Circuit Court for Baltimore City
Case No. 117300004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1079

September Term, 2019

KEVIN DEVON PARKER

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: March 1, 2021

A jury in the Circuit Court of Baltimore County convicted Kevin Devon Parker, appellant, of attempted first-degree murder, reckless endangerment, conspiracy to commit armed carjacking, and armed carjacking. He was sentenced to life in prison for attempted first-degree murder; 30 years consecutive for armed carjacking, 30 years concurrent for conspiracy to commit armed carjacking; no sentence was imposed for reckless endangerment. In his timely appeal, he presents two questions for our review:

I. Did the trial judge err and abuse its discretion by dismissing Juror Number 12 and replacing this juror with an alternative over objection?

II. Is the evidence legally insufficient to sustain appellant's convictions?

For the reasons that follow, we affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On August 15, 2017, William Rogers left a friend's house around midnight in his 2016 Dodge Journey. When he was stopped at a traffic light, two men approached and asked for a ride to the east side of Baltimore City. Rogers, who was "hacking," agreed.[1] Appellant got into the front passenger seat, and the second man, Craig Williams, got into the back seat.

Appellant gave Rogers directions. Later, Williams pulled out a gun, and in the 4300 block of Wilshire Avenue, he told Rogers to "[p]ull over right here and get out the vehicle." When everyone got out of the vehicle, Rogers started "walking" away. Appellant told

[1] "Hacking," as it is colloquially referred to, is a common but illegal practice in Baltimore City where unlicensed individuals act as cab drivers. Laura Vozzella, *Hail at Own Risk*, Baltimore Sun (Sept. 15, 2009), https://www.baltimoresun.com/news/bs-xpm-2009-09-15-0909150013-story.html.

Williams to "[g]et his phone," which Williams, pointing his gun at Rogers, did. Rogers then started running away "in a zigzag formation." Two of the multiple shots that Williams fired at Rogers hit him. With appellant driving, he and Williams drove away in Rogers's vehicle.

Baltimore City Police Officer Geoffrey Stafford responded to a call for shots fired in the 4300 block of Wilshire Avenue. Rogers provided a description of his vehicle and the license tag number, but, because the police dispatching system was "down," that information was not broadcasted or shared with the Baltimore County Police dispatcher for about one hour.

Baltimore County Police Officer Jeffrey Dunham was patrolling Pulaski Highway "between 11:30 [p.m.] and midnight" when he saw a gray Dodge Journey speed past his patrol unit. After pacing the vehicle, he activated his overhead light, and pulled the vehicle over. The vehicle was registered to Rogers.

Appellant initially gave Officer Dunham, as his name, the name and date of birth of "Craig Williams." When Officer Dunham checked that information, he discovered that Craig Williams was the passenger in the car and not the driver. Afterwards, appellant gave Officer Dunham his correct name, but he could not produce a driver's license. When asked "[w]hy are you driving so fast," appellant responded "I'm trying to get to my sister, she['s] having a baby." Officer Dunham issued appellant a warning for speeding and citations for driving without a license and failing to display a license. He advised Williams, who had a

valid license, "that he was going to be driving the vehicle away from the scene and not Mr. Parker."

Approximately fifteen to twenty minutes later, Officer Dunham heard a Baltimore City dispatcher broadcast a lookout for a Dodge Journey vehicle with the same license plate numbers as the one he had just stopped in connection with a carjacking. Office Dunham responded to the 4300 block of Wilshire Avenue and provided identification information to the Baltimore City Police investigators there.

Rodney Montgomery, Baltimore City Police Crime Lab Technician Supervisor processed the scene and took photographs. He identified several bloods stains in addition to six cartridge casings, all of which were fired from the same firearm.

During William's arrest, Officer John Bartoszak recovered a handgun in Williams' pants pocket. Based on the markings on the six casings recovered at 4300 Wilshire, it was determined that they were fired from the handgun found on Williams.

When the police showed Roger several photographs, he identified appellant and Williams with the following statements:

> [PHOTO OF KEVIN PARKER]: Just told me to continue driving and listen[.] And with the shooter[.]
>
> [PHOTO OF CRAIG WILLIAMS]: 60% [positive][2] shot 4 or 5 times[.] Held at gunpoint for entire ride from west [Baltimore] to east Baltimore[.] At that point [he] told me to pull over at 4300 Wilshire[.]

[2] At trial, appellant testified: "[O]n that particular time, I was pretty positive, so I put 60%. But I'm almost positive that's the case."

Appellant was arrested on August 24, 2017. Trial was held on April 17, 2019 through April 22, 2019.

Additional facts will be provided in our discussion of the questions presented.

DISCUSSION

I.

The Dismissal of Juror 12

On the third day of trial, Juror Number 12 ("Juror 12") had not appeared when the court session began at 9:16 a.m. The court provided the prosecutor and defense counsel with the following information and sought their input:

> THE COURT: And then [Juror 12] called at 9:00 [AM] and then [the court's clerk] called the Jury Commissioner's Office, they had a different number. She answered the number. And she just told us she worked last night and she was still at home and it would take her about a half an hour to get here. Which I don't even see how she can really get here in a half hour because if you're still at home, does that mean you're not dressed? Wouldn't you have called us if you were dressed and you were just running late?
>
> Anyway, you know, you just have to discuss it with your client but I think we should just sit an alternate and keep moving.
>
> THE CLERK: Because I told her to wait for me to call her back.
>
> [DEFENSE COUNSEL]: Wait, you told her not to – to start heading here?
>
> THE CLERK: I told her to wait to hear from the Judge –
>
> THE COURT: Well, I wanted to know what you all wanted to do, I mean, it was like five minutes ago, it's going to take her –
>
> THE CLERK: Right. I told her a half hour.
>
> [THE STATE]: I don't object to sitting an alternate.

[DEFENSE COUNSEL]: I do. This is an engaged juror who has been taking notes, nodding at everything, even lea[n]ing forward in her seat to see the TV. I think it's worth – I think it's worth giving her a little bit of time to get here. I mean, we have one witness this morning who's not going to take very long at all, I have almost no questions for her if any.

* * *

THE COURT: Well, here's the thing, she worked last night. I mean –

[DEFENSE COUNSEL]: But she knew that when she got on the jury, I mean –

THE COURT: No, but I'm saying it's like well, how many hours did you work – let's call her.

THE CLERK: Okay.

THE COURT: No, I got to wait for the defendant to get up here.

* * *

THE COURT: Well, you know what, let's just call her and then you call tell your client, is that okay?

[DEFENSE COUNSEL]: Sure.

* * *

Whereupon, the Judge made a phone call to Juror Number 12 at her home at 9:20 a.m. and the conversation was as follows:

JUROR 12: Hello?

THE COURT: This is Judge Handy. I'm in court and the attorneys are here with me. So [my clerk] advised that when she called you this morning because you weren't here at 9:00, you told her that you were at home?

JUROR 12: Yes.

THE COURT: Did she wake you up? Did she just wake you up?

JUROR 12: Yes.

* * *

THE COURT: So from what time to what time did you work?

JUROR 12: About 7:00 [PM] to 11:30 [PM] and I came home and I had to clean my husband up and I just was up for a little while.

THE COURT: I see because you sound a little tired now.

JUROR 12: I am.

THE COURT: So that mean – so you're not dressed or anything?

JUROR 12: I'm trying to get there.

THE COURT: Okay. Well, ma'am, I'm going to excuse you for today and I'm going to seat one of the alternates.

JUROR 12: Thank you.

THE COURT: Okay.

(Whereupon, the telephone call ended at 9:21 a.m.)

[DEFENSE COUNSEL]: Your Honor, please note my objection.

THE COURT: No, you can put it on the record, as soon as – I want you to explain to your client what's going on first.

(Whereupon, the defendant entered the courtroom at 9:21 a.m.)

* * *

THE COURT: Did you explain to your client what happened or do you want me to say what happened?

[DEFENSE COUNSEL]: I did, I just would like to make my objection for the record.

THE COURT: Okay. Put – yes.

[DEFENSE COUNSEL]: Very briefly, Your Honor. When I pick a jury, this is somewhere like 155 or something juries that I picked, it's a science and a juror is not a juror. When I pick a jury, I pick a team. And that's why I strike from the box like most jurors do because you're not striking individuals. In this case there were certain people that I struck from the week but for the most part you're striking from the box because you're looking at them as a unit, as a team, and this juror was an engaged juror, she was nodding, she was taking notes, she was straining forward to look at the screen. She was very involved. I haven't seen any of that from the alternates, because alternates like it or not, are not nearly as engaged as alternates or as regular jurors because they think they're going home before they get to deliberate.

So I think that, I mean, she said she worked five hours starting at 7:00 p.m., she was home at 11:00 [PM] or she was home at 1:00 [AM], I mean –

THE COURT: She said that she – when she got home she had to clean up her husband and she got to bed very late. She clearly – you could tell she was sleeping.

[DEFENSE COUNSEL]: I'm sleepy.

THE COURT: Okay. Well, that's fine, you can put on the record whatever you would like.

[DEFENSE COUNSEL]: I'm just, yeah, I mean –

THE COURT: Well, you know, when you look at the team, you've also, if you're a good lawyer and I know you are, you got to look at this possibility of alternates being part of that team because you can never anticipate what's going to happen.

[DEFENSE COUNSEL]: I had –

THE COURT: And you accepted these alternates.

Standard of Review

If we conclude that appellant's right to be present was violated, we would then consider whether the error was harmless:

> [T]he harmless error principle is fully applicable to a defendant's right to be present during a stage of the trial. Prejudice will not be conclusively presumed. If the record demonstrates beyond a reasonable doubt that the denial of the right could not have prejudiced the defendant, the error will not result in a reversal of his conviction.

State v. Hart, 449 Md. 246, 262 (2016) (quoting *Noble v. State*, 293 Md. 549, 568–69 (1982)).

A trial court's "decision to excuse a seated juror and replace him or her with an alternate for reasons particular to that specific juror will not be reversed unless there is a clear abuse of discretion or prejudice to the defendant." *Diaz v. State*, 129 Md. App. 51, 59 (1999) (internal citation and quotation marks omitted).

Contentions

Appellant mounts a two-prong attack on the court's decision to replace Juror 12. He contends that the trial court "deprived [him] of his right to be present at all stages of his trial" and both erred and abused its discretion by "dismissing Juror Number 12 and replacing [her] with an alternate over objection." He argues that the court erred in not following "the procedures regarding written or oral communication received by the judge from a juror set forth in Maryland Rule 4-326(d)(2)," and that the error "was not harmless" because "a conscientious and attentive juror was lost, while an alternate with less of these characteristics was seated." He asserts that Juror 12's dismissal was an abuse of discretion because the trial court "made up [its] mind to replace the juror before hearing from any of the parties as indicated in its statement, "I think we should just sit an alternate and keep it moving."

The State contends that appellant waived his right-to-be present argument, and "[w]aiver aside, all of his arguments fail on the merits." But, if an error did occur, appellant suffered "no prejudice."

Analysis

The Right to be Present

We address first appellant's contention that the trial court "deprived [him] of his right to be present at all stages of his trial" under the Federal Constitution, the Maryland Declaration of Rights, and Md. Rule 4-231. Md. Rule 4-231(c)(3) provides that the "right to be present . . . is waived by a defendant . . . who, personally or *through counsel, agrees to or acquiesces in being absent*." (Emphasis added).

As the Court of Appeals has explained:

> In this State there is no doubt that an accused in a criminal prosecution for a felony has the absolute right to be present at every stage of his trial from the time the jury is impaneled until it reaches a verdict or is discharged, and there can be no valid trial or judgment unless he has been afforded that right. The constitutional guarantee includes the right of the accused to be present . . . (iii) when the court communicates with the jury in answer to questions propounded by the jury, or (iv) when there shall be any communication whatsoever between the court and the jury; *unless* the record affirmatively shows that such communications were not prejudicial or had no tendency to influence the verdict of the jury.

Id. at 64 (quoting *Midgett v. State*, 216 Md. 26, 36-37 (1958)).

Md. Rule 4-326(d) governing communications between the court and a jury has roots in a criminal defendant's right to be present at every stage of trial. *Id*. at 64 (citing *Bunch v. State*, 281 Md. 680, 683-84 (1978)). It provides in pertinent part:

(2) Notification of Judge; Duty of Judge

> (A) A court official or employee who receives any written or oral communication from the jury or a juror shall immediately notify the presiding judge of the communication.
>
> (B) The judge shall determine whether the communication pertains to the action. If the judge determines that the communication does not pertain to the action, the judge may respond as he or she deems appropriate.
>
> (C) If the judge determines that the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication in writing or orally in open court on the record.
>
> The record reflects the following before the court called and dismissed Juror 12:
>
> THE COURT: No, I got to wait for the defendant to get up here.
>
> * * *
>
> THE COURT: Well, you know what, let's just call her and then you call tell your client, *is that okay*?
>
> [DEFENSE COUNSEL]: Sure.

(Emphasis added).

Clearly, the trial court was well aware of appellant's right to be present, and clearly, counsel agreed to—or, at least, acquiesced in—appellant not being present during the phone call. The court expressly sought counsel's agreement before calling Juror 12 and counsel did not indicate to the court that no decision as to Juror 12's dismissal was to be made until his arrival. Only after talking to her in the presence of the attorneys, did the court excuse Juror 12 from the case.

Before calling Juror 12, the court invited counsels' input on how to proceed, which satisfied the requirements of Md. Rule 4-326(d)(2). Defense counsel objected, stating:

> This is an engaged juror who has been taking notes, nodding at everything, even lea[n]ing forward in her seat to see the TV. I think it's worth – I think it's worth giving her a little bit of time to get here. I mean, we have one witness this morning who's not going to take very long at all, I have almost no questions for her if any.

When the phone call with Juror 12 ended, defense counsel asked that his objection be noted. The court indicated that he could "put it on the record," but that he should "explain to [appellant] what's going on first." After appellant had entered the courtroom and met with counsel, appellant's counsel renewed his objection.

In sum, counsel objected to Juror 12 being excused before appellant was present and renewed that objection after he met with appellant. The issue of Juror 12's dismissal under Md. Rule 4-312(g)(3) and Md. Rule 4-326(d)(2), which we discuss below, was preserved for appellate review. Appellant advances no reason why the court's decision to replace Juror 12 would or should have been different had he been present when Juror 12 was called. There was no error, but had there been, we are persuaded beyond a reasonable doubt that appellant's absence during the discussion with Juror 12 was not prejudicial and had no tendency to influence the jury's verdict. Simply put, it was harmless

The Dismissal of Juror 12

Md. Rule 4-312(g)(3) states:

> At any time before the jury retired 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 in the order of selection set under section (e).[3]

Grade v. State, 431 Md. 85 (2013) and *Diaz v. State*, 129 Md. App. 51, 59 (1999) are instructive to our review. In *Grade*, the trial court told the jury and the alternates to return to the courthouse at 9:15 a.m. the next day to begin deliberations, and that, if all the jurors show up, the alternates would be dismissed at that time. 431 Md. at 88. The next morning, one of the jurors informed the court that she would not be able to get to the courthouse until 10:30 a.m. at the earliest. *Id.* at 89. The court, without informing the parties of the communication, replaced the juror with an alternate, rather than delay deliberations until she arrived. *Id.* The Court of Appeals held that the juror's call "[fell] squarely within the ambit of Rule 4–326(d)" because "it was a communication directed to the court, about a subject, the effect of which, if acted on, could, or would, affect the make-up of the fact-

[3]Md. Rule 4-312(e) provides:

> (1) *Examination*. The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after considering questions proposed by the parties. If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. On request of any party, the judge shall direct the clerk to call the roll of the array and to request each qualified juror to stand and be identified when called.
>
> (2) *Challenges for Cause*. A party may challenge an individual qualified juror for cause. A challenge for cause shall be made and determined before the jury is sworn, or thereafter for good cause shown.

finding panel as determined by the parties and, in fact, it was later acted on with that very effect." *Id.* at 100–01.

Because Md. Rule 4-312(b)(3)[4] and Md. Rule 4-326(d)(2) "overlap" by addressing the same subject matter, the *Grade* Court explained that they "must be construed together," and "to the extent possible, harmonized." *Id.* at 102. A communication concerning a juror's late arrival that could affect the ultimate make-up of the jury necessarily "pertains to the action" under Md. Rule 4-326(d). *Id.* at 104. The Court held that the failure to inform the parties of the communication was reversible error. *Id.* at 106.

In *Diaz v. State*, 129 Md. App. 51 (1999), only Md. Rule 4-312 was at issue. There, the trial court replaced a late juror with an alternate over defendant's objection. *Id.* at 59. On appeal, defendant argued that it was an abuse of discretion to replace a juror who was only seven and one-half minutes late without inquiring into the reasons for the lateness. *Id.* at 60. Upholding the trial court's decision, we explained that "even a premature dismissal of a juror would not be cause for reversal," and "the facts show[ed] that the trial judge was concerned that the juror's tardiness would delay the entire proceeding." *Id.* at 61-62. We concluded that "prejudice [was] unlikely" because the "alternate juror had been seated with other jurors during the first day of trial" and "had the opportunity to hear all evidence presented and abide by the court's instructions." *Id.* at 63; *see also Hayes v. State*, 355

[4] The *Grade* Court was discussing Md. Rule 4-312(b)(3) which, at the time, governed juror replacement. Md. Rule 4-312 was rewritten in December 2007, and juror replacement is now governed by Md. Rule 4-312(g)(3) which is nearly identical to the earlier version. *See Grade v. State*, 431 Md. 85, n.4 (2013).

Md. 615, 636 (1999) (stating that a "defendant is not prejudiced by a substitution if (1) the jury has not yet entered the jury room to discuss the case, and (2) the alternate juror had not been subjected to any outside influence and remains qualified to serve").

Here, the trial court advised counsel that Juror 12 was running late and sought input on the matter:

> THE COURT: . . . . [Juror 12] just told us she worked last night and she was still at home and it would take her about a half an hour to get here. Which I don't even see how she can really get here in a half hour because if you're still at home, does that mean you're not dressed? Wouldn't you have called us if you were dressed and you were just running late? . . . . but I think we should just sit an alternate and keep moving. . . .
>
> * * *
>
> [THE STATE]: I don't object to seating an alternate.
>
> [DEFENSE COUNSEL]: *I do.* This is an engaged juror who has been taking notes, nodding at evening, even leaning forward in her seat to see the TV. I think it's worth – I think it's worth giving her a little bit of time to get here. I mean, we have one witness this morning who's not going to take very long at all, I have almost no questions for her if any.

(Emphasis added).

In response to defense counsel's objection, the trial court suggested calling the juror to inquire further. With counsel for the parties on the line, the trial court called Juror 12. As stated above, we are satisfied that the trial court complied with the demands of Rule 4-326(d)(2)(c) before dismissing Juror 12.[5] And the *Grade* Court has stated that "[t]he

[5] Had we held otherwise, the burden would fall "on the State to persuade us beyond a reasonable doubt that a violation of Rule 4-326 did not influence the verdict to [his] prejudice." *Perez*, 420 Md. at 76; *see also Grade*, 431 Md. at 106 (explaining that the State

prospect of delay not unexpectedly triggers concern on the part of the court with regard to the efficiency of the trial process." 431 Md. at 103. The trial court's statement about sitting an alternate "and keep moving" reflected that concern, but it did not, in our view, imply an abuse of discretion.

In explaining the basis for its decision, the court stated that, to it, Juror 12 sounded like she was "sleeping" and was not yet ready to leave. The court also considered the distance the juror would have to travel, and that it was already 9:30 a.m. Notwithstanding appellant's assertion that Juror 12 was paying more attention than the alternates, the trial court observed that all the alternates "were paying attention." In addition, the record reflects that Juror 12 was tired from working late the evening before and having to take care of her husband after she got home. Moreover, it is "unlikely," as we said in *Diaz*, that appellant was prejudiced by an alternate juror who was previously accepted by the defense in the jury selection process and who "had been seated with other jurors" during the trial and had seen and heard all the witnesses and evidence presented. 129 Md. App. at 63.

In short, we perceive neither error nor an abuse of discretion in the substitution of an alternate for Juror 12.

II.

Sufficiency of the Evidence

bears the burden of showing that the defendant was not prejudiced by a violation of Rule 4-326(d)).

Appellant was convicted of conspiracy to commit armed carjacking and the armed carjacking. His convictions for first-degree attempted murder and reckless endangerment were based on accomplice liability.

Standard of Review

As we have explained:

> The standard of review for the sufficiency of evidence is well settled. We must determine 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. But, it is not the function of the appellate court to undertake a review of the record that would amount to a retrial of the case. Nor is it the function of the appellate court to determine the credibility of witnesses or the weight of the evidence.
>
> Of import here, the same standard applies to all criminal cases, including those resting upon circumstantial evidence. Circumstantial evidence alone is sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused. . . [C]ircumstantial evidence is as persuasive as direct evidence. With each, triers of fact must use their experience with people and events to weigh probabilities.

Handy v. State, 175 Md. App. 538, 561–62 (2007) (citations and internal quotation marks omitted). Stated more simply, "[t]he primary appellate function in respect to evidentiary inferences is to determine whether the [fact finder] made reasonable, i.e., rational, inferences from extant facts." *State v. Smith*, 374 Md. 527, 547 (2003).

Contentions

Appellant, arguing that "the prosecution failed to sufficiently prove his involvement in the crimes," contends that the evidence was legally insufficient to sustain his convictions.

The State contends that the evidence provided "an adequate basis for a rational juror to conclude that [appellant] committed each of [the] offenses."

Analysis

A. Conspiracy to Commit Armed Carjacking and Armed Carjacking

In regard to his conviction for conspiracy to commit armed carjacking, appellant asserts that the prosecution "failed to prove that [he] entered into an agreement to commit the armed carjacking." We disagree.

"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)). Stated differently, "[t]he essence of a criminal conspiracy is an unlawful agreement." *Mitchell v. State*, 363 Md. 130, 145 (2001). That agreement "need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Carroll v. State*, 428 Md. 679, 696–97 (2012) (internal quotation marks and citations omitted). In other words:

> It is sufficient if the parties tacitly come to an understanding regarding the unlawful purpose. In fact, the State [is] only required to present facts that would allow the jury to infer that the parties entered into an unlawful agreement. The concurrence of actions by the co-conspirators on a material point is sufficient to allow the jury to presume a concurrence of sentiment and, therefore, the existence of a conspiracy.

Acquah v. State, 113 Md. App. 29, 50 (1996) (internal citations omitted).

"The crime is complete when the agreement is formed, and no overt acts are necessary to prove a conspiracy." *Carroll*, 428 Md. at 696–97 (internal quotation marks and citations omitted).

In conspiracy trials:

> there is frequently no direct testimony, from either a co-conspirator or other witness, as to an express oral contract or an express agreement to carry out a crime. It is a commonplace that we may infer the existence of a conspiracy from circumstantial evidence. If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may, but need not, infer a prior agreement by them to act in such a way. From the concerted nature of the action itself, we may reasonably infer that such a concert of action was jointly intended. Coordinated action is seldom a random occurrence.

Jones v. State, 132 Md. App. 657, 660 (2000); *see also In re Lavar D.*, 189 Md. App. 526, 591 (2009) (stating that "a conspiracy can be inferred from the actions of the accused"), *cert. denied*, 414 Md. 331 (2010). In other words, "circumstantial evidence, from which an inference of a common design may be shown" is sufficient to prove a criminal conspiracy. *Alston v. State*, 177 Md. App. 1, 42 (2007).

Carjacking is taking "unauthorized possession or control of a motor vehicle from another individual who actually possesses the motor vehicle, by force or violence, or by putting that individual in fear through intimidation or threat of force or violence." Md. Code Ann., Crim. Law § 3-405(b)(1). When the person committing the carjacking "employ[s] or display[s] a dangerous weapon during the commission" it becomes an "armed carjacking." Md. Code Ann., Crim. Law § 3-405(c).

In this case, Rogers testified, and appellant conceded, that between 11:30 p.m. and midnight, on August 15, 2017, appellant and Williams asked him for a ride and got in his

vehicle. Rogers identified appellant as the person who got in the front passenger seat of the car. To be sure, it was Williams, who later pointed a gun at Rogers, and ordered him to stop in the 4300 block of Wilshire Avenue and get out of the Dodge Journey. But it was appellant who gave Rogers directions and instructed him to "listen to" Williams, directed Williams to take Rogers's phone, and drove Rogers's vehicle away.

The evidence reflects a concurrence of actions between appellant and Williams. And it was more than sufficient for the jury to conclude beyond a reasonable doubt that appellant and Williams entered into an agreement to commit the armed carjacking, and then acted together in accomplishing it.

B. Attempted First-Degree Murder and Reckless Endangerment

In regard to attempted murder and reckless endangerment, appellant essentially contends that he was not involved in Williams shooting Rogers. The prosecution's theory was that appellant was Williams's accomplice in these offenses.

Murder in the first degree is "a deliberate, premediated, and willful killing." Md. Code Ann., Crim. Law § 2-201(a)(1). "An attempt to commit a crime is, in itself, a crime." *Peters v. State*, 224 Md. App. 306, 355 (2015) (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). "A person is guilty of an attempt when, with intent to commit a crime, he engages in conduct which constitutes a substantial step toward the commission of that crime." *Id.* Reckless endangerment is a lesser-included offense of attempted first-degree murder. *McClurkin v. State*, 222 Md. App. 461, 489 (2015). The crime prohibits a person's reckless

engagement "in conduct that creates a substantial risk of death or serious physical injury to another." Md. Code Ann., Crim. Law § 3-204(a)(1).

"[W]hen two or more persons participate in a criminal offense, each is responsible for the commission of the offense and *for any other criminal acts done in furtherance of the commission of the offense or the escape therefrom*." *Diggs & Allen v. State*, 213 Md. App. 28, 90 (2013), *aff'd sub nom*., *Allen v. State*, 440 Md. 643 (2014) (citation and quotation marks omitted) (emphasis added). An accomplice is a person who "participate[s] in the commission of a crime knowingly, voluntarily, and with common criminal intent with the principal offender, or [who] in some way advocate[s] or encourage[s] the commission of the crime." *Silva v. State*, 422 Md. 17, 28 (2011) (quoting *State v. Raines*, 326 Md. 582, 597 (1992)). An accomplice "who is actually or constructively present when a felony is committed, and who aids or abets in its commission" is a principal in the second degree. *Pope v. State*, 284 Md. 309, 326 (1979). An accomplice must know or have reason to know of the intent of the principal in the first degree and must share that same intention. "'[I]ntention' includes not only the purpose in mind but also such results as are known to be substantially certain to follow." *State v. Williams*, 397 Md. 172, 195 (2007) (citation omitted), overruled on other grounds by *Price v. State*, 405 Md. 10 (2008).

In *Diggs & Allen*, because the first-degree murder was a specific intent crime, Allen argued "that the evidence failed to show that he shot at [the victim] or intended to kill [the victim]." 213 Md. App. at 89. We disagreed:

> Here, [the victim] was shot during the commission of the armed robbery. There was ample evidence presented at trial that Allen intended to commit

> the armed robbery, participated in the planning of the scheme, and actively participated in the robbery. This constitutes sufficient evidence for the jury to conclude that Allen had sufficient *mens rea* to be held accountable for the shooting, even if he was not the triggerman.

Id. at 90-91.

As stated above, the jury in this case heard that appellant directed Rogers to where Williams instructed Rogers to stop, and, at gun point, ordered Rogers out of the vehicle. It was appellant who instructed Rogers to listen to Williams and instructed Williams to take Rogers's phone. Appellant remained physically present on the scene when Williams fired at least six shots at Rogers, striking him twice. And, he was the driver when he and Williams sped away in Rogers's vehicle.

This evidence was sufficient for a rational jury to conclude beyond a reasonable doubt that appellant, as an active participant in the armed carjacking, was responsible for the attempted first-degree murder and reckless endangerment committed in its furtherance.

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