigation. Therefore, Elleby’s post-crime behavior was circumstantial evidence “tending to show a consciousness of guilt” of the crime charged. *See Snyder*, 361 Md. at 593. We turn, then, to the evidence that suggested Elleby’s consciousness of guilt.

Lies and Apparent Lack of Concern

Evidence that a defendant lied or made false statements to the police can constitute consciousness of guilt. *Hricko v. State*, 134 Md. App. 218, 242 (2000). In this case, Elleby changed his story throughout the investigation into Cherice’s disappearance as police uncovered his lies in the prior iterations of his story. Elleby initially claimed that he and Cherice had walked from his home to the bus stop at Rolling Road and Route 40; that they’d argued; that Cherice had called Marcus to come and pick her up; that Marcus had arrived about 25 minutes later in a red Chevy Tahoe; and that Marcus and Cherice had departed together. It was not until he was confronted with surveillance footage and the fact that Marcus had worked on February 21, 2010, that Elleby changed his story, admitting that Marcus was not involved and that he and Cherice had really gone to Baltimore and Carey Streets to buy marijuana. Elleby’s false account of Cherice’s disappearance not only

derailed the police investigation for at least a month, it also implicated Marcus in an apparent attempt to make Marcus a suspect in the investigation.

A defendant’s shifting story and alterations in behavior can also be probative evidence of guilt. *See Tetso*, 205 Md. App. at 396-99. Tetso was convicted of second-degree murder of his wife after she disappeared. *Id.* at 340. Like the present case, no body was ever located and there was no forensic evidence offered at trial. *Id.* at 380. The State argued that a wide range of circumstantial evidence, including the defendant’s abrupt switch from obsessively tracking his wife’s movements to not participating in searches for her, demonstrated sufficient evidence to support a conviction for murder. *Id.* at 398-99. The defendant countered that no evidence presented by the State, “even when considered in its totality, [led] to a conclusion, beyond a reasonable doubt, that [defendant’s wife’s] death was a homicide or that [defendant was] the criminal agent.” *Id.* at 380.

The Court of Appeals disagreed, determining that the circumstantial evidence available was sufficient to “permit a rational trier of fact to determine beyond a reasonable doubt that [defendant] committed the crime of second-degree murder.” *Id.* at 395. The Court cited as relevant to determining that defendant was guilty of and “caused [his wife’s] death,” evidence of the fact that defendant “made inconsistent statements concerning his activities on the day [his wife] disappeared;” evidence that defendant was “aware of [his wife’s] affair” with another man; and evidence of defendant’s change in behavior, from calling his wife and her employer constantly to find out “where is she, who is she with, where is she going to be, [and] how long is she going to be there,” having her followed,

and tapping their house phone, to not “participat[ing] in the searches for [his wife] and [tearing] down [missing person] flyers that were on his car and mail box.” *Id.* at 396-98.

Returning to the underlying case, in addition to lying to the police and his mother, the evidence suggested that, in the aftermath of Cherice’s disappearance, Elleby seemed unconcerned and made no effort to contact Ragins. As with the defendant in *Tetso*, Elleby’s behavior after Cherice’s disappearance marked a significant change from his typical behavior prior to her disappearance. Before Cherice disappeared, Elleby called the Ragins home constantly and kept close tabs on Cherice’s whereabouts. After Cherice disappeared, however, Elleby did not call Ragins until February 25, four days after he last saw Cherice (and did so only after Ragins called his mother to ask that Elleby return her call). Elleby claimed that his lack of contact stemmed from his belief that, after Cherice left the Giant with Marcus, his relationship with her was over. This excuse disintegrated when Elleby changed his account of the events surrounding Cherice’s disappearance and admitted that Cherice neither called nor left with Marcus.

In this case, then, Appellant’s apparent lack of concern is probative because it shows a sudden behavioral change around the time of Ragins’s disappearance from which consciousness of guilt can be inferred. As noted, this change in behavior was unrelated to the end of Elleby’s relationship with Cherice. Although Elleby claimed that he did not tell Dets. Marll and Childs the truth about where he and Cherice went because he was afraid to admit he’d been involved in the purchase of marijuana, this is not a credible explanation. As the detectives suggested, if Elleby and Cherice had really gone where he claimed, he could easily have told the police the location of their last meeting without sharing details

about any drug purchases. Instead, Elleby’s behavioral change, taken together with the lies told to the police and his mother, suggest a desire to conceal the truth about Cherice’s disappearance. Viewed together, evidence of Elleby’s lies and apparent lack of concern support a finding that Elleby murdered Cherice.

Evidence of Elleby’s blatant change in behavior also makes his reliance on *Snyder v. State* inappropriate. The Court’s decision in *Snyder* supports the proposition that a failure to inquire about the progress of a murder investigation is “so ambiguous and . . . subject to so many interpretations, [that] evidence of the lack of inquiry cannot be probative of consciousness of guilt and, therefore, simply is irrelevant.” 361 Md. at 590-94. The Court held that, because the prosecution had “presented no testimony or evidence, from the investigating authorities or any other source, either as to the general response of family members during a murder investigation or of any specific responses or types of inquiries made by members of the Snyder family in this particular case,” there was no evidentiary basis for the jury’s conclusions that defendant’s failure to inquire was a result of his guilty conscience. *Id* at 596.

By contrast, in this case, in addition to demonstrating the change in Elleby’s behavior, the State presented testimony that distinguished Elleby’s response to Cherice’s disappearance from that of her other loved ones. For instance, Ragins made a police report and repeatedly called Elleby and his mother in an attempt to locate Cherice. Elleby, on the other hand, did not call the Ragins home for several days after Cherice was last seen, nor did he check in with Ragins as the investigation progressed. The State thus established a baseline for both a “normal” reaction to a missing loved one, and for Elleby’s behavior. In

the context of the totality of the evidence, then, Elleby’s failure to inquire about the progress of the investigation is not too ambiguous to be probative circumstantial evidence of Elleby’s guilt. More specifically, the probative value of Elleby’s lies and lack of concern passes the four inferential steps set out in *Thomas*: (1) Elleby’s behavior showed a knowledge that Cherice would not be going home and a desire to exculpate himself and mislead detectives; (2) this desire shows that Elleby had a consciousness of guilt; (3) Elleby’s consciousness of guilt shows consciousness of guilt concerning Cherice’s murder; and (4) his consciousness of guilt concerning murder tends to show his actual guilt of murder. *See* 372 Md. at 352.

D. Motive and Opportunity

In addition to evidence tending to show Elleby’s consciousness of guilt, the State adduced other circumstantial evidence of Elleby’s guilt: Elleby had motive and opportunity to kill Cherice. Elleby contends that evidence of the volatile relationship between himself and Cherice provides a slender basis for suspicion that he killed Cherice but can by no means be considered conclusive proof.

Adducing evidence of a defendant’s motive to commit a crime can “help[] to establish that he had the requisite intent to commit the crime.” *Sewell*, 239 Md. App. at 612 (citation omitted). Motive is the “catalyst that provides the reason for a person to engage in criminal activity.” *Snyder*, 361 Md. at 604. One way to demonstrate motive is through evidence of “previous quarrels and difficulties between a victim and a defendant.” *Id.* at 605. To be relevant as “evidence of motive,” any prior abuse or relationship difficulties must be “committed within such time, or show such relationship to the main

charge, as to make connection obvious,’ . . . that is to say they are ‘so linked in point of time or circumstances as to show intent or motive.’” *Id.* (quoting *Johnson v. State*, 332 Md. 456, 470 (1993)).

For instance, in *Snyder*, the Court considered probative evidence that defendant and his wife had engaged in a physical dispute a year prior to her murder; testimony that the defendant and his wife “had a ‘stormy’ relationship;” and testimony from the wife’s friend “concerning a fight the night before the murder in which the petitioner allegedly stated that the victim was ‘a dead woman.’” *Id.* at 608. The court found that this evidence of “disharmony in the household . . . was probative of a continuing hostility and animosity, on the part of the petitioner, toward the victim and, therefore, of a motive to murder, not simply the propensity to commit murder.” *Id.* at 608-09; *see also Stevenson v. State*, 222 Md. App. 118, 149-50 (2015) (considering the defendant’s previous violent acts towards his girlfriend as evidence of his motive to murder her).

In this case, despite the fact that Ragins testified that she had no reason to believe that Cherice was afraid of Elleby, evidence shows that their relationship was erratic and intense. Ragin’s testimony indicates that Elleby was obsessive about and possessive of Cherice. His constant calls to the Ragins home to determine Cherice’s whereabouts, even between Cherice leaving his home and arriving at her own, suggest controlling, jealous behaviors. Additionally, although the text messages from Ragins saved on Elleby’s mobile phone do not necessarily bely a violent relationship, they do indicate the presence of disharmony and tension in the relationship. Several of the text messages suggest that Cherice wished to end her relationship with Elleby. Just six days after the last of these

messages was sent—mere days before Cherice’s disappearance—Cherice and Elleby had a volatile argument about Marcus that resulted in the police being called. Finally, in this context, the text message from Appellant to an unknown recipient, sent approximately ten days before Ragins’s disappearance and stating, “I’m just want to kill this bitch,” takes on an ominous quality. As in *Snyder*, the evidence shows an unsettled relationship and suggests Elleby’s continuing mistrust of and hostility towards Cherice. Based on the evidence, then, a rational finder of fact could have determined that, based on the tenuous nature of Elleby’s relationship with Cherice and his jealousy of her relationship with Marcus, Elleby had a motive to murder Cherice.

Further, Elleby had opportunity to kill Cherice. Elleby, despite his false statements suggesting otherwise, was the last known person to see Cherice alive and was presumably with her when she disappeared. The “presence of the defendant in the vicinity of the [crime], whether before or after its occurrence, is always relevant.” *McDowell v. State*, 231 Md. 205, 214 (1963). Taken together, the evidence of motive and opportunity and the “proper inferences therefrom” are yet further circumstantial proof that Elleby murdered Cherice. *See Hott v. State*, 3 Md. App. 298, 308 (1968); *see also State v. Syed* 463 Md. 60, 91-92 (2019) (stating that a reasonable finder of fact still could have determined that evidence of motive and opportunity showed criminal agency, even with alibi evidence putting the crime’s timeline into question).

In sum, to sustain Elleby’s conviction we need not reject his assertion that no single strand of the circumstantial evidence discussed above would be sufficient to sustain a conviction of second-degree murder. “[C]ircumstantial evidence does not ‘depend upon

one strand, but is made up of a union and combination of the strength of all its strands.”
Sewell, 239 Md. App. at 614 n.12. In this case, that circumstantial evidence included Elleby’s lies, his apparent lack of concern, evidence of motive and opportunity, and the incriminating text message he sent. Taken together, as connected and dependent facts and in the context of the totality of the evidence, *Morgan*, 134 Md. App. at 122, a rational finder of fact could have found beyond a reasonable doubt that Elleby is guilty of second-degree murder.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**