Circuit Court for Somerset County
Case No.: C-19-CR-19-000225

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1424

September Term, 2020

TIMOTHY DWAN JARVIS

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: June 21, 2022

After a jury trial in the Circuit Court for Somerset County, Timothy Dwan Jarvis was convicted of robbery with a dangerous weapon, robbery, using a firearm in a crime of violence, second-degree assault, theft between $100 and $1,500, reckless endangerment, conspiracy to commit armed robbery, conspiracy to commit robbery, and conspiracy to commit theft between $100 and $1,500 dollars. After merging several of the convictions, the court sentenced Mr. Jarvis to consecutive terms of incarceration of thirty-five years for using a firearm in a crime of violence and fifteen years for armed robbery. He presents one issue on appeal, which we have reworded:

> Were the jury's guilty verdicts supported by legally sufficient evidence?[1]

Because the answer to this question is yes, we will affirm the judgments of the circuit court.

BACKGROUND

At trial, Kristina Ohanian testified that, on the morning of June 30, 2019, she was working her shift as assistant manager at the Dollar General store in Westover, Maryland. At 9:55 a.m., a man walked up to her inside the store and brandished what appeared to be a handgun before saying "give me your money." The robber followed Ms. Ohanian to the register. When she reached for her keys to unlock it, he struck her in the head with the weapon. Ms. Ohanian withdrew all the money from the two registers and the safe, a total of $ 834. Ms. Ohanian described the robber as wearing black clothes, a black mask, "a

[1] In his brief, Mr. Jarvis frames the issue as follows:

> Is speculation about a cell phone using data from a tower insufficient evidence of robbery and a conspiracy?

hood covering the majority of his face," a "hoodie jacket, a zip up," and black gloves. Surveillance footage inside the Dollar General, which was admitted into evidence and played to the jury, further showed that the suspect was wearing what appeared to be white shoes.

Michael Alexander, a Dollar General store employee, testified that he was talking to Ms. Ohanian on the morning of June 30, 2019, when a man in a black jacket with a red stripe and a hood up came into the store and demanded that Ms. Ohanian give him money. The robber took this money and fled out the front door of the store. He testified that the robber appeared to be African American.

While these events were unfolding within the store, Erik Sanchez was on his way to church with his family. He testified that he saw a car with its hood up on the side of the road, a short distance from the Dollar General. A man was standing in front of the car, which was partially obstructing traffic. After passing the car, Mr. Sanchez saw someone "of African descent" leaving the Dollar General in a rush while concealing what looked like a handgun in their pants. Mr. Sanchez described the individual as having "kind of spiky [hair], like he had the beginning stages of dreads. . . ." He watched that person get into the car that had been stopped on the side of the road. The man who had been waiting outside the car also got into the vehicle and drove away at a high rate of speed.

Mr. Sanchez described the person who left the store and got into the car as having a "small build," and described both the robber and the man at the car as "skinny. They

weren't tall. They weren't stocky, muscular, fat." Footage from Mr. Sanchez's dash cam was published to the jury, and it indicated that the getaway car was blue.

Another passer-by, Larry Taylor, witnessed the scene that Mr. Sanchez described and corroborated most of the details provided by Mr. Sanchez.

Law enforcement was notified of the armed robbery at the Dollar General shortly after its commission. Two deputy sheriffs arrived at the scene a few minutes later and spoke with witnesses while a third officer patrolled the area to see if he could find the getaway car. The officer located a blue car matching the description from the witnesses at 7366 River Road, approximately ten minutes after the initial call reporting the crime came in. This address was the residence of Anthony Horsey and Stephanie Cannon.

The police continued their investigation. More than four hours later, at around 3:00 p.m., an officer discovered a black ski mask lying in a patch of grass adjoining the Dollar General. Although it had been several hours since the robbery took place, the mask appeared to be undisturbed and was dry upon seizure by the investigating police officers. Around the same time, an officer spoke with Ms. Cannon at her place of work to inquire about the robbery. The police seized the blue vehicle that Ms. Cannon used to drive to work, since it matched the description of the vehicle used in the robbery. The vehicle was processed for forensic evidence at the Maryland State Police Barrack in Salisbury.

The day after the robbery, and aware that a suspect, Anthony Horsey, had a residence on River Road, officers decided to walk the entirety of Clyde Ford Road because that was the optimal side street to use to get to River Road from the Dollar General. On this walk,

the officers discovered two gloves, one in an embankment and one on the roadway itself, and one white tennis shoe.

On June 30 and July 2, 2019, police interviewed Mr. Horsey regarding his possible involvement in the Dollar General robbery. On July 2, 2019, Mr. Horsey was arrested for his alleged involvement in the robbery as the getaway driver and a DNA sample was obtained. During this interview, Mr. Horsey identified Devon Cannon[2] as the gunman in the robbery, so the police also interviewed Mr. Cannon and obtained a DNA sample from him. Mr. Horsey acknowledged that he had been with the blue car that appeared to have broken down on Fairmount Road. The parties stipulated that Mr. Horsey pled guilty to conspiracy to rob the Dollar General prior to Mr. Jarvis's trial.

It was not until months later that the Forensic Science Division of the Maryland State Police received a positive DNA test from the ski mask identifying Mr. Jarvis as a suspect. The police also identified two videos posted on social media the day before the robbery showing Mr. Jarvis and Mr. Horsey together in a car. Ms. Cannon was visible in one of these videos. On October 22, 2019, the police first interviewed Mr. Jarvis and obtained a consensual DNA sample from him. He also identified his cell phone number at the time of the incident to the officers. Cell tower information for Mr. Jarvis's phone number was later collected and analyzed. At first, Mr. Jarvis denied being at Ms. Cannon's house on the

[2] The parties do not address whether Devon Cannon was related to Stephanie Cannon.

night of the robbery but later acknowledged that he had been there. Neither Mr. Jarvis's phone nor the weapon used during the robbery were recovered by investigating officers.

Samples from the ski mask, the gloves, the shoe, and the blue car were submitted for DNA analysis. The State's forensic scientist, Leslie Monkous, was unable to recover usable information from the passenger-side door handle of the automobile or the gloves. She was however able to identify a significant contributor from the DNA samples taken from both the ski mask and the white tennis shoe.

Ms. Monkous testified that Mr. Jarvis could not be excluded as a significant contributor of the DNA profile on the mask, and that the probabilities of selecting an unrelated individual at random who cannot be excluded as the significant contributor to this DNA profile are approximately:

US Caucasian	1 in 32 quintillion
African American	1 in 30 quintillion
US Hispanic	1 in 66 quintillion

Ms. Monkous further testified that Mr. Jarvis could not be excluded as a significant contributor of the DNA profile on the white shoe, and that the probabilities of selecting an unrelated individual at random who cannot be excluded as the significant contributor to this DNA profile are approximately:

US Caucasian	1 in 140 quadrillion
African American	1 in 48 quadrillion
US Hispanic	1 in 440 quadrillion

These results were based on an assumption by Ms. Monkous that Mr. Jarvis's DNA profile was his and his alone. However, there was evidence that Mr. Jarvis has an identical twin brother who would likely share the same DNA code as Mr. Jarvis. Ms. Monkous testified that Mr. Jarvis's twin brother could not be ruled out as the significant contributor to the DNA samples with the certainty an unrelated person could be.

FBI agent Matthew Wilde was admitted as an expert witness for the State. He testified that the cell phone records and cell tower information introduced as evidence showed that (1) Mr. Horsey's and Mr. Jarvis's phone numbers were located near the Dollar General Store on the evening before the robbery, (2) both phones were in the vicinity of the Dollar General Store on the day the robbery took place from 9:01 a.m. to 10:08 a.m. (Ms. Ohanian testified that the robbery took place at 9:55 a.m.), and (3) both phones were in Salisbury later in the morning.

THE STANDARD OF REVIEW

Mr. Jarvis's sole appellate contention is that the evidence was insufficient to support his convictions. The test for determining whether the prosecution presented legally sufficient evidence to support a conviction is well-established. "The relevant question 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). Maryland has adopted the *Jackson v. Virginia* standard. *See, e.g., State v. Morrison*, 470 Md. 86, 105 (2020); *State v. Coleman*, 423 Md. 666, 672 (2011). This standard is applicable

to all criminal cases, whether the case rests upon direct evidence, circumstantial evidence, or a combination thereof. *Smith v. State*, 415 Md. 174, 185 (2010). It is important to note that "[a]lthough circumstantial evidence alone is sufficient to sustain a conviction, the inferences made from circumstantial evidence must rest upon more than mere speculation or conjecture." *Id*. In our role as appellate judges, we review the evidence, as well as any inferences that can be reasonably drawn from the evidence, in the light most favorable to the prevailing party at trial. *Id.*

Mr. Jarvis asserts that the legal principles summarized in the previous paragraph do not apply to the present case. According to him, "[a] conviction based solely on circumstantial evidence should be sustained only where 'the circumstances, taken together, are inconsistent with any reasonable hypothesis of innocence.'" *Moye v. State*, 369 Md. 2, 13 (2002) (quoting *Wilson v. State*, 319 Md. 530, 537 (1990)). Mr. Jarvis is not correct.

In [*Clavon*] *Smith v. State*, 415 Md. 174, 183–84 (2010), the Court of Appeals addressed an almost identical contention based on *Moye* and *Wilson* and explained:

> We stated in *State v. Smith*, 374 Md. 527, 534 (2003), that the finder of fact has the "ability to choose among differing inferences that might possibly be made from a factual situation. . . ." That is the fact-finder's role, not that of an appellate court.
>
> * * *
>
> We need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence. *Smith*, 374 Md. at 557.
>
> Accordingly, the proper standard of review to be applied here is that set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979), where the U.S. Supreme Court stated that "the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . ., 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." *Id.* at 318-19 (emphasis in original).

(Some citations omitted).

This Court addressed the continuing viability of *Moye* and *Wilson* in *Ross v. State*, 232 Md. App. 72 (2017). Writing for this Court, Judge Charles Moylan, Jr. concluded that in [*Clavon*] *Smith v. State*, the Court of Appeals effectively declared that *Wilson* was no longer good law in Maryland. *Id*. at 98. Judge Moylan explained:

> The message of *Smith* is clear. Even in a case resting solely on circumstantial evidence, and resting moreover on a single strand of circumstantial evidence, if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal sufficiency of the evidence. The State is NOT required to negate the inference of innocence. It is enough that the jury must be persuaded to draw the inference of guilt.

Id. (formatting in original).

ANALYSIS

A

Mr. Jarvis's first argument is that the State did not introduce sufficient "direct [or] circumstantial evidence" to link him to the Dollar General robbery. He correctly points out that no witness testified that he was a participant in the robbery and that the State's case relied on circumstantial evidence, namely, his alleged mobile telephone use and DNA evidence, to connect him to the crime. He concludes:

> [T]here was no evidence of the victim's blood on Mr. Jarvis, nothing placed Mr. Jarvis at the crime scene when the robbery occurred, and there was no

> concrete evidence that he was actually with Mr. Horsey at or around the time of the robbery. Even the tennis shoes and mask allegedly containing Mr. Jarvis's DNA (with a mixture of DNA from at least three other people) were found away from the store [and] hours after the robbery.

We do not agree with his assessment of the probative value of the evidence introduced at trial. In its brief, the State succinctly, and in our view accurately, summarized the relevant evidence:

(1) The robber wore a black mask, white shoes, and a hoodie. The robber had a gun.

(2) A man dressed in a black jacket ran out of the Dollar General store, placed a gun in his pants, and got into a blue car. A passing motorist saw a blue car parked on the side of a nearby road with its hood up and a man standing in front of it. Once the man in the black jacket was in the car, the car drove away, reaching a speed of over 100 m.p.h.

(3) Mr. Horsey pled guilty to conspiracy to rob the Dollar General store. At an earlier interview with police, he acknowledged that he was with the blue car that was park on the side of the road when the robbery occurred.

(4) DNA was recovered from a white shoe that had been found on July 1, 2019, in a ditch on Clyde Ford Road, two miles from the Dollar General store. Clyde Ford Road was along the route that a robber would likely have traveled between the Dollar General store and Mr. Horsey's home. The probability of selecting an unrelated African-American individual at random who, like Mr. Jarvis, could not be excluded as the significant contributor to the DNA profile obtained from the shoe is approximately one in 48 quadrillion.

(5) A black mask, which was neither buried nor wet, was found approximately five and a half hours after the robbery in between the Dollar General store and Fairmount Road. The probability of selecting an unrelated African-American individual at random who, like Mr. Jarvis, could not be excluded as the significant contributor to this DNA profile obtained from the mask is approximately one in 30 quintillion.

(6) The parties stipulated that Mr. Jarvis told police that his cellphone number was 302-249-5759 on three occasions before and after the crime: June 24, 2019, July 17, 2019, and August 8, 2019. When an investigating officer asked Mr. Jarvis about that number during an interview, Mr. Jarvis did not say that it was not his cellphone number. Nor did he say that other people used that number, that he used another number at the time of robbery, or that he lent his cell phone to his brother regularly.

(7) Cellphone records show that, on the evening before the robbery, the cell phones with numbers attributed to Messrs. Jarvis and Horsey were in Westover at 5:00 p.m. and in Salisbury at 6:44 p.m. The cellphone records show that, on the day of the robbery, these same phones were in Westover (the location of the Dollar General store) from 9:06 until 10:15 a.m., and both were in Salisbury by 10:57 a.m., where they remained into the afternoon.

(8) Cellphone records show that, after police interviewed Mr. Horsey from 4:23 to 4:40 p.m. on June 30, 2019, he texted Mr. Jarvis twice beginning at 4:43 p.m., and then called him and spoke for a minute and a half.

(9) Cellphone records also show that, after police interviewed Mr. Horsey on July 2, 2019, from 9:18 to 9:52 a.m., there was a three-minute phone call, a one-and-a-half-minute phone call, and six more phone calls and eight text messages between Messrs. Horsey and Jarvis between noon and 1:00 p.m.

(10) During his interview with police, Mr. Jarvis stated that he did not know Mr. Horsey well. But there were approximately 30 cell phone communications between the two men between noon on June 30, 2019, and noon on July 2, 2019.

From this evidence, a reasonable fact-finder could infer that Jarvis and Horsey knew one another, that they both were in close proximity to the Dollar General on the day before the robbery and while the robbery occurred, and that they communicated frequently with one another after Mr. Horsey was interviewed by the police about the Dollar General robbery. Furthermore, because he had admitted it, a reasonable fact-finder could conclude that Mr. Horsey participated in the robbery. A reasonable fact-finder could also conclude that someone with Mr. Jarvis's DNA wore the white shoe and the black mask found in the vicinity of the robbery and that the robber wore white shoes and a black mask. To be sure, that Mr. Jarvis has an identical twin makes the DNA evidence less probative that it might otherwise have been. However, from the cell phone location evidence and the other evidence linking him to the crime, a fact-finder could conclude that the contributor of the DNA was Mr. Jarvis. A reasonable fact-finder could also infer that Mr. Jarvis was in possession and use of his cell phone because when he was interviewed by police, Mr. Jarvis did not say that the telephone number that investigators linked to him was not his number,

or that other people used that cell phone, or that he was using a different cell phone at the time of the robbery, or that he lent his cell phone to his twin brother on a regular basis.

Mr. Jarvis is correct that no single piece of evidence directly linked him to the robbery. He is also correct that no single strand of evidence if considered in isolation was sufficient to support a conviction. But, as an appellate court, we view the evidence in its totality and in the light most favorable to the State. Applying that standard of review, we hold that the evidence presented at trial was legally sufficient to support the convictions.

B

Mr. Jarvis's second contention is that there was insufficient evidence to support the conspiracy to commit robbery conviction. This contention is not preserved for appellate review.

At the conclusion of the evidentiary portion of the trial, Mr. Jarvis moved for a judgment of acquittal on all 12 counts. In pertinent part, counsel stated:

> Your Honor, I would request that this matter be — that my client be acquitted. And the basis for that, Your Honor, that the State has failed to demonstrate and failed to provide significant evidence to sustain a conviction, Your Honor.

Counsel then discussed, in some detail, the evidence linking Mr. Jarvis to the scene of the crime on the day that the robbery was committed. She posited that the cell phone records "only establish that the phone was in transit that day. They don't establish who was being — who was utilizing them." After the prosecutor responded to these contentions, the following exchange took place:

> [The Court]: And just for the record, to be clear, [Defense Counsel], your motion was as to all 12 counts, correct?
>
> [Defense Counsel]: Correct, Your Honor.
>
> [The Court]: And argument as to all 12 counts?
>
> [Defense Counsel]: Correct.

To this Court, Mr. Jarvis asserts:

> The only evidence of any interaction between Mr. Horsey and Mr. Jarvis is two Facebook videos where they were "free style rapping" and their alleged cell phones utilizing data from the same cell tower. [TFC] Tilghman "believe[d]" that one of the videos was [taken] the day before the robbery". However, that belief was based on the date that the video was *posted*, rather than the date that it was recorded. Worse, there is no testimony about a single word of that video. Nor is there evidence of a single word or interaction between Mr. Horsey and Mr. Jarvis beyond the video. And the alleged presence of two phones in the same place at the same time does not establish any agreement or intent to do anything, let alone commit a robbery.

(References to the record omitted.)

The State suggests that this argument is not preserved for appellate review. We agree. None of the contentions presented on appeal were made to the trial court. Md. Rule 4-324(a) requires that "[t]he defendant shall state with particularity all reasons why the motion should be granted." The Court of Appeals has explained that "under Maryland Rule 4–324(a), a defendant is required to argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient." *Hobby v. State*, 436 Md. 526, 539–40 (2014) (cleaned up). As Judge Joseph F. Murphy, Jr. observed: "When ruling on a motion for judgment of acquittal, the trial court is not required to imagine all reasonable offshoots of the argument actually presented."

Starr v. State, 405 Md. 293, 304 (2008). BECAUSE Mr. Jarvis failed to state with particularity the justifications in support of his motion for judgment of acquittal as to the conspiracy charges, he has failed to preserve the issue for appellate review.

THE JUDGMENTS OF THE CIRCUIT COURT FOR SOMERSET COUNTY ARE AFFIRMED. APPELLANT TO PAY COSTS.