Circuit Court for Charles County
Case No. C-08-CR-17-000007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0684

September Term, 2018

TYREL JAVONTE ADAMS

v.

STATE OF MARYLAND

Wright,
Beachley,
Wilner, Alan M.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: September 13, 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.

On February 14, 2018, a jury in the Circuit Court for Charles County convicted Tyrel Javonte Adams, appellant, of the following crimes: robbery with a dangerous weapon; using a firearm in the commission of a crime of violence; first-degree assault; robbery; theft in an amount under $1,000.00; illegal possession of a shotgun; conspiracy to commit robbery with a dangerous weapon; conspiracy to commit first-degree assault; and conspiracy to commit robbery. Adams' convictions arose from an armed robbery that he committed on April 18, 2017. Adams now challenges his convictions and presents the following questions for our review:

1. Was the evidence insufficient to support the convictions?
2. Did the trial court err in admitting a prior statement of the State's primary witness?
3. Did the trial court err and/or abuse its discretion in admitting a record of [Adams'] phone calls to the spouse of an alleged co-conspirator?
4. Did the trial court err in admitting Detective Gregory's statement about the relationship between two individuals connected to the case?
5. Did the trial court impose an illegal sentence?

For the reasons presented below, we answer Adams' first four questions in the negative and affirm the circuit court's judgment on those issues. However, we answer the fifth question in the affirmative and remand this case to the circuit court for proceedings consistent with this opinion.

BACKGROUND

At approximately 5 a.m. on April 18, 2017, four men committed an armed robbery at the "Dash In" convenience store in White Plains, Maryland. Just before the robbery took place, Duane Izlar, the night shift cashier at the Dash In, and James Rawlings, a customer, were smoking cigarettes outside of the store. While they were standing there, a van pulled up to the store and four men, at least several of whom were in ski masks, got out of the van. The men ordered Izlar and Rawlings into the store and onto the ground; Izlar got down on the floor behind the cash register, and Rawlings got on the floor near the front door.

Rawlings later testified that he saw one of the men carrying a shotgun, and that he heard two gunshots while the men were in the store. After the men left the store, Izlar stood up and saw that the "wall ha[d] been shot[.]" He then called the owner of the store and the police. The owner later determined that the perpetrators took $300.00 from the cash register and approximately ten packs of cigarettes. Later in the day, police found a burned van approximately one or two miles from the Dash In. Two latex gloves were collected from the ground near the vehicle.

Surveillance video, that was later introduced at trial, showed that the entire robbery took approximately thirty seconds. The video depicts four individuals running into the store; two wore dark hooded tops and dark pants, one wore a red jacket, and one wore camouflage pants. The perpetrators' clothing and general body types were the only distinguishing characteristics visible in the video.

On May 17, 2017, Detective Charles Gregory, a detective in the Robbery Unit of the Charles County Sheriff's Office's Criminal Investigation Division, interviewed Anthony Walls about the robbery. During the interview, Walls told Detective Gregory that he performed the robbery with three men: Adams, Nathan Proctor, and Corey Kelton. After concluding the interview, Detective Gregory obtained a search warrant for Nathan Proctor's residence, 7276 Carroll Drive. On May 23, 2017, police executed the search warrant and seized a black and gray jacket, two pairs of camouflage pants, a mask, several latex gloves, a duffle bag, several boots, Proctor's identification card, and a black ski mask. Proctor and Kelton were both arrested after the warrant was executed, and Adams was arrested on June 16, 2017.

Pursuant to a plea agreement, Walls testified at trial as a witness for the State. For his involvement, Walls pled guilty to conspiracy to commit robbery. In exchange for his plea and testimony, the State agreed to postpone Walls' sentencing until after Adams' trial and agreed that Walls' sentence would not exceed five years of active incarceration. The State did so despite the fact that Walls' record contained other convictions for conspiracy to commit robbery and theft.

At trial, Walls explained that at about 4 or 5 a.m. on the night in question, he was walking to meet up with a friend when a van stopped next to him. He got into the van and immediately saw Adams, Proctor, Kelton, and a driver he did not recognize. When he initially entered the van, Walls thought the group was "just gonna go chill, and like, just smoke or something like that." However, he quickly learned the men were planning

to rob the Dash In when they began putting on gloves and masks. Walls stated that the group robbed the Dash In at about 5 a.m. He testified that, after the robbery, the men abandoned and burned the van; they also burned the latex gloves they wore during the robbery. After burning the van, the men drove another vehicle to an unknown person's house. Walls did not receive any proceeds from the robbery.

During his testimony, Walls was shown a photograph from the Dash In surveillance video. He identified the men in the video as Adams, Proctor, Kelton, and himself. Walls was the only witness who identified Adams as one of the perpetrators.

Detective Gregory also testified during the trial. As explained above, Detective Gregory obtained a search warrant for Proctor's residence and ultimately recovered several items that were the same as those shown on the Dash In surveillance video. Detective Gregory reviewed the contents of a digital video recorder ("DVR") that was also found at Proctor's residence. The DVR contained footage from a surveillance camera, including one clip, dated May 20, 2017, showing Adams, Kelton, Proctor, and Proctor's wife, Tiffany Wedding, standing in the carport of the residence.[1]

At the conclusion of trial, the jury convicted Adams of nine crimes related to his involvement in the Dash In robbery. Adams now appeals his convictions to this Court.

DISCUSSION

I. Sufficiency of the Evidence

[1] The State presented additional evidence against Adams, which will be discussed in further detail below.

Adams moved for judgment of acquittal twice during trial - once at the close of the State's case, and again at the close of all the evidence. In both instances, Adams argued that "there was insufficient corroboration of Walls' testimony that [he] had participated in the charged offenses." The circuit court denied both motions. On appeal, Adams argues that "the [circuit] court should have granted [his] motions for judgment of acquittal, because the State presented insufficient evidence to corroborate Walls' testimony." In response, the State contends that "[Walls'] testimony was corroborated by a combination of direct evidence connecting Adams to the perpetrators of the robbery and circumstantial evidence identifying Adams as one of the robbers."

This Court has previously described the standard for reviewing a challenge to the sufficiency of the evidence as follows:

> The test of appellate review of evidentiary sufficiency is 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. The Court's concern is . . . only with 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 offense charged beyond a reasonable doubt. We must give deference to all reasonable inferences that the fact-finder draws, regardless of whether the appellate court would have chosen a different reasonable inference. Further, we do not distinguish between circumstantial and direct evidence because a conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.

Donati v. State, 215 Md. App. 686, 716 (2014) (cleaned up).[2]

[2] The Court of Appeals recently explained the recent increase in use of "cleaned up" as a parenthetical. The parenthetical "signals that the current author has sought to improve readability by removing extraneous, non-substantive clutter (such as brackets,

At the time of this trial, "[it was] firmly established in this State that a person accused of a crime may not be convicted [only] on the uncorroborated testimony of an accomplice." *Turner v. State*, 294 Md. 640, 641-42 (1982). In State of Maryland v. Jones, ___ Md. ___, No. 52, September Term, 2018, the Court of Appeals abrogated that rule and held that the jury, after proper instruction about the possible unreliability of accomplice testimony, is entitled to weigh the sufficiency of such evidence without the need for independent corroboration. *Jones,* slip op. at 20. The holding does not apply to this case because the ruling is solely prospective. *Id.* at 22.

Under the rule applicable here, only "slight corroboration" is necessary to verify accomplice testimony. *Turner*, 294 Md. at 642. This "slight corroboration" requirement is a very low bar, as it provides a "safeguard against depriving the factfinder of evidence from a source intimately connected with the crime." *Id*. The Court of Appeals has explained "slight corroboration" as follows:

> Not much in the way of evidence corroborative of the accomplice's testimony has been required by our cases. We have, however, consistently held the view that while the corroborative evidence need not be sufficient in itself to convict, it must relate to material facts tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself. If with some degree of cogency the corroborative evidence tends to establish either of these matters, the trier of fact may credit the accomplice's testimony even with respect to matters as to which no corroboration was adduced. That corroboration need not extend to every detail and indeed may even be circumstantial is also settled by our cases.

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quotations marks, ellipses, footnote signals, internal citations, or made un-bracketed changes to capitalization) without altering the substance of the quotation." *Lopez v. State*, 458 Md. 164, 195 n.13 (2018).

Brown v. State, 281 Md. 241, 244 (1977) (cleaned up). "[W]hether the test is met . . . depend[s] upon the facts and circumstances, and the inferences deducible therefrom, in each case." *McDowell v. State*, 231 Md. 205, 212 (1963) (quotation omitted).

As for the evidence, which "identif[ies] the accused with the perpetrators of the crime," *Brown*, 281 Md. at 244, the State presented: (1) "records from Adams'[] Facebook account, registered under the moniker 'Bossman Savage,' which included a photograph of Adams and Kelton[3] at Proctor's house, and a series of text messages, dated May 19, 2017, between Adams and Kelton, in which Adams asks Kelton, 'Where nate,' and upon being told, 'We on the way back down,' replies, 'Okay ask him can I wash [sic] my clothes;'" and (2) "surveillance video from Proctor's house, recorded on May 20, 2017, [depicting] Adams, Kelton, and Proctor interacting at the house's front entrance."

We next turn to the corroborating evidence, which "shows the participation of the accused in the crime itself." *Brown*, 281 Md. at 244. It is first important to note that Walls identified Adams in the Dash In surveillance as the person wearing an orange mask, a hooded gray and black jacket, black boots with yellow stripes on the soles, and camouflage pants. Four days after Adams messaged Kelton about doing laundry at Proctor's house, and three days after surveillance video showed Adams at Proctor's house, police "executed a search warrant at [Proctor's] house and found various clothing

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[3] Detective Gregory identified the man in the photograph with Adams as "Corey Feldman." However, as the State explains, "the prosecutor later referred to the same person as Corey Kelton, and there was no one named 'Corey Feldman' in the case, so it seems clear that the detective either misspoke or his testimony was mistranscribed."

items consistent with those worn by the robbers." Those clothing items included "a hooded gray and black jacket . . . ; two pairs of camouflage pants, one in a laundry basket and a second hung in a closet; and a pair of black boots with yellow stripes on the soles found in the trunk of Proctor's car." The State also presented evidence that Adams' height was similar to the robber in the orange mask, and that on May 26, 2017, Adams posted a photograph to Facebook showing him wearing camouflage pants and dark boots.

This evidence, taken in total, sufficiently corroborates Walls' testimony that Adams participated in the Dash In robbery. As we explained above, whether enough evidence has been produced to satisfy the "slight corroboration" requirement "depend[s] upon the facts and circumstances, and the inferences deducible therefrom, in each case." *McDowell*, 231 Md. at 212 (citation omitted). Here, the State presented corroborating evidence to establish that: (1) Adams communicated with Kelton about doing laundry at Proctor's house on May 19, 2017; (2) Adams was actually present at Proctor's house on May 20, 2017; and (3) three days after Adams was at Proctor's house, police found clothing that matched the clothing worn by the individual in the surveillance video that Walls identified as Adams.

In sum, this evidence supports the inference that Adams communicated with Kelton and Proctor about the clothes that were found in Proctor's house on May 23, 2017, and that those clothes were the same clothes that Walls said Adams wore in the armed robbery. The degree to which this evidence connects Adams to the other perpetrators and to the crime itself is heightened when considering the photographs of

Adams and Kelton at Proctor's house, as well as that of Adams in camouflage pants. We therefore conclude that, at a minimum, the evidence presented by the State "slightly corroborates" Walls' testimony, and we hold that the circuit court did not err in allowing Walls' testimony about Adams' participation in the robbery.[4]

Adams relies on *Foxwell v. State*, 13 Md. App. 37 (1971), to argue that this evidence is insufficient to identify Adams with the perpetrators of the crime. In that case, Foxwell was convicted of "being an accessory before the fact to an armed robbery." *Foxwell*, 13 Md. App. at 38. His conviction was based on the testimony of an accomplice, who explained how he and Foxwell allegedly planned the robbery. *Id*. at 38-39. The State attempted to corroborate the accomplice's testimony by "identifying [Foxwell] with the perpetrators of the crime[.]" *Id*. at 39. The *only* corroboration came from "[Foxwell] himself" admitting "to a police officer he had talked to [the accomplice] several hours before the robbery[.]" *Id*. Noting that "[t]he admitted conversation by [Foxwell] with [the accomplice] occurred several hours earlier and eight blocks from the scene[,]" the Court held that this evidence was "too remote in time and place from the commission of the crime to be adequate corroboration under all the circumstances." *Id*. at 40-41.

[4] We also note that: (1) Walls' DNA was not found on any of the physical evidence that was tested; (2) in the May 20, 2017, surveillance video, Kelton was wearing camouflage pants; and (3) Detective Gregory testified that he could not determine the height of the person in the orange mask in the Dash In surveillance video. These facts, however, do not alter our conclusion that the State has presented sufficient evidence to at least "slightly corroborate" Walls' testimony about Adams' involvement in the armed robbery.

We disagree with Adams' application of *Foxwell*. Unlike in *Foxwell*, the State here produced a variety of evidence that connected Adams to the perpetrators of the crime and to the crime itself. If, as was the case in *Foxwell*, the State produced only *one* piece of evidence connecting Adams to the perpetrators of the crime, such as *only* the Facebook messages or *only* the video from May 20, 2017, then this Court may have reached the same conclusion as in *Foxwell*. However, the State produced more than this, and that, in itself, distinguishes this case from *Foxwell*. We therefore conclude that the *Foxwell* holding does not apply here.

In light of the evidence presented, we reiterate our holding that the State slightly corroborated Walls' testimony, thereby satisfying the low bar for the admissibility of accomplice testimony. Further, we hold that the circuit court did not err in finding the evidence sufficient to convict Adams, because "after viewing the evidence in the light most favorable to the prosecution, [a] rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Donati*, 215 Md. App. at 718.

II. Walls' Prior Statements to Detective Gregory

After Walls testified, the State attempted to move an audio recording of his interview with Detective Gregory into evidence. Significantly, the interview occurred after he was under investigation for robbery. The State did so to rebut the allegation that Walls lied about Adams' involvement in the robbery to obtain a favorable sentence.

Despite Adams' objection, the recording was admitted as a prior consistent statement under Md. Rule 5-802.1(b).[5]

Walls now challenges the admission of that recording. Walls is correct that Md. Rule 5-802.1(b) applies only when the prior statement was made before *all* possible motives to fabricate arose. Adams argues that the exception did not apply, and the statement should not have been admitted. In response, the State avers that the timing of the *alleged* motive to fabricate is crucial, and that the only motive alleged by Adams at trial was Walls' plea deal. The State maintains that Adams did not preserve for appeal the argument that Walls was motivated to lie to Detective Gregory because he was under investigation for the robbery.

We review the circuit court's determination on the application of the hearsay exception under the *de novo* standard, but the court's "factual findings . . . will not be disturbed absent clear error[.]" *Gordon v. State*, 431 Md. 527, 538 (2013).

In *Holmes v. State*, 350 Md. 412, 417-18 (1998), the Court of Appeals explained the rationale behind the hearsay exception in Md. Rule 5-802.1(b):

> As a general rule, prior out-of-court statements made by a witness that are consistent with the witness's[:] trial testimony are not admissible to bolster the credibility of a witness. The general rule has an exception where a witness' credibility is attacked by an implication of fabrication or improper influence or motive; then, the witness' prior consistent statements are admissible if *made before* the alleged fabrication or improper influence or

[5] Md. Rule 5-802.1 covers "statements previously made by a witness who testifies at the trial . . . and who is subject to cross-examination concerning the statement." Under Md. Rule 5-802.1(b), such statements are admissible when they are "consistent with the declarant's testimony, [and are] offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive[.]"

> motive existed. The rationale behind the common-law, "pre-motive" rule was that if a witness has been attacked by a charge of bias, interest, corrupt influence, contrivance to falsify, or want of capacity to observe or remember, the applicable principle is that the prior consistent statement has no relevancy to refute the charge unless the consistent statement was made *before* the source of the bias, interest, influence, or incapacity originated. At common law, a prior consistent statement was admissible only to rehabilitate the witness's credibility and not as substantive evidence.

(Cleaned up) (first emphasis added). "Md. Rule 5-802.1(b) retains the common law 'pre-motive' requirement." *Thomas v. State*, 429 Md. 85, 101 (2012).

In *Thomas*, the Court of Appeals explained that "the timing of the alleged fabrication is crucial to the application of Md. Rule 5-802.1(b)." *Id.* at 103. For example, "when the witness is obviously under investigation or has been arrested when the statements were made, the witness' prior statements are generally inadmissible because the motive to fabricate has already arisen." *Id.* (cleaned up) (footnote omitted). The Court noted, however, that a witness' "pre-statement motive to fabricate must have been '*raised in the case*,' *e.g.*, expressly or impliedly, but before the trial judge's determination as to the admissibility of the prior consistent statement." *Id.* at 103 n.1 (emphasis added). This requirement is in line with Md. Rule 8-131(a), which states that appellate courts may review only those issues which "plainly appear[] by the record to have been raised in or decided by the trial court."

Here, when the State sought to introduce the audio recording of Walls' interview with Detective Gregory into evidence, a lengthy discussion between the circuit court, the State, and defense counsel ensued. First, the State cited *Acker v. State*, 219 Md. App. 210 (2014), to support its argument that the recording should be admitted as a prior consistent

statement. The State argued that *Acker* stood for the concept that, if a witness has multiple motives to fabricate, a prior consistent statement could be admitted, so long as it predates one of those motives. Though Adams now correctly points out that the State's interpretation of *Acker* was not valid,[6] defense counsel made no objection to the way the case was characterized at trial.

After the discussion of *Acker*, defense counsel questioned "the State's ability to establish the timing of the plea deal in relation to Walls' statement." At the end of that discussion, the following exchange occurred:

> [STATE]: . . . [T]he point is that . . . the [d]efense says the plea deal is the inciting event to get Mr. Walls to be inconsistent. He gave a statement that was consistent with his trial testimony months before the plea deal.
>
> [DEFENSE COUNSEL]: Well . . . well, actually . . . well, I don't need to tell them what I'm going to argue. That's fine.
>
> [THE COURT]: Okay. It does come in under [Md. Rule] 5-801.1(b)[.]

Despite this exchange, Adams now contends that he *implicitly* raised the notion that Walls was motivated to lie because he was under investigation for the robbery. *See Thomas*, 429 Md. at 103 n.1. Adams asserts that this additional motive to fabricate was

[6] In his brief, Adams explains that "[c]ontrary to the prosecutor's representation, [the Court of Special Appeals] in *Acker* held that 'when a witness[] motive to lie could stem from more than one event, the witness' prior consistent statements are admissible under the rule only if they were made prior to all of the events that could have given rise to the motive to fabricate.' *Acker*, 219 Md. App. at 232."

raised during opening statement[7] and during defense counsel's cross-examination of Walls.[8]

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[7] Adams points to the following portion of defense counsel's opening statement as evidence that Walls' additional motives to fabricate were raised implicitly:

> [DEFENSE COUNSEL]: Now, the State has told you that there is going to be an individual who did not commit this robbery, that gets up there and tells you that my client was involved. Well, we all know that people do come to court and testify for reasons of personal gain.
>
> What you will hear is that this person has not been sentenced. He is testifying in this case, and it will come out, the evidence will show, that he has reasons to believe that he will gain from what he is doing.

[8] Adams cites the following portion of his cross-examination of Walls as evidence that Walls' additional motives to fabricate were raised implicitly:

> [DEFENSE COUNSEL]: Okay. And your interview with the police took about two hours, correct?
>
> * * *
>
> [WALLS]: I don't really know how much--
>
> [DEFENSE COUNSEL]: But it was a long time, right?
>
> [WALLS]: Um . . . not that I know of. I mean, it was a little bit, I guess.
>
> * * *
>
> [DEFENSE COUNSEL]: Initially when you talked to them, . . . you did not name anyone that you were claiming was involved in this situation, correct?
>
> [WALLS]: I did name them.
>
> * * *
>
> [DEFENSE COUNSEL]: You immediately, as soon as the officers talked to you, you named people[?]

As a preliminary point, we are not convinced that Adams implicitly alleged that Walls lied to Detective Gregory because he was under investigation. In her opening statement, defense counsel stated that "people do come to court to testify for reasons of personal gain[,]" and she informed the jury that Walls had not yet been sentenced. Though she spoke of plural "reasons," she did so in the context of a broad assertion about "people" coming to court to testify; she did nothing to suggest that there was anything other than the plea deal that may have induced Walls to lie. In her cross-examination of Walls, defense counsel asked Walls about the circumstances surrounding his interview

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> [WALLS]: Yeah . . . yes.
>
> [DEFENSE COUNSEL]: Okay. And the plea agreement that you received from the State, you have already pled guilty to this crime that you are here testifying on, right?
>
> [DEFENSE COUNSEL]: And you have not received a sentence[?]
>
> [WALLS]: Right.
>
> [DEFENSE COUNSEL]: And they are not going to sentence you until after you testify here, right?
>
> [WALLS]: Right.
>
> *　　*　　*
>
> [DEFENSE COUNSEL]: And they promised you, though, that they would not sentence you to more than five years, correct?
>
> [WALLS]: Correct.
>
> *　　*　　*

with Detective Gregory, but she failed to raise any questions that suggested a motive to fabricate other than the plea deal.

Even more important than what defense counsel may have argued implicitly, however, is what she stated explicitly. When faced directly with the fact that the prosecutor believed Walls' alleged motive to fabricate was the plea deal he received from the State, defense counsel did not correct this understanding. Instead, she merely stated, "I don't need to tell them what I'm going to argue. That's fine."

Based on this statement, there is no need for this Court to infer whether Adams raised a motive to fabricate other than the plea deal; when given the opportunity to allege an additional motive to fabricate, defense counsel said nothing. And, as explained above, the explicit statements that defense counsel made at trial all seem to allege that Walls was motivated to fabricate his testimony only because he was offered a plea deal by the State. It follows, that Adams' argument on the application of Md. Rule 5-802.1(b) is not preserved for our review, and we will not address the substance of the claim.

This outcome is consistent with the purpose of Md. Rule 8-131(a), which is "to prevent unfairness and require that all issues be raised in and decided by the trial court[.]" *Peterson v. State*, 444 Md. 105, 126 (2015) (cleaned up). "Put another way, the rule exists to prevent 'sandbagging' and to give the trial court the opportunity to correct possible mistakes in its rulings." *Id*. (cleaned up). Adams' counsel had numerous opportunities to clearly state an additional motive to fabricate but did not do so; Adams would now have this Court overlook the explicit statements made in the record to imply

that his counsel implicity raised other motives during trial. This is the exact kind of "sandbagging" that the *Peterson* Court sought to prevent, and in remaining consistent with the Court of Appeals, we will not permit such sandbagging here.

III. Adams' Phone Records

Before opening statements, Adams moved *in limine* to exclude telephone records showing he made 243 phone calls to a cell phone registered to Nathan Proctor's wife, Tiffany Wedding, from June 17, 2017,[9] to February 12, 2018. The cell phone was registered to Wedding at Nathan Proctor's address, 7276 Carroll Drive. This was the same location where officers executed a search warrant and recovered numerous items associated with the robbery. Adams argued that "just calling [someone] a number of times . . . [has] no probative value to this case[,] [and the record would only serve to] to prejudice the jury[.]" The circuit court reserved on its ruling and chose to delay a decision until the State attempted to move the records into evidence.

On the second day of trial, the State attempted to enter the phone records into evidence. Defense counsel again argued that the report was not relevant and would only serve to prejudice the jury. The circuit court ruled that the report was "a piece of the puzzle," and that it "is relevant . . . to connect [Adams] to the property, and to the evidence seized [at the property], and to the address[.]"

[9] June 17, 2017, was the day after Adams was incarcerated.

After the court determined that the report was relevant and admissible, Adams maintained his objection but agreed to a stipulation. The stipulation given to the jury stated the following:

> The phone number [------------] is registered to Tiffany Wedding, 7276 Carroll Drive, Bryan's Road, Maryland 20616. Tyrel Adams made 243 calls to this number from June 17th, 2017 to February 12th, 2018.

Adams now argues that the circuit court "erred and/or abused its discretion in admitting the record of Adams'[] phone calls, because that information was irrelevant and highly prejudicial." More specifically, Adams contends that "[t]he fact that Adams made 243 phone calls to Wedding . . . has no bearing on whether he committed crimes in the Dash In[,]" and that the phone records were "highly prejudicial" because they permitted the jury to "speculate" as to the contents of the phone calls.

In response, the State asserts that "evidence of Adams'[] frequent phone calls to Proctor's wife was relevant because the evidence made it more likely that Adams was acquainted with Proctor, which, in turn, made it more likely that he conspired with Proctor to commit the charged offenses." (Footnote omitted). The State further avers that though the "phone calls were prejudicial to Adams [because] they were damaging to his case, . . . [the records] were not *unfairly* prejudicial[.]"

We will begin our analysis by determining whether the record of Adams' phone calls was "relevant." "Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401.

Irrelevant evidence is inadmissible. Md. Rule 5-402. "[T]he '*de novo*' standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not [relevant]." *State v. Simms*, 420 Md. 705, 725 (2011) (alteration added).

Here, the State's theory of the case was that Adams, Walls, Proctor, and Kelton conspired to rob the Dash In. The existence of a conspiracy was, therefore, "a fact of consequence to the determination of the evidence." *See* Md. Rule 5-401. Despite Adams' arguments to the contrary, the record of Adams' calls to Wedding's cell phone made the existence of the alleged conspiracy "more probable." As the State contends, Adams' "frequent phone calls to Proctor's wife . . . made it more likely that Adams was acquainted with Proctor, which, in turn, made it more likely that he conspired with Proctor to commit the charged offenses." *See Winston v. State*, 235 Md. App. 540, 571 (2018) (explaining that evidence that alleged co-conspirators "[know] one another [is] relevant to show the existence of a conspiracy, [because] conspiracies between acquaintances [are] more common than conspiracies between utter strangers.") (internal quotations omitted).

Separately, the State asserted at trial that various items of clothing worn by Adams on the night of the robbery were found at Proctor's residence, 7276 Carroll Drive. On this point, we agree with the State that Adams' "frequent phone calls to a number registered to 7276 Carroll Drive corroborated Walls'[] identification of Adams by connecting him to the residence at which police found various items of clothing matching those worn by the robbers[.]" Taken one step further, his connection to the residents of

the home makes it "more probable" that the clothing items found at Proctor's residence were worn by Adams on the night of the robbery.

As mentioned above, Adams contends that "[t]he fact that [he] made 243 calls to Wedding . . . has no bearing on whether he committed the crimes" of which he was accused. We do not agree, as this argument mischaracterizes the standard under which post-crime behavior is considered relevant. Such conduct may be admissible under Md. Rule 5-403, not as conclusive evidence of guilt, but as circumstance tending to show a consciousness of guilt. *Parker v. State*, 115 Md. App. 252, 271 (2004). We have concluded that the record of Adams' calls to Wedding's cell phone meets and exceeds this bar, and we hold that the circuit court did not err in finding the phone record to be relevant evidence.

We next consider whether the phone record was unfairly prejudicial to Adams. Under Md. Rule 5-403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading of the jury[.]" The determination of whether evidence is unfairly prejudicial "requires review of the trial judge's discretionary weighing and is thus tested for abuse of that discretion."[10] *Simms*, 420 Md. at 725.

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[10] An abuse of discretion occurs:

> When the trial court exhibits a clear failure to consider the proper legal standard in reaching a decision. Abuse of discretion is not limited solely to those occurrences when a trial court misapplies a legal standard. A trial court also abuses its discretion when no reasonable person would take the view adopted by the trial court or when the court acts without reference to

In *Odum v. State*, 412 Md. 593, 615 (2010), the Court of Appeals explained that "the fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in [Md.] Rule 5-403." (Quotations and citations omitted). The Court noted that "[p]robative value is outweighed by the danger of '*unfair*' prejudice when the evidence produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case." *Id.* (quotations and citations omitted).

As we have explained above, evidence of Adams' phone calls to Wedding between June 17, 2017, and February 12, 2018, was probative of the alleged conspiracy between Adams, Proctor, and others, and was probative of his connection to the residents of 7276 Carroll Drive. Though this evidence is certainly damaging to Adams' case, we conclude that it is not unfairly prejudicial. Simply put, there is nothing about the phone record of Adams' calls to Wedding that could "produce such an emotional response that logic cannot overcome" the resulting prejudice. *Odum*, 412 Md. at 615.

Adams first contends that the phone record evidence would lead the jury to "speculate that Adams was having an affair with Wedding, or that they were talking about the robbery or something else incriminating." We disagree with this assertion, as

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> any guiding rules or principles. An abuse of discretion may also be found where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic.

Kusi v. State, 438 Md. 362, 385-86 (2014) (cleaned up).

the jury was told by the circuit court to base its verdict on "the evidence in this case." *See Ezenwa v. State*, 82 Md. App. 489, 518 (1990) ("We presume that jurors are able to, and do, follow instructions given by the court."). Adams' assertion that the jury may have speculated about the content of the phone calls is just that - pure speculation.

Adams further contends that, without knowing that he was incarcerated during the period that the calls were made, the jury could not have known that Adams could only make outgoing calls and not receive incoming calls. Adams argues that, without this knowledge, "the jury was led to believe that [he] was speaking to Wedding more frequently than he actually was." As the State asserts, evidence of Adams' incarceration was withheld from the jury to "minimize the potential unfair prejudice" that it may have caused. Further, regardless of the context in which the calls were made, the phone record remains probative of Adams' relationship to Proctor and to the residents of 7276 Carroll Drive.

Finally, Adams argues that "[t]he State enhanced the prejudicial nature of [the] evidence by arguing at length in closing argument that the call record established a connection to Proctor, and, therefore, to the items of clothing found in Proctor's house, which were used during the robbery." Adams' argument on this point clearly articulates the reasons why the record of Adams' calls to Wedding are both relevant, probative, and damaging to his case. His argument, therefore, does not alter our conclusion that the evidence was *not* unfairly prejudicial.

For these reasons, we conclude that the circuit court did not abuse its discretion in determining that the phone record was not unfairly prejudicial, and we hold such evidence was properly admitted at trial.

IV. Detective Gregory's Statement about the Relationship between Tiffany Wedding and Nathan Proctor

During the State's direct examination of Detective Gregory, the State showed him surveillance video from Proctor's house and asked him to identify the individuals shown in the video. The following colloquy ensued:

> [STATE]: And I see an individual, there's a dog, and there is an individual walking in the back. Were you able to identify the individual in the back there?
>
> DETECTIVE GREGORY: Yes.
>
> [STATE]: And who is that?
>
> DETECTIVE GREGORY: Her name is, it's Tiffany Wedding or Tiffany Proctor. She goes by both names that I am aware of.
>
> [STATE]: Okay. And do you know what relation she had to anyone in that house?
>
> DETECTIVE GREGORY: It's--
>
> [DEFENSE COUNSEL]: Objection.
>
> [THE COURT]: Yeah, only if he knows, if they developed this part of the investigation.
>
> [STATE]: Do you know what, if any, connection she has to any of the individuals in the house?
>
> DETECTIVE GREGORY: During this investigation and during previous investigations, it was noted that Tiffany Proctor and Nathan . . . Tiffany

> Wedding or Tiffany Wedding-Proctor, that female right there and Nathan Proctor are in a relationship and reside together at that residence.

Adams asserts that "Detective Gregory's statement that [Wedding] was in a relationship with Proctor and resided with him was inadmissible hearsay," and that "the trial court erred in allowing the testimony." More specifically, he contends "[t]he only reasonable inference that the jury could have drawn from [Detective Gregory's] statement was that some person had told [him] that Wedding was in a relationship with Proctor and lives with him at the house on 7276 Carroll Drive." In response, the State asserts that Adams' claim is unpreserved, as defense counsel failed to request additional relief after the court stated "[y]eah, only if he knows, if they developed this part of the investigation." The State also argues that even if the claim is preserved, it should be denied because "the detective's testimony included no hearsay, express or implied."

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Unless permitted by an exception to the rule, "hearsay is not admissible." Md. Rule 5-802. "Whether evidence is hearsay is an issue of law reviewed *de novo*." *Parker v. State*, 408 Md. 428, 436 (2009) (quotation & citation omitted).

Assuming, *arguendo*, that Adams' hearsay claim was preserved, we hold that Detective Gregory's statements do not constitute inadmissible hearsay. There is no basis upon which this Court could conclude that Detective Gregory acquired his knowledge about the relationship between Proctor and Wedding through an out-of-court statement. As the State avers, "[Detective Gregory] had seen surveillance video from [Proctor's]

home, he had executed a search warrant there, and had apparently investigated its occupants multiple times." Detective Gregory also determined through his investigation that Tiffany Wedding also used the last name "Proctor" or "Wedding-Proctor." Based on the extent to which Detective Gregory investigated Proctor, it was entirely reasonable for him to have learned that Proctor and Wedding were in a relationship through what he observed. We conclude that Detective Gregory's statements about the relationship between Proctor and Wedding did not constitute hearsay under Md. Rule 5-801(c), and we hold that the circuit court properly admitted such statements at trial.

V. Adams' Sentence

Adams was convicted of two separate conspiracy-related charges: (1) Count 11, conspiracy to commit armed robbery of Izlar; and (2) Count 14, conspiracy to commit first-degree assault of Rawlings. For Count 11, the circuit court imposed a twenty-year sentence, all suspended, and for Count 14, the court imposed a ten-year sentence, consecutive to Count 11, all suspended. Both parties agree, as does this Court, that the sentence for Count 14 is illegal.

In *Tracy v. State*, 319 Md. 452, 459 (1990), the Court of Appeals explained that "[i]t is well settled in Maryland that only one sentence can be imposed for a single common law conspiracy no matter how many criminal acts the conspirators have agreed to commit. The unit of prosecution is the agreement or combination rather than each of its criminal objectives." Here, the State alleged that Adams participated in a *single* conspiracy involving *multiple* crimes, so Adams may only be convicted and sentenced for

a single conspiracy. We therefore vacate the conviction and sentence imposed for Count 14, and remand this case to the circuit court for proceedings consistent with this opinion. *See Johnson v. State*, 427 Md. 356, 378 (2012) ("When the illegality of a sentence stems from the illegality of the conviction itself, [Md.] Rule 4-345(a) dictates that both the conviction and sentence be vacated."); *see also Jordan v. State*, 323 Md. 151, 162 (1991) (holding that the conviction and sentence for the less severe crime must be vacated when appellant was convicted of conspiracy to commit robbery and conspiracy to commit murder).

THE SENTENCE ON COUNT 14 IS VACATED AND REMANDED FOR RESENTENCING. THE JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY IS OTHERWISE AFFIRMED. APPELLANT TO PAY FOUR-FIFTHS OF THE COST. CHARLES COUNTY TO PAY ONE-FIFTH.