

Circuit Court for Baltimore City  
Case No. 112159010

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 987

September Term, 2017

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SHAQUILLE JOHNSON

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Eyler, Deborah S.,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: July 2, 2018

\*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 July 3, 2013, a jury sitting in the Circuit Court for Baltimore City convicted appellant, Shaquille Johnson, of conspiracy to commit first-degree assault, conspiracy to use a handgun in a felony or crime of violence, and reckless endangerment. The court sentenced appellant to twenty-five years of incarceration for conspiracy to commit first-degree assault and suspended all but ten years of that sentence. The court further sentenced appellant to a concurrent twenty-years of incarceration for conspiracy to use a handgun in a felony or crime of violence and suspended all but ten years of that sentence. Finally the court sentenced appellant to a concurrent five years of incarceration for reckless endangerment. On appeal, appellant argues that the lower court erred in not merging his conspiracy convictions, and he argues that the evidence was insufficient to support his convictions. We vacate the conviction and sentence for conspiring to use a handgun in a felony or crime of violence, but otherwise affirm the judgments.

### **BACKGROUND**

On April 12, 2012, at approximately 11:14 p.m., Officer Benjamin Davis of the Baltimore City Police Department was in the 5100 block of Park Heights in Baltimore walking on foot patrol when he heard three gunshots in the area. Officer Davis ran approximately one block towards the shots and located Ricky Judd (“Ricky”) laying in the 5000 block of Palmer Avenue suffering from two gunshot wounds. Present with Ricky at the scene was his brother Antoine Judd (“Antoine”). Both men denied knowing who shot Ricky. Ricky was transported to University of Maryland Shock Trauma Center where it was discovered that he had suffered a gunshot wound to the left arm, and a gunshot wound

to the back. Doctors removed a bullet from his arm and inserted a steel rod. He was permanently paralyzed as a result of the gunshot wound to his back.

Detective Ruganzu Howard responded to Shock Trauma several hours later and recovered the bullet removed from Ricky's arm. While there he talked briefly with Ricky, who "wasn't very forthcoming with information." Detective Hassan Rasheed was later assigned to the case and spoke with Ricky on April 25, 2012, at the rehabilitation hospital to which Ricky had been transferred. Using nicknames for the assailants, Ricky advised that "Lo," "Slim Man," "D'Andre," and "Shaq" were involved in the shooting and that "Lo" was the shooter. Detective Rasheed took the names provided by Ricky and developed a series of photo arrays. Ricky viewed the photo arrays and identified Angelo Alexander ("Lo"), Eugene Mickey ("Slim Man"), D'Andre Johnson ("D'Andre"), and appellant ("Shaq") as his assailants. He identified Alexander as the shooter. On the back of the photo of appellant he wrote "Shaquille or DeAndre brought the gun and gave it to Slim Man. The person I chose, either Shaq or DeAndre." Ricky testified that "Shaq" and "DeAndre" are brothers who look very similar, and that he named DeAndre because of their similar appearance. Investigators later discovered that D'Andre Johnson was incarcerated at the time of the shooting, and therefore, could not have been involved.

Ricky testified that one week prior to the shooting, Alexander had struck his son with a stick, breaking his jaw and sending him to shock trauma. On the night he was shot, he was standing in the 5000 block of Palmer Avenue with his brother when appellant and co-defendants walked past. Sometime later they returned and upon seeing Alexander in the group Ricky told him "I've got a problem with you." At that point Ricky and Alexander

started physically fighting with each other. Mickey then snuck up behind Ricky and hit him. Antoine Judd then entered the fight and began sparring with Mickey. At some point during the altercation, Ricky saw appellant and Mickey go to the side of a nearby church.<sup>1</sup> When Mickey returned to where Alexander and Ricky were fighting, he was holding a gun. Appellant did not return to the fight. Mickey then gave the gun to Alexander, pushed Alexander towards Ricky, and told Alexander to shoot him. Ricky then heard shots ring out. He attempted to flee but discovered that he had been shot and collapsed to the ground.<sup>2</sup> As he was laying on the ground, his brother Antoine leaned down over him and told him “don’t worry about it, [w]e’re going to get them.” Understanding that he and his brother were going to take care of the situation “street ways,” he initially chose not to cooperate with investigators. Ricky testified that he later changed his mind regarding cooperating with police after suffering as a result of his injuries.

Antoine testified that prior to the fight he saw appellant stash the gun about twenty feet away by a nearby church. He then yelled “gun” several times, but did not run away because his brother, Ricky was “still dealing with the other guys.” He then saw Mickey go to where the gun was stashed at the side of the church and run towards Ricky. Antoine then fought with Mickey while Ricky was fighting Alexander. During the fight he saw

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<sup>1</sup> After additional questioning, Ricky testified that while he never saw the gun in appellant’s hand, he saw him run to the side of the church and stash something, which he believed to be a gun.

<sup>2</sup> Angelo Alexander pled guilty to attempted first degree murder and use of a firearm. Eugene Mickey was tried with appellant and was convicted of conspiracy to commit first degree murder and related charges.

Mickey push Alexander towards Ricky and Micky told Alexander, “get him.” Antoine then started running, thinking Ricky would too. But as Antoine looked in his brother’s direction he saw Alexander shoot Ricky. Antoine then ran back to where Ricky had collapsed on the ground. Once he reached Ricky, he heard Ricky state that he couldn’t feel his legs. Antoine testified that he did not initially cooperate with investigators because he intended to seek “the worst revenge you can get,” and that he was “going to take an eye for an eye.” Antoine later had a change of heart when he realized that, even if he exacted revenge on his brother’s assailants, Ricky would still be in a wheelchair.

## DISCUSSION

### Sentencing

Appellant first contends that the “lower court erred when it failed to merge appellant’s conspiracy convictions.” He argues that, “[a]ccepting the State’s evidence in this case, there was a single conspiracy with one overarching objective; to commit an assault with a handgun” and, therefore, “one of [a]ppellant’s conspiracy convictions must be vacated or merged.” The State concurs. We agree.

“A criminal conspiracy is ‘the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means.’” *Savage v. State*, 212 Md. App. 1, 12 (2013) (quoting *Mason v. State*, 302 Md. 434, 444 (1985)). “[O]nly one sentence can be imposed for a single common law conspiracy no matter how many criminal acts the conspirators have agreed to commit.” *Tracy v. State*, 319 Md. 452, 459 (1990). “The unit of prosecution is the agreement or combination rather than each of its criminal objectives.” *Id.*

Appellant was convicted of conspiracy to commit first degree assault and conspiracy to use a handgun in the commission of a felony or a crime of violence. He received two sentences for these convictions. The evidence presented at trial, however, established only one conspiracy, that is, to commit an assault with a gun. Accordingly, appellant’s conviction for conspiracy to use a handgun in a felony or crime of violence must be vacated.

### **Sufficiency of Evidence**

Appellant argues that it was “clearly erroneous” for the jury to find him guilty of the offenses for which he was convicted because of “inconsistent testimony” presented at trial. He claims that the evidence “did not demonstrate that Appellant acted in concert with Mickey to provide him with a weapon [which] would be used to shoot Judd.” He further argues that other than Ricky and Antoine’s “inconsistent, self-serving testimony, there was no other evidence linking Appellant to the shooting.” We disagree.

To review for sufficiency of evidence, “we review the evidence in the light most favorable to the prosecution and determine whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Perry v. State*, 229 Md. App. 687, 696 (2016) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). The reviewing court will affirm the conviction, “[i]f the evidence ‘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.’” *Bible v. State*, 411 Md. 138, 156 (1998) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). “It is not the function of the appellate court to determine the credibility of

witnesses or the weight of the evidence.” *Smith v. State*, 138 Md. App. 709, 718 (2001) (citations omitted). It is the fact finder’s “task to resolve any conflicts in the evidence and assess the credibility of witnesses.” *Id.*

As noted, “a criminal conspiracy is ‘the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means.’” *Savage*, 212 Md. App. at (quoting *Mason v. State*, 302 Md. 434, 444 (1985)). “The essence or gist of criminal conspiracy is an unlawful agreement,” and “the crime is complete without any overt act.” *Mason, supra*, 302 Md. at 444. “Although the agreement need not be a formal transaction involving meetings and communications, there must nonetheless be a meeting of the minds reflecting a unity of purpose and design.” *Id.* “A criminal conspiracy may be shown by ‘circumstantial evidence from which an inference of common design may be drawn.’” *Armstead v. State*, 195 Md. App. 599, 646 (2010) (quoting *McMillian v. State*, 325 Md. 272, 292 (1992)).

The reckless endangerment statute provides, in pertinent part, that a person may not “engage in conduct that creates a substantial risk of death or serious physical injury to another[.]” MD CODE ANN., CRIM LAW § 3-204(a)(1). The statute requires the “State to prove: ‘1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly.’” *Perry v. State*, 229 Md. App. 687 (2016) (quoting *Jones v. State*, 357 Md. 408, 427 (2000)).

Ricky Judd testified that appellant stashed what he believed was a gun by a nearby building, and that Micky later retrieved it before handing it to Alexander. Antoine Judd

testified that after the argument started but prior to the shooting, he saw appellant stash a “dark object” by a nearby building. He believed that object to be a gun. He later saw Mickey go to where the gun was stashed, retrieve it, and hand it to Alexander. Mickey then pushed Alexander into Ricky and told him to “get” Ricky. Alexander then shot Ricky.

In light of this evidence, a rational trier of fact could have found that appellant brought the gun to where Ricky and Alexander were already engaged in an argument for the purpose of using it to assault Ricky. As such, the evidence was sufficient to support appellant’s convictions for conspiracy and reckless endangerment.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED IN  
PART AND VACATED IN PART. CASE  
REMANDED TO THAT COURT WITH  
INSTRUCTIONS TO VACATE THE  
JUDGMENT OF CONVICTION AND  
SENTENCE FOR CONSPIRACY TO USE A  
GUN IN THE COMMISSION OF A  
FELONY OR CRIME OF VIOLENCE.  
JUDGMENTS OTHERWISE AFFIRMED.**

**COSTS TO BE SPLIT BY APPELLANT  
AND MAYOR AND CITY COUNCIL OF  
BALTIMORE.**