Circuit Court for Baltimore City
Case No. 118071008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 946

September Term, 2019

GILBERT GARDNER

v.

STATE OF MARYLAND

Fader, C.J.,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: April 16, 2020

A jury sitting in the Circuit Court for Baltimore City convicted Gilbert Gardner, the appellant, of first-degree murder, conspiracy to commit first-degree murder, and use of a firearm in the commission of a crime of violence. Mr. Gardner contends that his conviction must be reversed for four reasons: (1) the trial court abused its discretion in asking a compound voir dire question during jury selection; (2) the trial court abused its discretion in admitting lay opinion testimony; (3) the trial court abused its discretion in excusing a seated juror during trial; and (4) the evidence was insufficient to sustain the convictions. We conclude that the court did not abuse its discretion and that the evidence was sufficient to sustain the convictions. Accordingly, we will affirm the judgments.

BACKGROUND

The Underlying Incident and Trial Evidence

On February 13, 2018, Sadik Griffin was shot seven times and killed on the 3800 block of Elmley Avenue in Baltimore. Mr. Gardner was arrested in connection with the shooting and charged with murder, conspiracy to commit murder, and use of a firearm in the commission of a crime of violence.

The evidence at trial included the following:

- Kimberly Sedlak testified that she was in the kitchen of her home, located on Chesterfield Avenue between Juneway and Elmley Avenue, when she heard "five or six" gunshots. Seconds later, she looked out her back window, facing an alleyway connecting Juneway and Elmley Avenue, and saw an African-American male running "hurriedly, very fast" up the alley towards Juneway. Ms. Sedlak testified that she then exited her house, "looked down the alley," and saw a body lying in front of a store located on Elmley Avenue.

- Two security cameras posted at a house in the area of Chesterfield Avenue and Juneway captured audio and video from around the time of the shooting. One video, taken by a camera facing Chesterfield Avenue, shows a silver

BMW driving away from the 3800 block of Elmley Avenue around the time of the shooting. The second video, taken by a camera facing the alleyway connecting Juneway and Elmley Avenue, shows a silver BMW stopping on Juneway. An unidentified man then exits the passenger seat of the vehicle, closes the door, and walks up the alleyway toward Elmley Avenue. Approximately ten to 15 seconds later, the passenger-side door of the vehicle opens from the inside and the same unidentified man runs back to the vehicle. The man then enters the vehicle through the open passenger-side door, and the vehicle drives away.

- The State also introduced into evidence video footage taken by a third security camera, facing the intersection of Juneway and Chesterfield Avenue, which was posted at a different house in the area. That camera captured a silver BMW driving away from the 3800 block of Elmley Avenue around the time of the shooting.

- Richard Shoemaker, who lived in the 3900 block of Chesterfield Avenue, testified that he was taking groceries from his car into his home when he "observed a vehicle pull up across the street." He observed the driver exit the vehicle and greet another person who had come out of a nearby house. The driver then "jumped back in the driver's seat of the vehicle" and "took off at a fast rate of speed." "Within the next 2 or 3 minutes," Mr. Shoemaker "heard like six to ten gunshots." The State introduced into evidence video footage taken from a security camera posted at Mr. Shoemaker's house and facing Chesterfield Avenue. The video shows a silver BMW stopping in front of a home across the street. The driver then exits the vehicle and greets a person who had come out of a nearby home. That person then appears to interact with someone in the BMW's passenger seat. Approximately one minute later, the vehicle's driver jogs back to the vehicle and drives away.

- Charles Thomas identified himself in testimony as the person shown interacting with the driver of the silver BMW in the video taken by Mr. Shoemaker's security camera. Mr. Thomas identified the driver as "Gil." In response to the prosecutor's question, "And the individual that you know as Gil, do you see that individual in the courtroom today?" Mr. Thomas initially replied, "Yeah," although he answered "No" when asked the question a second time.

- Mr. Gardner stipulated that he was the driver of the silver BMW depicted in the four videos. Mr. Gardner also stipulated that, when he was arrested two days after the shooting, he was wearing clothing that matched the clothing he had worn on the day of the shooting, as captured on the video taken by Mr. Shoemaker's security camera.

DISCUSSION

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ASKING A COMPOUND VOIR DIRE QUESTION DURING JURY SELECTION.

Mr. Gardner first argues that the trial court abused its discretion in asking a compound question during jury selection. The court posed the following question:

> This question has three parts, I believe. Once again, I'm going to ask you to stand if any one of them apply to you but I ask that you wait until I've asked all of the parts before you stand.
>
> If you have ever been charged with a crime similar to the types of charges in this case; if you ever have been the victim of a crime similar to the types charged in this case; or if you have ever had a negative experience with the criminal justice system that would affect your ability to decide this case fairly and impartially based on the evidence, please stand if any of those apply to you.

Several prospective jurors stood in response to the trial court's question.

Following voir dire, the court asked the prosecutor and defense counsel whether either had any objections or exceptions to the voir dire. Defense counsel stated that the final part of the question quoted above called upon the jurors to "evaluate their [own] fairness." The court agreed, but opined that the question was nonetheless acceptable because the final part was "not a necessary question" and "not required" under Maryland law.

Mr. Gardner concedes that the question at issue is not a mandatory question and that it was not requested by either the State or the defense, but contends that the court nonetheless abused its discretion in asking a question "that allowed the prospective jurors to make the call on their own impartiality with no consideration by the court of the facts supporting such a conclusion."

"Voir dire, the process by which prospective jurors are examined to determine whether cause for disqualification exists, is the mechanism whereby the right to a fair and impartial jury, guaranteed by Art. 21 of the Maryland Declaration of Rights, is given substance." *Dingle v. State*, 361 Md. 1, 9 (2000) (internal citations omitted). "To that end, 'on request, a trial court must ask a *voir dire* question if and only if the voir dire question is reasonably likely to reveal specific cause for disqualification.'" *Collins v. State*, 463 Md. 372, 376 (2019) (quoting *Pearson v. State*, 437 Md. 350, 357 (2014)). "There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a collateral matter is reasonably liable to have undue influence over a prospective juror." *Id.* This Court "review[s] the trial judge's rulings on the record of the voir dire process as a whole for an abuse of discretion." *Washington v. State*, 425 Md. 306, 314 (2012).

The Court of Appeals addressed the propriety of compound voir dire questions in *Dingle*, 361 Md. 1. There, during jury selection, the defendant requested that the trial court ask a series of questions regarding whether prospective jurors "had certain experiences or associations" (i.e., whether they had been "victim[s] of crime[s]" or were "member[s] [of] any victims' rights group[s]"). *Id.* at 3 & n.3. The court agreed, but merged with each of the defendant's requested inquiries a further question asking "whether the experience or association . . . would affect the prospective juror's ability to be fair and impartial." *Id.* at 3-4. The court instructed each prospective juror to stand only "if your answer is yes to both parts of the question." *Id.* at 5. Reversing the convictions, the Court of Appeals held

that the trial court had erred in posing the compound questions. *Id.* at 21. The Court observed that the trial judge, not "the venire or the individual venire persons," "must decide whether, and when, cause for disqualification exists for any particular venire person." *Id.* at 14-15. By asking jurors to divulge certain experiences or associations only if they first concluded that they could not be fair and impartial as a result, the trial court had (1) failed to exercise its "responsibility to decide . . . whether any of the venire persons occupying the questioned status or having the questioned experiences should be discharged for cause," and (2) "denied [the defendant] the opportunity to discover and challenge venire persons who might be biased." *Id.* at 17.

In *White v. State*, 374 Md. 232 (2003), the Court revisited the issue of compound voir dire questions. There, even though certain questions were posed in the same compound manner as in *Dingle*,[1] the Court affirmed the convictions. *Id.* at 238-48. The Court explained that, although "disapproved *Dingle*-type questions, *standing alone*, would constitute reversible error," the trial judge's use of compound questions in *White* was not erroneous. *Id.* at 242. When viewed as a whole, the record established that "the painstaking individual *voir dire* conducted by the trial judge created a reasonable assurance that partiality and bias would have been uncovered." *Id.*

[1] By way of example, one of the questions asked was: "Is there any prospective juror . . . who has ever been employed in any fashion at any time by any type of law enforcement agency, either civilian or military, and because of that employment you believe that you could not render a fair and impartial verdict in this case?" *White*, 374 Md. at 237.

More recently, the Court addressed the use of compound questions in connection with mandatory "strong feelings" voir dire questions. *See Pearson v. State*, 437 Md. 350, 360 (2014) ("[O]n request, a trial court must ask during voir dire whether any prospective juror has 'strong feelings about' the crime with which the defendant is charged." (quoting *State v. Shim*, 418 Md. 37, 54 (2011), *abrogated on other grounds by Pearson*, 437 Md. 350)). In *Pearson*, the Court held that, when a requested voir dire question is mandatory—i.e., "reasonably likely to reveal [specific] cause for disqualification," *id.* at 357 (quoting *Moore v. State*, 412 Md. 635, 663 (2010))—the use of "*Dingle*-type" compound questions constitutes reversible error. *Id.* at 363-64.

Last year, in *Collins v. State*, 463 Md. 372, the Court reaffirmed that when a voir dire question is mandatory, "it is improper for a trial court to ask the . . . question in compound form." *Id.* at 379. In so holding, the Court rejected an argument by the State that other questions asked by the trial judge adequately "substitute[d] for a properly-phrased 'strong feelings' question." *Id.* at 398. The other questions included whether prospective jurors "had something happen to [them] in the past that would prevent [them]" from reaching a fair verdict; whether they "would allow sympathy, pity, anger[,] or any other emotion to influence [their] verdict in any way"; and whether, for "any other reason," they could not "be [ ] fair and impartial juror[s] in this case." *Id.* at 398-99. The Court made clear, however, that the additional questions asked by the trial court were not themselves improper:

> To be clear, a trial court may ask the "something in the past," "sympathy, pity, anger, or any other emotion," and "catchall" questions. Our point with

> regard to the "something in the past," "sympathy, pity, anger, or any other emotion," and "catchall" questions is that . . . [they] did not substitute for properly-phrased "strong feelings" questions.

Id. at 400.

Against that backdrop, we hold that the trial court in this case did not abuse its discretion in asking prospective jurors if they "ha[d] ever had a negative experience with the criminal justice system that would affect [their] ability to decide this case fairly and impartially based on the evidence." Although the Court of Appeals has "caution[ed] judges to refrain from using . . . [compound] questions when conducting *voir dire*," *White*, 374 Md. at 242 n.4, doing so does not constitute reversible error when the question is not mandatory, was not asked as a substitute for a question that is mandatory, was not requested by either party, and when the remaining voir dire questions, "viewed as a whole," established "a reasonable assurance that partiality and bias would have been uncovered," *id.* at 242. That is the case here.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING LAY OPINION TESTIMONY.

Mr. Gardner contends that the circuit court abused its discretion in permitting Baltimore City Police Detective Michael Vodarick, the lead investigator in the case, to offer lay opinion testimony regarding his observations of a witness, Charles Thomas, during a police interview. The following occurred during Detective Vodarick's testimony:

> [STATE]: Now, the individual in question, Mr. Thomas, that you had the opportunity to interview, did you see him in court today?
>
> [WITNESS]: I did.

[STATE]: And can you describe, per your interview of Mr. Thomas, his demeanor at the time that you interviewed him?

[WITNESS]: Didn't want to be involved. Seemed to be scared.

[STATE]: At any point in time, did you –

[DEFENSE]: Objection, Your Honor.

THE COURT: Overruled.

* * *

[STATE]: Okay. At any point in time in the investigation in your interview with Mr. Thomas, did Mr. Thomas ever identify who the front seat passenger was?

[WITNESS]: No.

[STATE]: In attempting to gain this information, how would you describe Mr. Thomas's demeanor when challenged with questions as to the same?

[DEFENSE]: Objection.

THE COURT: You're asking for a description of his demeanor?

[STATE]: Correct.

THE COURT: Overruled.

THE WITNESS: He definitely felt like he didn't want to be involved. He was scared.

Mr. Gardner contends that the trial court erred in permitting Detective Vodarick to testify that Mr. Thomas "didn't want to be involved" and "definitely felt like he didn't want to be involved." According to Mr. Gardner, those statements were not proper "lay opinion"

testimony because they were not based on Detective Vodarick's observations, but instead expressed "the detective's theory as to why Mr. Thomas had not identified the passenger."

Maryland Rule 5-701 states that "[i]f [a] witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." In other words, "such testimony must derive from personal knowledge," and must "be rationally connected to the underlying facts; helpful to the trier of fact[;] and not prohibited by any other rule of evidence." *Rosenberg v. State*, 129 Md. App. 221, 255 (1999). "The admissibility of lay opinion is vested in the sound discretion of the trial court." *Id.* A court abuses its discretion when its decision "is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Walter v. State*, 239 Md. App. 168, 200 (2018) (quoting *Moreland v. State*, 207 Md. App. 563, 569 (2012)).

We hold that the trial court did not abuse its discretion in permitting the jury to hear the disputed testimony. As an initial matter, we observe that there was nothing objectionable about the questions the State posed to Detective Vodarick. In both instances, the prosecutor addressed the questions specifically and exclusively to what the detective observed regarding Mr. Thomas's demeanor. That was an appropriate subject for lay opinion testimony because it was based on the witness's personal knowledge and observations at the time he conducted the interview.

To be sure, if viewed in a vacuum, the detective's answers might appear to provide an unwarranted assessment of Mr. Thomas's mental state or feelings. But read together with the questions that prompted them, the answers convey Detective Vodarick's personal observations of Mr. Thomas's demeanor. It is possible for a person to present the outward appearance of being scared and of not wanting to be involved with questioning. Although the State might have elicited more specific testimony from Detective Vodarick regarding his observations of Mr. Thomas, we cannot say that the court abused its discretion in concluding that the detective's "opinions or inferences" were "rationally based on [his] perception." *See* Md. Rule 5-701. Moreover, Detective Vodarick's opinion was "helpful to a clear understanding of [his] testimony or the determination of a fact in issue," namely, why Mr. Thomas may have been reluctant to identify the passenger in Mr. Gardner's vehicle at the time of the shooting. Accordingly, the trial court did not abuse its discretion in admitting Detective Vodarick's testimony. *See Bruce v. State*, 328 Md. 594, 630 (1992) ("[L]ay opinions which are derived from first-hand knowledge, are rationally based, and are helpful to the trier of fact are admissible.").

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN EXCUSING A SEATED JUROR DURING TRIAL.

Mr. Gardner contends that the trial court erred in excusing Juror No. 1, the jury's foreperson, during trial. During the afternoon of the first day of trial, the prosecutor informed the court, out of the presence of the jury, that he was "concerned about Juror No. 1 and his sleeping." The prosecutor added that at "various stages . . . throughout the day," he had seen Juror No. 1 "nodding off." Defense counsel suggested that the court

instruct the jury about the importance of paying attention. The court agreed and asked both parties to "keep an eye on it." The court then addressed the jurors, telling them that their job was "extremely important" and that they should inform the court if they were "getting a little drowsy" and "could use a break."

Later that day, the trial court, out of the presence of the jury, made the following comments to counsel:

> I am concerned about Juror No. 1. He was stone out. The sheriff brought it to my attention, my law clerk's attention, brought it to mine and it took a little bit to wake him up. Think about that and let's see how he's doing tomorrow, but I'm – a case this important, or any case is important, but to have one of the jurors, and the foreperson in particular, miss most of the evidence is worrisome, so give it some thought.

Counsel agreed to do so, and the trial court adjourned for the day.

When the parties returned to court the following morning, but before the jury was called in, the court spoke to Mr. Gardner personally about Juror No. 1's "difficult time staying awake." Mr. Gardner acknowledged, "Yes, I've seen him." The court observed that the juror "was out. He was sleeping. I have real concerns about that." Mr. Gardner agreed with the judge's plan to "bring [Juror No. 1] in by himself, tell him that I noticed it . . . and ask if yesterday was unusual or whether he thinks that he may continue to have difficulties . . . and see what he says."

The trial court then called Juror No. 1 into the courtroom and informed him that he had been observed "drifting off and sometimes actually, falling asleep." The court asked the juror "whether there was anything going on yesterday" and if he thought "that might be a problem for [him] today," to which Juror No. 1 replied, "No." The court then asked

if the juror thought he could "stay awake and focus on the evidence," to which Juror No. 1 replied, "Yeah." In response to a question from the prosecutor, the juror said that he thought he had fallen asleep during "the videos." The court excused Juror No. 1 back to the jury room and asked the parties to "keep an eye on it and see if it continues to be a problem." The court then called the jury back into the courtroom and the trial continued.

Approximately one hour later, the trial court took a brief recess. During the recess, the court informed the parties that it had received a note from Juror No. 2, which complained about "the hygiene of Juror No. 1." The State moved to strike Juror No. 1, to which defense counsel objected. When questioned by the court, Juror No. 2 elaborated that the problem was an "oral hygiene issue" and that it was "making [him] very uncomfortable and making [him] feel sick." With the consent of the parties, the court decided to rearrange some of the jurors' seating positions so that Jurors No. 1 and 2 would not be seated next to each other.

Approximately one hour later, the prosecutor informed the trial court, out of the presence of the jury, that he had "noticed that [Juror No. 1] was nodding off" again. The following colloquy ensued:

> THE COURT: Madam Clerk passed up a note saying that [Juror No. 1] was asleep. I'm terribly concerned with having this man make a decision in this case when he's apparently been sleeping through much of the evidence. He was out, huh?
>
> [CLERK]: Yeah. And the last time he made like a (indiscernible).

[STATE]:	And the State would [] bring its motion to strike Juror No. 1 for those reasons. I just – he had an opportunity to –
[DEFENSE]:	I'll continue to object. I expressed my concerns.
THE COURT:	And I do understand it and I take it very seriously. But based on my observations throughout the trial, and the observations of court staff and counsel and my staff, I'm afraid that I am going to have to excuse him. Obviously, it's a very serious case and [] it's important that all of the jurors heard the evidence, especially he's sitting as Juror No. 1, which is our foreperson.

The trial court then excused Juror No. 1 and replaced him with an alternate juror, who had been present for the entirety of the trial. No further changes were made to the makeup of the jury.

Mr. Gardner contends that the trial court erred in excusing Juror No. 1 without conducting additional voir dire to determine specifically what, if any, evidence the juror had missed; whether the juror had really "fallen asleep," as opposed to "just closed his eyes"; and for how long he might have been asleep.

Rule 4-312(g)(3) states in pertinent part that "[a]t any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate." "[T]he substitution of an alternate juror for a regular juror 'lies within the sound discretion of the trial judge and such an exercise of discretion will not be disturbed on appeal unless arbitrary and abusive in its application.'" *Williams v. State*, 231 Md. App. 156, 195 (2016) (quoting *James v. State*, 14 Md. App. 689, 699 (1972)). This deferential "standard of review exists

for two reasons." *Diaz v. State*, 129 Md. App. 51, 59 (1999). "First, 'the trial judge is physically on the scene, able to observe matters not usually reflected in a cold record[.]'" *Id.* at 59-60 (quoting *State v. Cook*, 338 Md. 598, 615 (1995)). "Second, a defendant is not entitled to a jury comprised of any particular group of individuals, but only to a jury that is fair and impartial." *Diaz*, 129 Md. App. at 60 (citing *Cook*, 338 Md. at 614). As the Court of Appeals has explained, "[a] defendant's valued right to have his trial completed by a particular tribunal should not be expanded to apply to a situation where a seated juror is replaced with an alternate who has undergone the same selection process as the seated jurors and has been present for the entire trial." *Gupta v. State*, 452 Md. 103, 125 (2017) (quoting *Cook*, 338 Md. at 614).

We hold that the trial court did not abuse its discretion in excusing Juror No. 1 and replacing him with an alternate juror. The juror was observed sleeping during the presentation of evidence and admitted that he had done so. The court responded with a general instruction to the entire jury and, later, a specific inquiry of Juror No. 1. Although Juror No. 1 assured the court that he could stay awake through the remainder of the trial, he was again observed falling asleep during presentation of the evidence. Under those circumstances, we cannot say that the trial court erred or abused its discretion in replacing Juror No. 1 with an alternate who had been present—and, apparently, awake—for the entire evidentiary presentation. The record makes plain that the court's decision was in no way arbitrary or abusive, but instead was the result of careful consideration of the facts and circumstances of the case. *See Diaz*, 129 Md. App. at 61 (noting that "[j]udicial discretion

. . . means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously" (quoting *Gunning v. State*, 347 Md. 332, 351 (1997))).

IV. THE EVIDENCE ADDUCED AT TRIAL WAS SUFFICIENT TO SUSTAIN MR. GARDNER'S CONVICTIONS.

Finally, Mr. Gardner claims that the evidence was insufficient to sustain his convictions. Mr. Gardner notes that the State proceeded under the theory that Mr. Gardner's passenger committed the actual murder and that Mr. Gardner was guilty as an accomplice and co-conspirator. Mr. Gardner maintains, however, that the State failed to establish that Mr. Gardner's passenger was the same person who shot the victim. Mr. Gardner also claims that the State failed to show that he knew the shooting was going to happen or that he did anything to further the crime.

"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.'" *Donati v. State*, 215 Md. App. 686, 718 (2014)). That standard of review "applies to all criminal cases, including those resting upon circumstantial evidence," because "generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Darling v. State*, 232

Md. App. 430, 465 (2017) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004)). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (quoting *Cox v. State*, 421 Md. 630, 657 (2011)). Further, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence.'" *Neal*, 191 Md. App. at 314 (quoting *Sparkman v. State*, 184 Md. App. 716, 740 (2009)).

As Mr. Gardner correctly asserts, the State prosecuted him under the theory that he conspired with his passenger to murder the victim and that, although he did not actually kill Mr. Griffin, he "aided and abetted" the person who ultimately used a firearm to commit the murder. "An aider is one who assists, supports or supplements the efforts of another in the commission of a crime." *Kohler v. State*, 203 Md. App. 110, 119 (2012) (quoting *Handy v. State*, 23 Md. App. 239, 251 (1974)). "An abettor is one who instigates, advises or encourages the commission of a crime." *Id.* "If the State proceeds under a theory of aiding and abetting, the State must present evidence that the alleged aider and abettor participated by 'knowingly associating with the criminal venture with the intent to help commit the crime, being present when the crime is committed, and seeking, by some act, to make the crime succeed.'" *Davis v. State*, 207 Md. App. 298, 319 (2012) (quoting Md. Crim. Pattern Jury Instructions § 6:01). "An accomplice . . . who knowingly, voluntarily, and with common interest with the principal offender, participates in the commission of a crime . . . is a guilty participant, and in the eye of the law is equally

culpable with the one who does the act." *Owens v. State*, 161 Md. App. 91, 99-100 (2005) (quoting *Woods v. State*, 315 Md. 591, 615 n.10 (1989)).

A conspiracy occurs when "two or more persons combine[] or agree[] to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Savage v. State*, 226 Md. App. 166, 174 (2015). "When the object of the conspiracy is the commission of another crime, . . . the specific intent required for the conspiracy is not only the intent required for the agreement but also, pursuant to that agreement, the intent to assist in some way in causing that crime to be committed." *Mitchell v. State*, 363 Md. 130, 146 (2001). The essence of a criminal conspiracy is the unlawful agreement. "The crime . . . is complete when the agreement to undertake the illegal act is formed." *Savage*, 226 Md. App. at 174. "The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Townes v. State*, 314 Md. 71, 75 (1988). "A conspiracy may be shown through circumstantial evidence, from which a common scheme may be inferred." *Hall v. State*, 233 Md. App. 118, 138 (2017).

Here, testimonial and video evidence showed that, minutes prior to the shooting, Mr. Gardner drove himself and an unidentified passenger to the vicinity of the crime, where Mr. Gardner parked his vehicle, exited, and spoke to Mr. Thomas. Shortly thereafter, Mr. Gardner hurriedly reentered his vehicle and drove away at a high rate of speed. Minutes later, he stopped his vehicle at the mouth of the alley leading to the 3800 block of Elmley Avenue. The unidentified passenger exited Mr. Gardner's vehicle and traveled on foot down the alley toward Elmley Avenue. Seconds later, seven gunshots rang out, and

seconds after that, the unidentified passenger ran back down the alley to Mr. Gardner's waiting vehicle. By the time the passenger reached Mr. Gardner's vehicle, Mr. Gardner had moved the vehicle forward several feet and had pushed open the passenger-side door so that the unidentified person could reenter the car more quickly. Once the unidentified person was back in the car, Mr. Gardner drove away at a high rate of speed. Not long after, the victim, Sadik Griffin, was discovered on the 3800 block of Elmley Avenue suffering from seven gunshot wounds. Mr. Griffin later died of his injuries.

From that evidence, reasonable jurors could have inferred that the passenger in Mr. Gardner's vehicle was the person who shot and killed Mr. Griffin, and that Mr. Gardner not only was present when the crime was committed, but also knowingly aided, counseled, commanded, or encouraged the shooter in the commission of the crimes by (1) driving the shooter to the scene of the crime, (2) waiting for the shooter to commit the crime, (3) opening the door of the car to facilitate the shooter's escape, and then (4) immediately driving away with the shooter. Finally, given the concerted and deliberate nature of Mr. Gardner's and the shooter's actions before, during, and after the crime, a reasonable juror could have found that they conspired together to commit first-degree murder. *See Jones v. State*, 132 Md. App. 657, 660 (2000) ("If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may . . . infer a prior agreement by them to act in such a way."). Accordingly, the evidence adduced at trial was sufficient to sustain

Mr. Gardner's convictions of first-degree murder, conspiracy to commit first-degree murder, and use of a handgun in the commission of a crime of violence.

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