Circuit Court for Wicomico County
Case No. C-22-CR-20-000282

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 650

September Term, 2022

JARON LAVELLE PURNELL

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: March 30, 2023

*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.

Convicted by a jury in the Circuit Court for Wicomico County of second degree murder, attempted second degree murder, and related offenses, Jaron Lavelle Purnell, appellant, presents for our review two issues: whether the court erred in instructing the jury as to accomplice liability, and whether the evidence is insufficient to sustain the convictions. For the reasons that follow, we shall affirm the judgments of the circuit court.

The victims were Dondre Wilson ("Dondre"), who died of gunshot wounds to his head and left upper back, and his brother Adrian Wilson ("Adrian"). At trial, the State called Adrian, who testified that at approximately 10:00 p.m. on April 17, 2020, Dondre drove Adrian and a man named Kevin to the Merrifield Apartments in Salisbury to visit Adrian's cousin. When the three arrived at the apartment complex, Adrian went into an apartment, where he discovered that "everybody was hiding in different rooms." Adrian asked "what was going on," and the occupants told him that "somebody just got robbed."

Approximately ten minutes later, Adrian exited the apartment. Adrian testified:

> [W]hen I walked out the apartment, I seen, like, five people. One of them called me, but I seen the gun, so when I seen the gun I ran and hopped in the backseat. And I said, little bro, just floor it and duck down. But he didn't even get a chance to duck.

After Adrian "hopped in the car, . . . one guy went to [Dondre's] door and started shooting," and "another person came to [Adrian's] door and started shooting." The other three men "ran to the front of the car." Adrian identified Mr. Purnell as one "of the people who had a gun" and the person who "was at Dondre's door." The gunmen fired "[a]t least 20" shots into the car. Adrian was struck twice in his shoulder, and he saw Dondre being struck in his head and chest. The car then "hit a parked truck, . . . ran up the parking curb[,] and ran

into a tree." Adrian "tried to get out the car" and "pull [Dondre] out," but "heard somebody running to the car, and they sent two more shots." Adrian exited the car, ran to and hid in some bushes, and called 911. Adrian subsequently viewed a photo array and identified a photo of Mr. Purnell as the "person who did" the "shooting."

The State also called Taylor Hudson, who testified, pursuant to an "agreement for proffer," that she first met Mr. Purnell "about six or seven" years before trial. On April 17, 2020, Ms. Hudson received a call from her boyfriend Torrey Brittingham, who was at the Merrifield Apartments and was "out of breath" and "talking fast." Ms. Hudson "told him [that she] was coming there to see if he was okay." Ms. Hudson rushed to the apartment complex, because Mr. Brittingham "said [that] he had been jumped." When Ms. Hudson arrived at the complex, Mr. Brittingham's friend Pierre Copes "came outside" and asked her "to drive down to the other end and see how many people were there." Ms. Hudson "drove down there and saw there were two people in . . . a Hyundai." Ms. Hudson reported back to Mr. Copes, who told her "to wait there." Ms. Hudson then "drove back down to the other end and parked near [Mr. Brittingham's] car."

Approximately five minutes later, a "silver SUV" driven by Mr. Purnell "pulled in beside [Mr. Brittingham's] car." A "minute or two" later, Mr. Purnell, Mr. Brittingham, Mr. Copes, and a man named Dimarise DeShields exited the SUV and "start[ed] walking toward [an] apartment." When the "Hyundai beg[a]n to pull off," Mr. Purnell "started to shoot." Ms. Hudson heard "about five or six" gunshots, after which the men "ran back to . . . their cars," and Ms. Hudson departed. Ms. Hudson subsequently viewed a photo array and identified a photo of Mr. Purnell.

The State also called Mr. Copes, who testified, pursuant to an "agreement to proffer," that at the time of the offenses, he had known Mr. Purnell for approximately five years. On April 17, 2020, Mr. Copes, who was living at the Merrifield Apartments, was visited at his apartment by Mr. Brittingham, who stated that he had "been jumped and robbed." When Ms. Hudson arrived at Mr. Copes's apartment, he "asked her to go see if anybody was down there at the place where [Mr. Brittingham had] been jumped and robbed at." Approximately "a minute later," Ms. Hudson returned and told Mr. Copes that there were "about three people down there." Mr. Copes re-entered his apartment and asked Mr. Brittingham "if he still wanted to go get his car." Mr. Brittingham "said no and that he was gonna wait for" Mr. Purnell.

A "couple [of] minutes" later, an SUV arrived, and Mr. Purnell exited the driver's seat. Mr. Purnell entered Mr. Copes's apartment and said, "let's go." When Mr. Brittingham stated that "he didn't have a gun," Mr. Purnell stated: "[T]hat's alright, I got it." The three then exited the apartment and entered the SUV. With Mr. Purnell in the driver's seat, Mr. DeShields in the front passenger's seat, and Mr. Copes and Mr. Brittingham in the back seat, the group "start[ed] going towards where [Mr. Brittingham] got robbed at." As Mr. Brittingham "was just telling 'em what happened, [that] he'd been jumped and robbed," Mr. Purnell stated: "[W]e gonna get 'em." Mr. Purnell backed the SUV into a parking spot, and "when he put the car in park," Mr. Copes heard the sound of "two guns cock[ing] back" from the "front seat." The group exited the SUV, and Mr. Purnell and Mr. DeShields "walk[ed] towards a car that pulled out of a parking spot." Mr. Purnell asked Mr. Brittingham: "[W]as this them?" When Mr. Brittingham stated that it

was, Mr. Purnell and Mr. DeShields "start[ed] shooting at the car." Mr. Copes heard "[a]bout six or seven" gunshots, after which Mr. Purnell and Mr. DeShields entered the SUV, and Mr. Brittingham and Mr. Copes entered Mr. Brittingham's car. Mr. Purnell's vehicle "exited the parking lot first," followed by Mr. Brittingham's vehicle. Mr. Brittingham and Mr. Copes then went to Mr. Brittingham's residence. Mr. Copes identified Mr. Purnell in court as "one of the shooters of Dondre."

Mr. Purnell first contends that the court erred in propounding a jury instruction on accomplice liability. While responding to Mr. Purnell's motion for judgment of acquittal, the prosecutor indicated that she would be "seeking affirmatively the accomplice instruction."[1] Defense counsel stated that he would "be objecting to that," and argued:

[1]Maryland Criminal Pattern Jury Instruction 6:00 states, in pertinent part:

> The defendant may be guilty of [a crime] as an accomplice, even though the defendant did not personally commit the acts that constitute that crime. In order to convict the defendant of [the crime] as an accomplice, the State must prove that the [crime] occurred and that the defendant, with the intent to make the crime happen, knowingly aided, counseled, commanded, or encouraged the commission of the crime, or communicated to . . . [a] primary actor in the crime that [the defendant] was ready, willing, and able to lend support, if needed.
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> * * *
>
> The mere presence of the defendant at the time and place of the commission of the crime is not enough to prove that the defendant is an accomplice. If presence at the scene of the crime is proven, that fact may be considered, along with all of the surrounding circumstances, in determining whether the defendant intended to and was willing to aid . . . [a] primary actor, for example, by standing by as a lookout to warn the primary actor of danger, and whether the defendant communicated that willingness to . . . [a] primary actor.

(continued)

> . . . I'm always puzzled by an argument by the State when they present every piece of evidence that my client is the principal, and the only principal, and then you're coming and saying that he is also an accomplice.
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> * * *
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> [I]f you believe that my client showed up with a gun, went down there and shot him, then he is the principal of every single act.
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> He's the principal of shooting at Dondre Wilson and killing him. He's the principal of attempted murder, because he shot into a car of people. He is the principal of reckless endangerment. He's the principal of a handgun. He's the principal of the assault. He is that person.

The court rejected the argument and, over defense counsel's objections, gave the instruction to the jury.

Mr. Purnell now contends that the court "abused its discretion by [so] instructing the jury," because "that alternative theory of [Mr. Purnell's] guilt was neither argued by the prosecution nor generated by any of the evidence at trial." (Emphasis omitted.) We disagree. The State produced evidence that Mr. Purnell, at Mr. Brittingham's request, drove himself and Mr. DeShields to the apartment complex. When Mr. Brittingham told Mr. Purnell that he did not have a gun, Mr. Purnell stated: "[T]hat's alright, I got it." Mr. Purnell subsequently drove Mr. Brittingham, Mr. DeShields, and Mr. Copes to the location where Mr. Brittingham had been robbed. When Mr. Brittingham described to the other men how he had "been jumped and robbed," Mr. Purnell stated: "[W]e gonna get 'em." After Mr. Copes "heard two guns cock back" from the area in which Mr. Purnell and Mr.

(Brackets omitted.)

DeShields were sitting, Mr. Purnell accompanied Mr. DeShields to the car in which the victims were located. Mr. Purnell asked Mr. Brittingham to identify the victims prior to Mr. Purnell opening fire. After the shooting, Mr. Purnell drove Mr. DeShields away from the site of the shooting. We conclude that this evidence was sufficient to generate an instruction that Mr. Purnell, with the intent to make the offenses happen, knowingly aided, counseled, commanded, or encouraged the commission of the offenses, or communicated to a primary actor in the offenses that Mr. Purnell was ready, willing, and able to lend support, if needed. Hence, the court did not abuse its discretion in instructing the jury as to accomplice liability.

Mr. Purnell next contends that the evidence is insufficient to sustain the convictions. Mr. Purnell contends that because "there were so many inconsistencies and so much cause to doubt the veracity of" Adrian, Ms. Hudson, and Mr. Copes, and because "there was no physical evidence connecting [Mr. Purnell] to the crime," the decision of the Supreme Court of Maryland (formerly known as the Court of Appeals of Maryland)[2] in *Kucharczyk v. State*, 235 Md. 334 (1964), requires "revers[al] without retrial." We disagree. In *Kucharczyk*, the prosecuting witness, who was an intellectually disabled 16-year-old boy with an I.Q. of 56, gave contradictory testimony about whether the assault and battery

[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* Rule 1-101.1(a) ("[f]rom 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").

allegedly committed by Mr. Kucharczyk had occurred. *Id.* at 336-37. Reversing Mr. Kucharczyk's conviction, the Supreme Court of Maryland stated that "if any witness's testimony is itself so contradictory that it has no probative force, a jury cannot be invited to speculate about it or to select one or another contradictory statement as the basis of a verdict." *Id.* at 338 (internal citation and quotations omitted). Since *Kucharczyk*, however, both the Supreme Court of Maryland and this Court have made clear that "[t]he doctrine set forth in *Kucharczyk* is extremely limited in scope." *Smith v. State*, 302 Md. 175, 182 (1985) (citations omitted). *See also Vogel v. State*, 76 Md. App. 56, 59 (1988) ("[s]ome appreciation of the limited utility of the so-called *Kucharczyk* doctrine may be gathered from the fact that it was never applied pre-*Kucharczyk* in a criminal appeal and it has never been applied post-*Kucharczyk* in a criminal appeal" (internal citation omitted)). In fact, we have recently stated that

> the so-called *Kucharcyzk* Doctrine, if it ever lived, is dead. It has been dead for a long time. Forget it. Damaged credibility is not necessarily inherent incredibility.

Rothe v. State, 242 Md. App. 272, 285 (2019) (underlining omitted) (italics added).

Here, there were no internal inconsistencies in the testimony of Adrian, Ms. Hudson, or Mr. Copes that rise to the level of those at issue in *Kucharczyk*. Any such inconsistencies or cause to question the witnesses' veracity affected the reliability of their testimony, not its sufficiency, and were ultimately for the jury to resolve. We conclude that the witnesses' testimony was sufficient to sustain Mr. Purnell's convictions.

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

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0650s22cn.pdf