Circuit Court for Washington County
Case No. 21-K-16-52636

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1439

September Term, 2017

JERRY WAYNE SMITH, JR.

v.

STATE OF MARYLAND

Fader, Chief Judge,
Nazarian,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: March 14, 2019

In the Circuit Court for Washington County, a jury convicted Jerry Wayne Smith, Jr., the appellant, of first-degree murder of Margaret Rose McAllister, openly wearing a dangerous weapon with intent to injure, false imprisonment of Mrs. McAllister, and theft less than $1,000 against Gary Koontz.

Smith was sentenced to life in prison without the possibility of parole for the murder conviction. The court also imposed sentences of 3 years for the weapons conviction, 30 years for the false imprisonment conviction, and 18 months for the theft conviction, all to be served consecutive to the sentence for murder.

On appeal, Smith poses four questions, which we have combined and reworded as follows:

I. Did the trial court err by admitting certain hearsay evidence?

II. Was the evidence legally sufficient to support the convictions?[1]

[1] The questions presented, as framed by Smith, are:

I. Whether the Circuit Court erred by admitting through Det. Glines' testimony that Jerry and Crystal were residing with Edna and Carl Knable in Needmore, Pennsylvania.

II. Whether the Circuit Court erred by admitting through Det. Ward's testimony that when he entered Jerry Smith's and Crystal Stanley's names in LeadsOnline, a law enforcement database for pawn nationally, it told him that Mr. Smith had pawned an item.

III. Whether the Circuit Court erred by admitting in evidence as State's Exhibit No. 28, a photocopy of the Leads account showing where Jerry Wayne Smith with, uh, excuse me, a date of birth of 5-27-1973, uh, under-had pawned an item at the Arizona Pawnman in Holbrook, Arizona.

IV. Whether the Circuit Court erred by denying Mr. Smith's motions for judgment of acquittal.

We shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

Smith's trial took place in May 2017. We recite the pertinent evidence in the light most favorable to the State, as the prevailing party.

On May 19, 2016, Mrs. McAllister, age 81, was murdered in her house in Hancock, Maryland, where she lived alone. That night, sometime after Mrs. McAllister had last spoken on the phone to one of her daughters, she let her great-niece, Crystal Stanley, and Smith, Stanley's boyfriend, into her house. Stanley had called Mrs. McAllister earlier on the pretext that she wanted to stop by to discuss Stanley's grandmother, Edna Knable, who was Mrs. McAllister's sister. That was a ruse; in fact, Stanley and Smith wanted money so they could "get out of town." Both were wanted for probation violations.

Stanley and Smith arrived at Mrs. McAllister's house in a truck belonging to Mrs. Knable and her husband (Stanley's grandfather) Carl. When Stanley knocked on the door, Mrs. McAllister did not answer. Stanley called her again to say she was there, and Mrs. McAllister opened the door for Stanley and Smith. They were both wearing work gloves.

Once inside, Stanley grabbed Mrs. McAllister and held her while Smith tied her hands and arms with duct tape he had brought with him. They demanded to know where Mrs. McAllister's purse was. When she told them, Stanley got it and dumped out its contents. They took her credit cards and checks and then taped her mouth shut. Stanley

went into Mrs. McAllister's bedroom and stole items of jewelry. When she returned to the living area of the house Mrs. McAllister was still alive. Stanley went outside and got in the truck because their dogs were in the truck barking. Smith was in the house alone with Mrs. McAllister for about five minutes. He returned to the truck and they drove to a campsite where they were staying to change clothes. Stanley saw blood on Smith's clothing. Smith told Stanley that he had "almost decapitated" Mrs. McAllister.

The next day, Mrs. McAllister did not answer the phone when her daughter called, so her other daughter and that daughter's husband went to her house to check on her. They found her dead body on the living room floor. The police were called and responded immediately. An autopsy revealed that Mrs. McAllister had sustained 14 stab wounds, including two that were potentially fatal: one wound to her chest that punctured her lung and one eight-inch slash to her throat so deep that it reached her backbone. It could not be determined which wound was inflicted first, but she would have died from either wound.

After pawning some jewelry and using and attempting to use Mrs. McAllister's credit cards at several stores in Hancock, Stanley and Smith drove the truck to South Carolina. Stanley discarded Smith's bloody clothes in a dumpster. The two then drove the truck to Arizona, where they pawned more jewelry and eventually were arrested. Expert witness testimony established that Mrs. McAllister's wounds were consistent with being caused by a knife that was recovered from Smith when he was arrested. Eventually Stanley plead guilty to first-degree murder. She testified as a witness for the State.

We will include additional facts as necessary to our discussion of the issues.

DISCUSSION

I.

Hearsay Evidence

Detective Bryan Glines, of the Criminal Investigation Unit of the Washington County Sheriff's Department ("WCSD"), assisted in the investigation of Mrs. McAllister's murder and testified as a witness for the State. Early in the investigation, he learned that Stanley and Smith had been staying at a camping ground near Mrs. McAllister's home. Four days after the murder, he went to that camping ground and found a receipt for "campsite number two" that listed the renter's city and state as Needmore, Pennsylvania. The receipt recorded a tag number for the truck registered to Carl Knable that Stanley and Smith were driving. Detective Glines also found a check for $40 dollars, payable on the account of Carl and Edna Knable, made out to the National Park Service.

On direct examination, the prosecutor showed Detective Glines that check and the following ensued:

> [THE STATE]: Where, if you know, where was Jerry Smith residing at the time – at that time . . .
>
> [DEFENSE COUNSEL]: Objection. Calls for hearsay, Your Honor.
>
> [THE STATE]: If he knows.
>
> THE COURT: Overruled.

> [DETECTIVE GLINES]: Uh, Jerry and Crystal were residing at the address of, uh, Edna and Carl Knable, in Needmore, Pennsylvania.[2]

Subsequently, and without objection, Stanley testified on direct examination that in May 2016, prior to the events in question, she and Smith had been living with the Knables in Needmore, Pennsylvania.[3] On cross-examination, the defense moved into evidence a portion of the videotape of Stanley's interview by the police in which she said that she and Smith had been living at the Knables' house in Needmore, Pennsylvania and had fled because they thought they were violating their probation. On redirect, the State moved into evidence a letter from the Fulton County Probation Department addressed to Stanley and Smith at the Knables' address in Needmore, Pennsylvania, which matched the address on the registration for the Knables' truck that Stanley and Smith were driving at the time of their arrest. This evidence also was admitted without objection.

Detective Howard Ward, also a member of the Criminal Investigation Unit of the WCSD who was investigating Mrs. McAllister's murder, testified that on May 20, 2016 – the day Mrs. McAllister's body was found – the police determined that voicemail fraud alerts were being left on her phone by her credit card companies. He further testified that on May 27, 2016, he performed a computer search of LeadsOnline, a national law enforcement data base of pawn transactions. The following colloquy took place:

[2] Needmore, Pennsylvania is about 12 miles north of Hancock, Maryland.

[3] Stanley testified that even though the Knables were her grandparents, they had raised her and she called them mom and dad.

> [THE STATE]: Okay. And what did you do when you accessed [LeadsOnline]?
>
> [DETECTIVE WARD]: Um. I entered Jerry Smith and Crystal Stanley's name into that database and found where, uh, Mr. Smith had pawned an item.
>
> [THE STATE]: And what was the lo- where was the location of the pawn?
>
> [DEFENSE COUNSEL]: Objection. This is hearsay. If he's testifying to what a system told him, uh, when he put information into it. Again, I don't object to the contents of the investigation. But as substantive proof, I object, Your Honor.
>
> [THE STATE]: We would just ask that it go to the . . .
>
> THE COURT: I don't know if it's offered for the truth of the matter asserted but overruled.

Defense counsel did not request a limiting instruction.

The State then moved into evidence its Exhibit No. 28, a print-out of Detective Ward's LeadsOnline search. Defense counsel objected "subject to [his] earlier objection." The print-out, entitled "LeadsOnline Ticket - Arizona Pawnman," showed that the pawn transaction took place on May 26, 2016 at 3:36 p.m., at a pawnshop in Holbrook, Arizona. It further showed that Jerry Wayne Smith, Jr., date of birth 5/27/1973, with an address of 1395 Jefferson Blvd., Hagerstown, Maryland 21740, pawned three items at that time. It gave Smith's sex, race, eye color, hair color, height, and weight and showed a photograph that was taken of him at the time of the transaction. It listed the three items – silver earrings, a silver heart pendant on a silver chain, and 14K gold earrings – and showed that they were pawned for $20.00.

Stanley testified, without objection, that the jewelry she had stolen from Mrs. McAllister was pawned in Arizona. On cross-examination, the defense played a portion of Stanley's videotaped police interview in which she said she was with Smith at the pawn shop in Arizona when they pawned some of Mrs. McAllister's jewelry. Additional evidence at trial established that the pawned gold earrings had belonged to Mrs. McAllister.

On appeal, Smith contends the trial court erred by admitting three items of hearsay evidence: 1) Detective Glines's testimony that he and Stanley were living in Needmore, Pennsylvania at the relevant time; 2) Detective Ward's testimony that the result of his search of LeadsOnline showed that Smith had pawned three items in Holbrook, Arizona; and 3) State's Exhibit No. 28, the document memorializing the LeadsOnline search. Pointing to the court's comment that it did not know whether the evidence was being offered for the truth of the matter asserted, he complains, with respect to the LeadsOnline evidence, that the court did not make a threshold finding whether the evidence was hearsay. He further argues that, under *Crawford v. Washington*, 541 U.S. 36 (2004), his confrontation rights were violated by the admission of these three items of hearsay evidence.

With respect to Detective Glines's testimony that Smith was living in Needmore, Pennsylvania, the State responds that Smith waived this contention when the same evidence later was admitted through Stanley without objection. The State further responds that the contention lacks merit because, without any information about the

source of Detective Glines's knowledge about where Smith was living, it is impossible to determine whether his testimony was hearsay. Alternatively, the State argues that, if the testimony was hearsay and the court erred by admitting it, that error was harmless beyond a reasonable doubt because, as stated above, the same evidence came in through Stanley without objection. Finally, the State argues that the confrontation clause issue is not preserved for review as it was not raised below, and in any event without any information about the source of Detective Glines's information, it cannot be established that any hearsay was "testimonial."

With respect to Detective Ward's testimony about the information he received from LeadsOnline, and State's Exhibit No. 28 documenting that information, the State responds, once again, that Smith waived these contentions when the same evidence later came in through Stanley without objection. Specifically, Stanley testified that she and Smith pawned items they had stolen from Mrs. McAllister; that some of the items were pawned in Arizona, where the LeadsOnline computer data-base showed that Smith had pawned items; that Stanley was present when Smith pawned the items in Arizona; and that other evidence showed that one of the items pawned in Arizona had been stolen from Mrs. McAllister.

On the merits, the State argues that the evidence was admissible under the business records exception to the rule against hearsay. The State further argues that if there was any error in admitting the evidence, the error was harmless beyond a reasonable doubt. Finally, the State argues, as it does with respect to Detective Glines's

testimony, that the confrontation clause issue is not preserved for review as it was not raised below.

Although Smith generally recites the law pertaining to hearsay, he gives little actual legal argument to support his position that the court erred in admitting this evidence. His argument concerning Detective Glines's testimony about his address simply is that the evidence was hearsay. He says no more. He does not explain why the evidence is hearsay and why, if it was hearsay, it was inadmissible. Nor does he make any argument as to how this evidence, if erroneously admitted, prejudiced him.

We agree with the State that, if Detective Glines's testimony was hearsay, *i.e.*, that he was testifying in court for the truth of a matter (that Smith was living in Needmore, Pennsylvania) stated by an out-of-court declarant (something we agree cannot be determined because we do not know the source of Detective Glines's testimony), the hearsay objection nevertheless was waived. After Detective Glines's testimony, Stanley testified that in the month of May 2016, prior to the murder of Mrs. McAllister, she and Smith were living with the Knables, in Needmore, Pennsylvania. As noted, there was no objection to the question that elicited this testimony and no motion to strike it. The defense subsequently introduced Stanley's videotaped police interview in which she stated that she and Smith had been staying at the Knables' house in Needmore, Pennsylvania before going to see Mrs. McAllister. On redirect, the defense did not object to the State's introduction of the letter from the Fulton County Probation Department addressed to Stanley and Smith at the Knables' address in Needmore, Pennsylvania.

"Objections are waived if, at another point, during the trial, evidence on the same point is admitted without objection." *DeLeon v. State*, 407 Md. 16, 31 (2008). *See also Hunt v. State*, 321 Md. 387, 433 (1990) ("[A] party waives his objection to testimony by subsequently offering testimony on the same matter" (citing *Peisner v. State*, 236 Md. 137, 144-45 (1964) (when evidence that was objected to is later introduced by the defense, the earlier objection has been waived)); *accord Ridgeway v. State*, 140 Md. App. 49, 66 (2001) ("A challenge to the trial court's decision to admit testimony is not preserved unless an objection is made each time that a question eliciting that testimony is posed."). Accordingly, Smith waived for appellate review his hearsay contention about Detective Glines's testimony.

For much the same reason, even that if the evidence that Smith was living in Needmore, Pennsylvania was improperly admitted, the court's error was harmless beyond a reasonable doubt. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (in a criminal case, an error is harmless when a reviewing court, after independently reviewing the record, is satisfied beyond a reasonable doubt "that there is no reasonable possibility that the evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict"); *accord Dionas v. State*, 436 Md. 97, 108 (2013). Admission of improper evidence may be harmless when that evidence merely was cumulative of other evidence. *See Potts v. State*, 231 Md. App. 398, 408 (2016) (stating that "[e]vidence is cumulative when, beyond a reasonable doubt, we are convinced that there was sufficient evidence, independent of the [evidence] complained

of, to support the appellant['s] conviction") (quoting *Dove v. State*, 415 Md. 727, 743-44 (2010)). *See also, Webster v. State*, 221 Md. App. 100, 119 (2015) (any error in the admission of evidence of defendant's notebook found in an apartment where narcotics were seized was harmless when other evidence connected defendant to that apartment); *Snyder v. State*, 104 Md. App. 533, 563-64 (1995) (error in admitting a statement from witness who told defendant that the victim thought defendant was trying to kill her was harmless because it was "merely cumulative" of other testimony, admitted without objection, that the victim had told another witness that she was afraid that the defendant was going to kill her).

In this case, Detective Glines's testimony that Smith and Stanley were living in Needmore, Pennsylvania was cumulative of other evidence of the same fact introduced by the State without objection and other evidence of the same fact introduced by the defense. Accordingly, any error by the trial court in admitting Detective Glines's testimony was harmless beyond a reasonable doubt.

Smith's contentions that the trial court erred by admitting Detective Ward's testimony about his LeadsOnline search and by admitting the LeadsOnline record documenting that search also were waived and, if there was error, the error was harmless beyond a reasonable doubt. After Detective Ward's testimony, Stanley testified on direct examination – without objection – that Mrs. McAllister's jewelry was pawned in Arizona. On cross, defense counsel played the portion of Stanley's statement to police in which she said that she and Smith had pawned some of Mrs. McAllister's jewelry at the

pawn shop in Arizona. By allowing evidence of Smith's pawning pieces of Mrs. McAllister's jewelry to come in either by not objecting to it or introducing it, Smith waived his objection to the previously admitted LeadsOnline evidence. *See DeLeon*, 407 Md. at 31 (2008); *Hunt*, 321 Md. at 433; *accord Ridgeway*, 140 Md. App. at 66. And even if there had not been a waiver, any error in the trial court's admission of this evidence was harmless beyond a reasonable doubt. Detective Ward's testimony and the LeadsOnline record were cumulative of the evidence about the Arizona jewelry pawning that came in through Stanley. *See Tu v. State*, 336 Md. 406, 428 (1994) (erroneous admission of cumulative evidence is harmless). There was sufficient evidence, independent of the LeadsOnline evidence, to establish that Smith and Stanley had pawned Mrs. McAllister's jewelry in Arizona.[4]

Finally, Smith's confrontation clause contention is not preserved for review. At trial, he raised hearsay objections to the evidence in question but did not make any objection based on the confrontation clause. "It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999); *accord Perry v. State*, 229 Md. App. 687, 709 (2016)

[4]Our disposition of the contentions regarding the LeadsOnline evidence makes it unnecessary to address whether that evidence, which does appear to have been hearsay, was admissible under the business records exception to the rule against hearsay. We also note that as the proponent of the evidence that Smith objected to on hearsay grounds, the State bore the burden to raise the business records exception before the trial court. It did not do so, and for that reason the record does not show a foundation for that exception.

("[W]here an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal."), *cert. dismissed*, 453 Md. 25 (2017). This waiver principle has been applied to confrontation clause arguments raised for the first time on appeal. *See Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 314 n. 3 (2009) ("The right to confrontation may, of course, be waived, including by failure to object to the offending evidence; and States may adopt procedural rules governing the exercise of such objections."); *Martin v. State*, 218 Md. App. 1, 22-23 (2014) (defendant waived confrontation clause objection by failing to raise it below).

II.

Sufficiency of the Evidence

At the close of the State's case-in-chief, defense counsel moved for a judgment of acquittal. Although he stated that he was moving for a judgment of acquittal "on all counts," his entire argument was as follows:

> Essentially put, the State has not produced sufficient evidence by which a reasonable juror could conclude beyond a reasonable doubt that Mr. Smith committed first-degree murder. As a result of that, the case should not go to the jury. And I request judgment of acquittal. Thank you.

The prosecutor proceeded to explain why the State had presented a prima facie case of murder in the first degree and all the other remaining charges.[5] After that, when asked by the court whether there was anything further, defense counsel said no. The court denied the motion.

[5] Some of the charges originally brought had been *nol prossed* during trial.

The defense then rested and defense counsel renewed his motion for judgment of acquittal "on the prior arguments." The court denied the motion.

On appeal, Smith contends the evidence was legally insufficient to support a necessary finding of criminal agency on his part, with respect to the first-degree murder conviction.[6] In his opening brief, his entire argument is as follows:

> No one testified that Mr. Smith had caused Mrs. McAllister's injuries, which is a necessary element of murder. MPJI-Cr 4:17; *Young v. State*, 303 Md. 298 (1985). Neither Mr. Smith's fingerprints nor his DNA were found in Mrs. McAllister's home. *Id*. Mrs. McAllister's DNA was not found on anything belonging to Mr. Smith. *Id*. Accordingly, no reasonable juror could have inferred that Mr. Smith had caused Mrs. McAllister's injuries. Accordingly, the Circuit Court should have granted Mr. Smith's motions for judgment of acquittal.

For the first time in his reply brief, Smith argues that the testimony tying him to the crimes perpetrated against Mrs. McAllister came from Stanley, who had pleaded guilty to first-degree murder of Mrs. McAllister and therefore was an accomplice, but her testimony was not sufficiently corroborated. In effect, he asks us to ignore Stanley's testimony and conclude that, without it, the evidence was legally insufficient to support any of the convictions of crimes against Mrs. McAllister.

Rule 4-324(a) provides that when a defendant in a criminal case moves for judgment of acquittal, he must "state with particularity all reasons why the motion should be granted." The defendant "is not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302 (2008) (citations omitted). In this

[6] Smith does not make any sufficiency arguments about his other convictions.

case, in advancing his motion for judgment of acquittal in the trial court, Smith did not argue that Stanley's testimony was uncorroborated accomplice testimony that should be disregarded and therefore the evidence against him was legally insufficient to prove criminal agency. Accordingly, this issue is not preserved for review. In addition, if it were preserved, we would have discretion not to address it because in Maryland, "appellate courts ordinarily do not consider issues that are raised for the first time in a party's reply brief." *Gazunis v. Foster*, 400 Md. 541, 554 (2007). *See also Jones v. State*, 379 Md. 704, 713 (2004) (appellate court ordinarily will not consider an issue raised for the first time in the State's reply brief but has discretion to do so).[7]

In a sufficiency challenge in a criminal case, we view the evidence in the light most favorable to the State and determine whether, from that evidence, "'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "[B]ecause

[7]Smith's "lack of accomplice corroboration" argument has no merit in any event. Evidence of corroboration of an accomplice's testimony need only be slight. *See Morris v. State*, 204 Md. App. 487, 503 (2012) (noting that "[n]ot much in the way of evidence corroborative of the accomplice's testimony has been required by [Maryland] cases[,]" as "the corroborative evidence need not be sufficient in itself to convict …") (internal quotation marks and citation omitted). Here, there was testimony by a forensic scientist that when she inventoried the truck after Smith's arrest she found credit cards belonging to Mrs. McAllister together with credit cards belonging to Smith. She also found a business card for Gary Koontz, an antique dealer who testified that Smith attempted to pawn jewelry – later identified as belonging to Mrs. McAllister – the day Mrs. McAllister's body was found. This evidence alone was sufficient to corroborate Stanley's testimony.

the finder of fact has the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Titus v. State*, 423 Md. 548, 557 (2011) (citation omitted). The fact-finder has the opportunity to choose among differing inferences from the evidence, and we "defer to any possible reasonable inferences the trier of fact could have drawn from the admitted evidence[.]" *Id*. at 558.

A conviction for first-degree murder "requires that the defendant possess the intent to kill (willful), that the defendant have conscious knowledge of the intent to kill (deliberate), and that there be time enough for the defendant to deliberate, *i.e.*, enough time to have thought about that intent (premeditate)." *Pinkney v. State*, 151 Md. App. 311, 332 (2003) (quoting *Willey v. State*, 328 Md. 125, 133 (1992) (internal quotation marks omitted)). The brutality with which the murderous act was committed may alone support a conviction for first-degree murder. *Id.* at 337 (affirming conviction for first-degree murder when evidence established that defendant used violent force to inflict four fatal blows to the victim's head).

The State presented evidence that Smith and Stanley had decided to leave town because they were wanted for outstanding probation violations, but they needed money to do so. They devised a plan to gain entry into Mrs. McAllister's home under the pretext of visiting her to discuss her sister (Stanley's grandmother, whom she referred to as her mother). When Mrs. McAllister let Stanley and Smith into her house, they were wearing

gloves to avoid leaving fingerprints. Smith brought duct tape with him, and they used it to restrain Mrs. McAllister while they stole her check book, credit cards, and jewelry. After Smith left the house and joined Stanley in the truck, his clothes had blood on them and he said he had nearly decapitated Mrs. McAllister. When Mrs. McAllister's body was discovered the following day, she was bound with duct tape and had fourteen stab wounds, including a gash to her throat so deep it reached her backbone.

Following Mrs. McAllister's murder, Smith and Stanley sold some of her jewelry to Mr. Koontz and used her credit cards to make, and attempt to make, purchases at multiple Wal-Mart and Sheetz locations. Smith and Stanley traveled to South Carolina and then to Arizona where they pawned at least one item of Mrs. McAllister's jewelry before they were arrested. Police recovered a knife from Smith's truck that the State's forensic expert testified was consistent with the knife used to murder Mrs. McAllister.

Given the advanced planning of the crime, the financial motivation for the crime, the financial transactions and attempted transactions that followed it, and the vicious and brutal means by which Mrs. McAllister was killed, there was ample evidence from which a rational jury could have found, beyond a reasonable doubt, that Smith premediated and committed the murder of Mrs. McAllister.

JUDGMENTS OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.