Circuit Court for Prince George's County
Case No. CT160619X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1009

September Term, 2018

ANTONIO DAVONTE BURNS

v.

STATE OF MARYLAND

Wright,
Reed,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: May 15, 2019

The appellant, Antonio Davonte Burns, was convicted in the Circuit Court for Prince George's County by a jury, presided over by Judge Nicholas E. Rattal and Judge Peter K. Killough, of the felony murder of Darnell Dickerson and of the attempted robbery of John Lopez.

Contentions

The appellant's sole contention on appeal is that the trial judges erroneously denied his motion for acquittal at the end of the case. That contention, in turn, is based upon his argument that the entire case against him consisted of the testimony of Malik Johnson-Bey, an accomplice in the crime who testified for the State. The contention, in effect, is that the testimony of the accomplice was not adequately corroborated.

Factual Background

The details of the crime are not of critical significance to the sole contention before us, and we can narrate them briefly. The crime occurred on the late afternoon of May 26, 2015, in the Highland Gardens Park in Prince George's County. What was ostensibly arranged as an exchange of handguns turned out to be a murder and an attempted armed robbery.

A group of two men was victimized by a group of three men. The victim group consisted of 1) the ultimate murder victim, Darnell Dickerson, and 2) the attempted armed robbery victim, John Lopez. It was Lopez, incidentally, whose identification of the appellant would turn out to be the critical corroborating evidence in issue. The aggressor group consisted of three persons: 1) the appellant; 2) Taylor Stancil, who was tried and

convicted along with the appellant; and 3) Malik Johnson-Bey, the alleged accomplice whose testimony needed corroboration.

Initially, it was Johnson-Bey of the aggressor group and Lopez of the victim group who knew each other. Both shared a common interest in guns and drugs. Lopez wanted to acquire a Glock firearm. In late May of 2015, he and Johnson-Bey discussed a possible purchase of or exchange for such a weapon. It was not the first time that Johnson-Bey had bought or sold a gun. A possible exchange of guns was arranged for May 26, 2015, at the Highland Gardens Park.

It was agreed that Lopez would turn over to the aggressor group a nine millimeter handgun and they would then give him a Glock. It was Dickerson who initially produced a nine millimeter handgun and gave it to Stancil. Stancil tucked it into his waistband. Instead of producing a Glock, however, Stancil then pulled out another nine millimeter weapon and, pointing it at them, ordered Dickerson and Lopez not to move. Dickerson tried to smack the gun out of Stancil's hand. Stancil shot Dickerson. As Dickerson then tried to grab a small pistol from his own belt, Stancil shot him again, ultimately firing four or five shots at Dickerson. The appellant then fired a handgun at Lopez, who fell to the ground and screamed. Stancil searched Dickerson, who lay on the ground, taking a firearm and a case from him, before the aggressor group fled. Dickerson ultimately died of his wounds on July 14, 2015.

Johnson-Bey was arrested on June 16, 2015. He ultimately confessed to his participation in the crimes. Johnson-Bey ultimately entered into a plea agreement with the

State in which he agreed to testify against the appellant and Stancil. He himself entered a guilty plea on several lesser charges. All of the narrative that we have herein described was taken from the testimony of Johnson-Bey as a State's witness.

Corroboration Of An Accomplice

Although the State maintains that it was not unequivocally established that Johnson-Bey was an accomplice and that that is a jury question, we agree with the appellant that Johnson-Bey was an accomplice in this case. As Judge Delaplaine wrote for the Court of Appeals in Watson v. State, 208 Md. 210, 217, 117 A.2d 549 (1955):

> The test for determining whether a person is an accomplice of a defendant charged with a felony is whether he could be indicted and punished for the crime charged against the defendant.

(Citations omitted).

The accomplice corroboration rule in Maryland traces back to Luery v. State, 116 Md. 284, 81 A. 681 (1911). It has been consistently applied for the intervening 108 years. A full explanation of the corroboration requirement, both quantitatively and qualitatively, is that by Chief Judge Murphy for the Court of Appeals in Brown v. State, 281 Md. 241, 244–45, 378 A.2d 1104 (1977):

> 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. We have steadfastly adhered to these principles over the years since Luery was decided.

(Emphasis supplied; citations omitted).

We hold that the testimony of the accomplice in this case was adequately corroborated. The source of the corroboration was a tentative identification of the appellant by the surviving attempted robbery victim, John Lopez.

There were two instances of at least partial identification of the appellant by Lopez. In his statement to the police immediately after the shooting, Lopez described the man he "showed the gun to" as "Dark skin, beard, short, 125–130 lbs., 5'6" –5'7", all black clothing, 21 years old." That is a good rough approximation of the appellant's characteristics. The appellant's height was 5'7". His weight was 145 lbs. His age was 19. We need not, however, make an assessment as to whether this similarity of the description to the person would serve as minimal, but adequate, corroboration, because the tentative selection of the appellant by Lopez from a photographic array was itself adequate corroboration.

Detective Jeffrey Eckrich, the primary homicide detective in the case, showed Lopez a photographic array on March 11, 2016. The appellant's photograph was part of the group, as Picture Number 2. Detective Eckrich testified as to the procedure.

> When he was looking through them, when he got to Picture Number 2, he set Picture Number 2 to the right, and Picture Number 1 that he already looked at to the left, and continued to look through the rest of the pictures. When he was done he set all the pictures to the left, except for Number 2 he brought back in front of himself, and that's when he stated that this could be the guy that -- but he is older now and has hair on his face. And he indicated that he had a beard like this. (indicating)

> And then after that he stated that nobody, nobody in the other pictures was involved in the incident at the park, just the guy in the Number 2.

(Emphasis supplied).

This was no mere philosophical musing that "anything is possible" or "anybody could be the guy." This was an affirmative focus on the picture of the appellant. Lopez affirmatively rejected all of the other photographs as non-identifications. Picture Number 2 had been immediately and exclusively isolated from all of those non-identifications. Lopez, to be sure, said "I think so," instead of, "I am sure." This is what the caselaw means when it speaks of "slight corroboration" rather than of "absolute corroboration."[1]

The decision of the Appellate Division of New York State in People v. Jones, 85 N.Y.2d 823, 824–25, 647 N.E.2d 1344, 623 N.Y.S.2d 836 (1995), closely parallels the case before us.

> Ms. Comer initially identified defendant in a photo array 10 days after the crime, stating that she was "almost positive" that defendant was one of the robbers. . . . . At trial, Ms. Comer testified that two men were involved in the robbery and, although she could not make a positive identification, she pointed to defendant as a person who looked like one of the men.
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> . . . .
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> Defendant urges that Ms. Comer's equivocal identification was insufficient corroboration for Hudson's accomplice testimony. Corroborating evidence, however, need not be a positive identification. On the facts of this case, Ms. Comer's identification of defendant was sufficient to satisfy the minimal requirements of the accomplice corroboration statute.

[1] One inevitably thinks of British historian and philosopher Thomas Babington Macaulay, who was referred to by fellow historian George Trevelyan, "I wish I could be as certain about anything as Tom Macaulay is about everything." Assertiveness may be as much about personality as it is about actual certainty.

(Emphasis supplied; citations omitted). See also In the Matter of C.M.G., 905 S.W.2d 56, 57 (Texas 1995) ("Officer Green's testimony, while not making a positive identification of C.M.G., was sufficient corroboration of Moreno's testimony.").

In this case, the testimony of the accomplice was adequately corroborated and we, therefore, affirm the conviction.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.