UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1614

September Term, 2014

LEON RONALD HARVEY, JR.

v.

STATE OF MARYLAND

Meredith,
Berger,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: August 18, 2015

After being convicted by a jury in the Circuit Court for Baltimore County, Leon Harvey, appellant, challenges the sufficiency of the evidence to support his conviction on the charge of first degree burglary.

QUESTIONS PRESENTED

Appellant raises a single issue for our review: "Is the evidence insufficient to sustain the conviction of first degree burglary?" Because we answer "no" to the question presented, we shall affirm the judgments of the Circuit Court for Baltimore County.

FACTS AND PROCEDURAL HISTORY

Harvey does not argue that the elements of burglary were not proved at trial. Instead, he challenges only the sufficiency of the evidence to identify him as the second suspect who was seen running from the scene of the first degree burglary committed by his nephew. Viewing the evidence in a light most favorable to the prevailing party — here, the State — there is sufficient support for the first degree burglary conviction, as we set forth below.

At approximately 4:20 p.m. on August 13, 2013, several Baltimore County police officers responded to a call reporting a burglary in progress at 5422 Dogwood Road. The first officer at the scene, Officer William Flaherty, testified that, as he arrived at 5422 Dogwood Road, he saw two black men, both of whom were carrying black bags, run out of the front of the house. Officer Flaherty further testified that the two men ran toward a green minivan that was parked on the street in front of 5422 Dogwood Road. Upon seeing the police, the first suspect dropped the bag he was carrying and continued to run toward the minivan, while the second suspect (whom the prosecution alleged to be the appellant) reversed direction and ran around the left side of 5422 Dogwood Road.

Officer Flaherty pursued the suspect who ran toward the minivan. Officer Flaherty reached that suspect as the suspect entered the driver's door of the vehicle. The suspect failed to comply with commands from Officer Flaherty. At the same time, Officers Philip Wilson and Sean Daley, two additional responding officers, provided backup for Officer Flaherty upon seeing him pursue the first suspect. After continuing to fail to comply with the officers' instructions, the suspect attempted to drive away, at which point the three officers discharged their service weapons at the suspect. The suspect died as a result of that conflict. The decedent was identified as Harvey's nephew.

Following the incident involving the nephew, while the officers were securing the property at 5422 Dogwood Road, Baltimore County police received a tip that a possible suspect in the burglary was seen in the 1900 block of Oak Drive, directly behind 5422 Dogwood Road. Several police officers, including a K-9 unit, responded to that tip. The dog led officers to 1903 Oak Drive, where the appellant was found hiding between a garage and some bushes. Officers ordered Harvey to come out of the bushes, but Harvey did not comply with that command. The dog was then commanded to apprehend Harvey. Harvey was subsequently ordered to show officers his hands. He failed to comply with that request as well. Following a kick to the back by one of the officers, Harvey complied, showed the officers his hands, and was handcuffed and arrested. Police searched Harvey's person, but found no weapons or contraband of any kind.

Harvey was then taken to the hospital. The officer who transported him there, Officer Mori, testified that, during the registration process, Harvey identified himself as "Leon Folkes." While at the hospital, Officer Mori received information from a desk officer at the

police precinct that "Leon Folkes's" real name was Leon Harvey. Officer Mori informed the hospital registration employee of Harvey's real name. Harvey then asserted that "Harvey" was an alias of his. Officer Mori made a remark to the registration employee, stating that she was "not sure why [Harvey] would think that we wouldn't find his real identity when we have MVA computer systems." Harvey interjected, stating: "You don't have no MVA computers. You found my ID in that van."

Following the close of the State's case-in-chief, Harvey moved for a judgment of acquittal. Harvey argued that the State's evidence showed merely that he was present at the scene of the burglary, and there was no evidence that Harvey aided or abetted his nephew in the commission of the burglary. That motion was denied. At the close of evidence, Harvey renewed his motion for acquittal. That motion was also denied. The jury convicted Harvey of first degree burglary. This appeal followed.

STANDARD OF REVIEW

"It is the responsibility of the appellate court, in assessing the sufficiency of the evidence to sustain a criminal conviction, to 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.'" *Tracy v. State*, 423 Md. 1, 11 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). Our only concern is "'whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *State v. Manion*, 442 Md. 419, 431 (2015) (quoting *Taylor v. State*,

346 Md. 452, 457). Our purpose is not to "undertake a review of the record that would amount to, in essence, a retrial of the case." *State v. Albrecht*, 336 Md. 475, 478 (1994).

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 . . . ." *Smith v. State*, 415 Md. 174, 185 (2010) (citing *Tarray v. State*, 410 Md. 594, 608 (2009)). As a result, "[w]e defer to the jury's inferences and determine whether they are supported by the evidence." *Id.* In addition, "'[w]e do not second-guess the jury's determination where there are competing rational inferences available.'" *Id.* (quoting *Smith v. State*, 374 Md. 527, 534 (2003)). "We defer to *any possible reasonable inferences* the jury could have drawn from the admitted evidence and 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." *State v. Mayers*, 417 Md. 449, 466 (2010) (emphasis added). "'The limited question before us, therefore, is not whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded any rational fact finder.'" *Olson v. State*, 208 Md. App. 309, 329 (2012) (emphasis in original) (quoting *Fraidin v. State*, 85 Md. App. 231, 241 (1991)).

DISCUSSION

Harvey contends that the evidence presented at trial was insufficient to convict him of violating Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article, § 6-202, which proscribes first degree burglary. Section 6-202(a) provides: "A person may not break and enter the dwelling of another with the intent to commit theft[,]" while § 6-202(b) provides:

"A person who violates this section is guilty of the felony of burglary in the first degree and on conviction is subject to imprisonment not exceeding 20 years."

Harvey asserts that all of the evidence presented at trial was circumstantial. Harvey contends that, because no witness expressly identified him as the second individual seen running out of 5422 Dogwood Road, the remaining evidence, even when viewed in the light most favorable to the State, was insufficient for a rational jury to conclude beyond a reasonable doubt that he was the second man seen running from 5422 Dogwood Road on the afternoon of August 13, 2013. He argues that, in the absence of evidence expressly identifying him fleeing the house, the jury could not conclude beyond a reasonable doubt that he was a participant in the burglary.

The State counters, arguing that, when the evidence is viewed in the light most favorable to the State, there was sufficient evidence to support Harvey's conviction of first degree burglary. Conceding that the evidence implicating Harvey as the second man seen running from the crime scene was circumstantial, the State contends that identification of that second person being Harvey may be inferred from the evidence, and the State argues that, given the evidence presented, the jury could rationally conclude beyond a reasonable doubt that Harvey was the second individual. The State asserts:

> The proximity of Harvey's location to the scene of the crime, when considered in conjunction with the lead provided to the officer, the fact that Harvey is the uncle of the first burglar, the fact that Harvey lied to police about his identity, and the fact that he concluded that the police realized his identity by finding his ID card in the getaway vehicle all allow for inferences that Harvey was indeed that burglar. The jury's verdict was rationally supported by the evidence presented and should be upheld.

We agree that the evidence, when considered in the light most favorable to the State, was sufficient to support the jury's verdict.

In his brief, Harvey contends that "'[a] conviction resting on circumstantial evidence alone . . . cannot be sustained on proof amounting only to strong suspicion or mere probability.'" (quoting *Taylor, supra*, 346 Md. at 458). Harvey further argues that the circumstantial evidence implicating him as the second suspect "'merely arouse[d] suspicion or [left] room for conjecture[,]'" and was therefore "'obviously insufficient.'" (quoting *Taylor, id*.). Harvey urges us to reverse the decision of the trial court. The lynchpin of Harvey's challenge is that, because he was not explicitly identified as the second suspect who was seen running away from the burglarized house, the additional evidence noted above was too indefinite to permit any jury to rationally infer beyond a reasonable doubt that he was that second suspect.

While citing *Fleming v. State*, 373 Md. 426, 433 (2003), for the proposition that "mere presence of a person at the scene of a crime is not itself sufficient to prove the guilt of that person[,]" Harvey downplays the significance of the other evidence produced at trial, and the cumulative effect that the various pieces of evidence can have. Although we agree that Harvey's close proximity to 5422 Dogwood Road, standing alone, would be insufficient to sustain a conviction for first degree burglary if that was the sole incriminating evidence before the jury, the State proved significantly more than the fact that Harvey happened to be in the neighborhood at the time his nephew committed a burglary.

The record includes the following evidence: Officer Flaherty saw one of the two men who ran out of the house run away from the minivan, around the left side of 5422 Dogwood

Road, while the other suspect ran toward the minivan; Harvey was found hiding between some bushes and a garage, in close proximity to the scene of the crime; police located Harvey in his hiding place as a result of a tip informing them of his approximate location; Harvey refused to comply with commands from police officers when he was ordered to come out from the bushes and show his hands; when asked to identify himself, Harvey gave police and the hospital registration employee a false name; when Officer Mori stated that she was "not sure why [Harvey] would think that [the police] wouldn't find his real identity when [they] have MVA computers[,]" Harvey responded: "You don't have no MVA computers, you found my ID in that van"; and the deceased driver of the minivan being used as the getaway vehicle was Harvey's nephew.

Harvey cites *Taylor*, *supra*, 346 Md. 452, for the proposition that, "when the evidence equally supports two versions of events, and a finding of guilt requires speculation as to which of the two versions is correct, a conviction cannot be sustained." *Id.* at 458 (citing *Hebron v. State*, 331 Md. 219, 234 (1993)). Harvey argues that his failure to comply with commands from the police equally supports the inferences that he was afraid of the police, and that he had an outstanding warrant for his arrest in an unrelated case, as well the inference that he was involved in the first degree burglary. Harvey also contends that his knowledge of the presence of the minivan, as well as his comment about his ID being present in the minivan, is ambiguous and, therefore, of limited probative value. He emphasizes that he was not explicitly identified by any witness as the second suspect seen running from the house.

Harvey's reliance upon *Taylor* is, however, misplaced. In *Smith v. State, supra*, 415 Md. 174, the Court of Appeals addressed an argument analogous to the one Harvey presents in this appeal. In *Smith*, the petitioner challenged the sufficiency of the evidence presented at trial to sustain his conviction for possession of marijuana. *Id.* at 177. Like Harvey, the petitioner in *Smith* argued that, "when the evidence equally supports two versions of events, and a finding of guilt requires speculation as to which of the two versions is correct, a conviction cannot be sustained." *Smith, supra,* 415 Md. at 181-82 (quoting *Taylor, supra*, 346 Md. at 458)). The Court of Appeals explained in *Smith*, however, the appropriate analysis that appellate courts employ when considering the inferences that may reasonably be drawn from the evidence:

> Petitioner's highlighted language in these cases notwithstanding, it is well established that the standard that [he] champions is not the focus of the standard to be applied when reviewing the sufficiency of the evidence in criminal cases. 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. Professor Douglas Lind explains that "[t]he term 'inference' refers to the logical process that takes place when, within the context of a group of propositions (*i.e.*, an 'argument'), one proposition (the 'conclusion') is arrived at and affirmed on the basis of other propositions (the 'premises') that are accepted at the beginning point of the process." Douglas Lind, *Logic and Legal Reasoning* 4-5 (2001). In other words, "[a]n inference is a factual conclusion that can rationally be drawn from other facts." Clifford S. Fishman, *Jones on Evidence* § 4:1 (7th ed. 1992 & Supp.2009-2010). "If fact A rationally supports the conclusion that fact B is also true, then B may be inferred from A." *Id.*

Smith, 415 Md. at 183. The Court of Appeals continued:

> We do not second-guess the jury's determination where there are competing rational inferences available. We give deference "in that regard to the inferences that a fact-finder may draw." *Smith*, 374 Md. at 534. . . . **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.

Smith, 415 Md. at 183-84 (emphasis added).

Moreover, Harvey's emphasis on the fact that much of the evidence presented at trial was circumstantial does not persuade us that the evidence is insufficient to support the jury's verdict. As we stated in *Martin v. State*, 218 Md. App. 1, *cert. denied*, 440 Md. 463 (2014), *cert. denied*, 135 S. Ct. 2068 (2015):

> Maryland has long held that **there is no difference between direct and circumstantial evidence**. It is, in fact, now an axiom of law that no greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case the trier of fact must be convinced beyond a reasonable doubt of the guilt of the accused.

Id. at 35 (emphasis added) (quotations and citations omitted) (alteration omitted).

We do not second-guess a jury's decision to accord less weight to evidence that supports a defendant's point of view or a jury's refusal to draw inferences in favor of a defendant. *See Smith*, *supra*, 415 Md. at 184. It was the job of the jury, as the finder of fact, to weigh the evidence. *Id.* We consider only whether *any* jury, upon viewing the evidence in the light most favorable to the State, could rationally conclude that Harvey was the second individual seen running out of 5422 Dogwood Road on August 13, 2013. *See Tracy*, *supra*, 423 Md. at 11. We are persuaded that the evidence in this case was sufficient to permit a rational jury to conclude, beyond a reasonable doubt, that Harvey was the second individual seen running from 5422 Dogwood Road on August 13, 2013.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.