Circuit Court for Baltimore City
Case No.: 121306005

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1900

September Term, 2023

RAEKWON M. GRIFFIN

v.

STATE OF MARYLAND

Graeff,
Leahy,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 26, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Raekwon Griffin, was indicted in the Circuit Court for Baltimore City with two counts of first-degree premeditated murder and related counts in connection with the deaths of Brian Palmer and Darrin Stewart. Following a jury trial, Griffin was convicted of first-degree felony murder of Palmer, second-degree murder of Stewart, robbery with a dangerous weapon, and two counts of using a firearm in the commission of a crime of violence. After the court sentenced him to an aggregate sentence of life plus twenty-five (25) years, Griffin timely appealed and presents the following issues for our review:

I. "Whether the trial court erred in admitting evidence of Mr. Griffin's post-arrest, post-*Miranda* silence over his objection[.]"

II. "Whether the evidence is insufficient to sustain Mr. Griffin's convictions[.]"

As explained in our discussion below, we agree that the circuit court erred in admitting evidence of Griffin's post-arrest invocation of his right to counsel but conclude that the evidence was sufficient to sustain his convictions. Because of the evidentiary error, we shall reverse the judgments and remand the case for further proceedings.

BACKGROUND

On August 5, 2021, Baltimore City police responded to a 911 call for a shooting in the 4300 block of Flowerton Road. Upon arrival, officers discovered the bodies of two men with gunshot wounds inside a red Ford Focus. The victims were identified as Brian Palmer and Darrin Stewart. Both died from their injuries.

The 911 caller reported seeing two men flee the location in a white vehicle and provided the dispatcher with a license plate number. The next day, Police were able to

locate a white vehicle that matched the description in the parking lot of a supermarket not far from the crime scene. When police arrived, Montay Shuler was in the car. Police also found a Ruger 5.7 handgun registered to Palmer inside the vehicle. Schuler was arrested and the car was taken to the forensic crime lab where further testing revealed Griffin's fingerprints on the rear passenger-side door of Shuler's vehicle.

At the scene of the crime, five cartridge casings were found. Although there was no evidence admitted at trial of the caliber of these casings, a firearms expert determined they were all fired from the same handgun, which was never recovered. No weapons were recovered from Griffin's residence. The expert also confirmed that these casings were not fired from the Ruger 5.7 handgun that was registered to Brian Palmer.

Inside Palmer's vehicle, police found a cellphone and "large quantities" of marijuana. Text messages extracted from Palmer's cellphone showed Palmer was communicating with Griffin on the day of the shooting.[1] Griffin was interested in buying a pound of marijuana from Palmer, for the negotiated price of $2,500. Griffin and Palmer agreed to meet later that day at 4313 Flowerton Road. Detective Bryan Kershaw, who examined the cellphone extracts, testified that this was Griffin's prior address. Minutes before the murder, Griffin texted Palmer that he would be with his "brother" and that they were planning on "going half," suggesting they were splitting the cost of the purchase.

[1] The phone number used by Griffin was registered to "Rae Williams" at the home address of Griffin's girlfriend, Ty Tamara Williams. In his appellate brief, Griffin acknowledges that he "had engaged in communication with Brian Palmer to arrange a purchase of marijuana from him on August 5, 2021."

Palmer responded at 8:12 p.m., informing Griffin that he was arriving by stating "red focus pulling up." The 911 homicide call took place five minutes later, at around 8:17 p.m.

Police also analyzed the cellphone recovered from Shuler and ascertained that, approximately fifteen minutes after the homicides, Shuler received a jail call from an individual identified as "Pointer."[2] The phone conversation between Shuler and Pointer was recorded by the jail and played during trial.[3] Sergeant Seong Koo of the Baltimore Police Department, the primary officer for the case, testified that Shuler and Pointer used coded language during the call, with Shuler indicating that he just did an "and one," which means a "double murder." Other statements during the conversation, as decoded by Sergeant Koo, indicated that Shuler was trying to get a "P," meaning a pound of marijuana, and that he recovered a "57," meaning a Ruger 5.7 caliber firearm. Sergeant Koo further testified that the Ruger 5.7 caliber handgun is "a very rare type of firearm" and that he had never recovered one before.

Information was also extracted from the cell phone in Griffin's possession. This included a conversation that took place between Griffin and an unidentified individual, saved in Griffin's phone as "Scudy," around the same time that Griffin texted Palmer to purchase a pound of marijuana. During that conversation, Scudy texted that someone "said he got 15[,]" and Griffin texted back, "Who let me rob him[,]" to which Scudy replied,

[2] Sergeant Koo testified that Pointer was unrelated to the instant case.

[3] Griffin notes in his brief that the trial transcript incorrectly attributes Shuler's statements to Pointer and vice versa.

"Definitely can[.]" Detective Kershaw testified, without objection, that the conversation concerned a potential robbery.

Cellphone location data also showed Griffin's phone in the vicinity of the crime scene on August 5, 2021, around the time of the shooting. There was evidence that service for Griffin's cellphone was terminated at 8:30 p.m. on August 5, 2021, or approximately 13 minutes after the murders.

Finally of note, after Griffin was arrested and waived his *Miranda* rights,[4] Griffin gave a statement to the police, denying that he knew anyone named "Brian." Upon further questioning, Griffin admitted he was present during a marijuana transaction where someone pulled out a gun and fired two gunshots after a brief "tussle" involving Griffin took place. After that, Griffin ran. As will be discussed in more detail, after police asked Griffin to provide more detail, Griffin invoked his right to a lawyer, and the police interview ended.

We supplement these facts in our discussion of the issues.

DISCUSSION

I.

Admission of Post-*Miranda* Silence

Griffin first contends the trial court erred by admitting evidence of Griffin's post-arrest, post-*Miranda* silence when it allowed the State to play the portion of the interview

[4] *Miranda v. Arizona*, 384 U.S. 436 (1966).

during which Griffin invoked his constitutional right to an attorney. Commendably, the State agrees, as do we.

Prior to playing Griffin's interview before the jury, defense counsel objected to including Griffin's invocation of his right to an attorney, as follows:

> [DEFENSE COUNSEL]: So, as not to interrupt what was about to transpire, since we have a little break there, just wanted to approach about one of the exhibits that's coming up, and it's his statement, which I guess they're going to play. When he's talking to the officer, there comes to a point where he says [sic] asks a question. He says he wants to have a lawyer, and I just think that part should be excluded (phonetic).
>
> [PROSECUTOR]: I don't (unintelligible).
>
> THE COURT: What's the basis for objection to that?
>
> [DEFENSE COUNSEL]: Since he has a constitutional right to not speak, that's part of the Miranda thing. It puts him in a bad light when he suddenly decides he wants to speak [*sic*] an attorney before he answers any questions.
>
> THE COURT: To the extent that you're objecting to that being included, I'm going to overrule the objection.
>
> [DEFENSE COUNSEL]: Okay, thank you.

Thereafter, the interview was played, and the jury heard the following:

> [GRIFFIN]: So, he told me he has some weed, and I was trying to get the weed from him, and then I just second guessing. I just left after that.
>
> DETECTIVE KERSHAW: That's not true. You and the guy you were with ran and got into his white Subaru right after the shots were fired. So, I'll give you that one for free, okay? Nothing personal. (Unintelligible). If you're going to do this, let's do it, because, like I said this is a pretty situation because you're wrapped up in something that you had no idea what was going to happen. So, back up a little bit. and just tell me the truth, bro. Listen, I can prove to you that I'm not lying to you, all right, because I know what happened, and I know your role is you were just looking for some weed, and

shit went sideways. I believe that so much that the lawyer I deal with on this side of things, I got her out of bed this morning to come down here to watch.

We're okay. She's watching right now, and the decision about how we're going to proceed with you is based on your truthfulness, okay? So, I just — like, I'm willing to walk you through this, bro. I'm here with you, all right. But you got to tell the truth. You just have to. It's fucked up, nobody wants to be in that position but you're in that position, right? Man to man. I have no reason to lie to you because I'm not working on this case, I'm working on another one. All right? This is not every day for you. It's not every day when the police come into your apartment, right. So, this is a pivotal moment in your life. and I would like you to just be honest with me, man. Just tell me how it goes down. I need to know that you're going to tell me the truth, or we're wasting our time. Cool, bro. What are you thinking?

[GRIFFIN]: You said I can talk with a lawyer present?

DETECTIVE KERSHAW: That's up to you, bro. You have that right. If you don't feel comfortable talking to me, you know. I mean, as I told you, I've talked to your guy. You'll look back and regret not talking to me today. I can guarantee you that. All right. I'm not fucking with you. The only way to help yourself is to tell me the truth. How we do that, I can't give you a voice on that. So, what would you like to do? What are you thinking, bro? What you want to do, man?

[GRIFFIN]: Yeah, so they pulled up, the guy got out of the car, and he was showing me the weed.

DETECTIVE KERSHAW: Okay. Were you actually in the vehicle, or they just pulled up?

[GRIFFIN]: Yeah, so they were showing me the weed, and he whips out, and there's a tussle going on ---

DETECTIVE KERSHAW: Between?

[GRIFFIN]: -- us two, and then all I heard was two shots, and I ran.

DETECTIVE KERSHAW: Who was with you? I know who was there, bro. I mean, it's up to you. It's already done for him, so, like, you're not telling me anything I don't know. I know you don't want to put your boy in, but I need the whole story. I need every detail. You're a smart guy. You know how I know that, before we even talked, because when you realized

what had happened, you turned your phone off, and an hour and 15 minutes after you turned your phone off, you changed your phone number, which, you know, is a logical thing to do.

Because, shit, you were the one just trying to get some weed. And, but for your credibility, I need every detail. I know who you were with, but I need to hear it from you. Are you related to this person you were with? Is he a blood relative to you? I mean, you called him cuz and bro, so I'm just asking, like, that would make sense why it's so difficult for you to say his name. Are you guys related? Yes? No? No? Known him a long time? No.

[GRIFFIN]: No.

DETECTIVE KERSHAW: How did you guys end up together? How does he end up going home, because from your phone, from this guy here, tells me everything, bro. You woke up, left Belgian Avenue around 10:00, went down to West Baltimore, probably near the car wash you were talking about. From there, you make your way up to, like, Swan near the village. At what point do you guys end up together, or was it planned for you guys to be together so he could look out for you in case something like that happened?

[GRIFFIN]: I don't want to talk without a lawyer present.

DETECTIVE KERSHAW: All right, no problem, bro. So, here's what we'll do right before. I got to talk to the State's Attorney. I mean, I don't know what she's going to – they have the authority. They tell us what to do, okay? But moving forward, if you're telling me you want to talk to us, but you want to do with lawyer, it's not a problem, bro. We can do that. And it's called a proffer, which basically means you come in with your lawyer, I come in with my lawyer, and we agree to talk open and honestly, and anything you say can't be used. It's just a chance for you to spill your guts and tell us everything, right.

And then, after that, the lawyers will decide how to proceed, and you know, talk about how trustworthy you are. It's my job to prove what you tell me. Do you understand? Like, I can't – this case is awesome. We got Witnesses. We got your fingerprints all on the Subaru. We got your phone telling us everything. Like, we've got a lot of evidence on you, and your boys, goes back and gets arrested with the victim's gun the next day. I mean that gun is actually registered to the victim.

I mean, it's through the Maryland State Police, so, I mean, that's like a no brainer. So, I'm going to talk to you. I respect your decision, so I would

> like to time to talk to [Prosecutor], and we'll see where we go from here. All right? We good? All right, man, I appreciate you talking to us. All right. Do you need anything? You hungry? No. All right.
>
> (Video stopped).

(Emphasis added). The jury also heard the following testimony about Griffin's invocation as the prosecutor resumed questioning Detective Kershaw:

> [PROSECUTOR]: Detective Kershaw, other than what you said to Mr. Griffin after he invoked, did you speak with him at all that day about the case?
>
> [DETECTIVE KERSHAW]: No, when he said lawyer, he wants a lawyer. That was it. Done.[5]

Evidentiary rulings such as this admission of Griffin's post-arrest, post-*Miranda* invocation of his right to silence and legal counsel "are largely within the dominion of the trial judge." *Crosby v. State*, 366 Md. 518, 526 (2001). Generally, we "will not interfere with such rulings unless there has been an abuse of discretion[,]" *id*, as it is "well-settled that trial judges have wide discretion to admit or exclude items of evidence." *Lupfer v. State*, 420 Md. 111, 122 (2011) (quotations omitted). However, "even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards." *Alston v. Alston*, 331 Md. 496, 504 (1993). If the evidentiary ruling

[5] The State also concedes, and we agree, that although defense counsel did not renew the objection when the exhibit was formally entered into evidence, the issue is preserved because the objection and the erroneous admission of the invocation occurred in "close proximity[.]" *Jamsa v. State*, 248 Md. App. 285, 310 (2020) (Further explaining that, where trial court's ruling on a motion *in limine* was made immediately before the challenged testimony, it would have "been an exercise in futility" to require defense counsel to renew the objection that had just been overruled, *id.* at 311); *Watson v. State*, 311 Md. 370, 535 (1988) ("requiring Watson to make yet another objection only a short time after the court's ruling to admit the evidence would be to exalt form over substance").

"involves an interpretation and application of Maryland constitutional, statutory, or case law, our Court must determine whether the trial court's conclusions are 'legally correct' under a *de novo* standard of review." *Schisler v. State*, 394 Md. 519, 535 (2006) (citation omitted).

The Fifth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself[.]" *Lupfer*, 420 Md. at 122. Article 22 of the Maryland Declaration of Rights similarly guarantees "[t]hat no man ought to be compelled to give evidence against himself in a criminal case[.]" *Newman v. State*, 384 Md. 285, 315 (2004). Maryland's privilege against self-incrimination has been interpreted as even "more comprehensive than that contained in the federal Bill of Rights." *Lupfer*, 420 Md. at 130 (quotations omitted); *see id.* Even so, both provisions "guarantee the innocent and guilty alike the right to remain silent," which includes "remain[ing] free from adverse presumptions surrounding the exercise of such right." *Id.*

Thus, reference to a criminal defendant's silence after the defendant has been arrested and given Miranda warnings violates the Due Process Clause of the Fourteenth Amendment. *Brecht v. Abrahamson*, 507 U.S. 619, 628-29 (1993); *Newman*, 384 Md. at 315 (citing *Wainwright v. Greenfield*, 474 U.S. 284, 292 (1986); *Doyle v. Ohio*, 426 U.S. 610, 619 (1976)). Indeed, it is well established that "[e]vidence of post-arrest silence, after *Miranda* warnings are given, is inadmissible for any purpose[.]" *Grier v. State*, 351 Md. 241, 258 (1998); *see Miranda v. Arizona*, 384 U.S. 436, 468 n.37 (1966) ("The prosecution

may not . . . use at trial the fact that he stood mute or claimed his privilege in the face of accusation").

These bedrock principles apply equally to the right to request counsel. *Jamsa v. State*, 248 Md. App. 285, 309 (2020) (citing *Harris v. State*, 458 Md. 370, 415-16 (2018)). "Testimony regarding evidence that a defendant, post-*Miranda* warnings, invoked his or her right to counsel, generates the same concern as the invocation of the right to silence." *Id.* This is because courts would be "naive if we failed to recognize that most laymen view an assertion of the Fifth Amendment privilege as a badge of guilt." *Grier*, 351 Md. at 263 (quoting *Walker v. United States*, 404 F.2d 900, 903 (5th Cir. 1968)). This type of evidence carries a low probative value and a great risk of unfair prejudice. *Jamsa*, 248 Md. App. at 309. Maryland's precedent makes plain that invocation of these Constitutional rights is of "dubious [evidentiary] value," *Kosh v. State*, 382 Md. 218, 227 (2004), and when improperly admitted, "reversal is the norm rather than the exception," *Coleman v. State*, 434 Md. 320, 345 (2013) (citation and quotations omitted).

In *Jamsa*, the defendant was arrested after an undercover police officer "believed that he had witnessed a possible drug transaction." *Jamsa*, 248 Md. App. at 292. At trial, defense counsel argued it was "inappropriate" to present the jury with a video clip in which the defendant invoked his right to counsel as it "could be interpreted by the jury as an indication that his client was going to get a lawyer because he was guilty." *Id.* at 299. Despite these arguments, the jury heard, "on the tape, [the defendant] being advised of his *Miranda* rights" followed by the defendant himself stating that "he refused to talk anymore and invoked his right to an attorney." *Id.* at 309. Given the extremely prejudicial nature of

these comments, we held that the error was not harmless beyond a reasonable doubt and noted that while the State's case was strong, it was "not overwhelming." *Id.* at 312.

Returning to the instant case, we hold that the trial court erred in overruling defense counsel's objection to the admission of Griffin's invocation. Even the State contends that this error was not harmless beyond a reasonable doubt, and we concur with this concession. "In order for the error to be harmless, we must be convinced, beyond a reasonable doubt, that the error in no way influenced the verdict." *Weitzel v. State*, 384 Md. 451, 461 (2004) (citing, *inter alia*, *Dorsey v. State*, 276 Md. 638, 659 (1976)). The burden is on the State to prove harmlessness. *Simpson v. State*, 442 Md. 446, 462 (2015). To do so, "the record must affirmatively show that the error was not prejudicial." *Dionas v. State*, 436 Md. 97, 109 (2013) (quoting *Dorsey, supra*). If we are not convinced, beyond a reasonable doubt, that the error exerted no influence on the jury's verdict, then the defendant's convictions must be vacated and a new trial ordered. *Weitzel*, 384 Md. at 462.

Here, the defense's theory was that Griffin wanted to buy marijuana from Palmer and that there was no plan to rob him. Instead, Shuler acted on his own when he shot both Palmer and Stewart and took Palmer's gun. Potentially undermining that theory, the court admitted evidence that Griffin invoked his right not to speak to the detective without an attorney present after the detective asked him who he was with when he met Palmer. Indeed, the invocation came immediately after the detective asked the following: "At what point do you guys end up together, or was it planned for you guys to be together so he could look out for you in case something like that happened?" The State's case included the theory that Griffin was liable as an accomplice. Therefore, the admission of Griffin's

invocation immediately after he was asked who he was with at the time of the murders could have impacted the jury's decision on his culpability.

Moreover, the prosecutor reminded the jury of Griffin's invocation during her closing argument when she summarized the interview with the detective. For example, the prosecutor reminded the jury that after waiving his right to counsel, Griffin lied by claiming he left the scene before the shooting, and later invoked his right to counsel after the detective confronted him with that lie. "An accused may invoke his or her rights at any time during questioning, or simply refuse to answer any question asked, and this silence cannot be used against him or her." *Crosby*, 366 Md. at 529. Although the evidence was otherwise sufficient, by admitting evidence that highlights Griffin's invocation of his right to counsel, the prosecutor could have unfairly and prejudicially influenced the outcome against him, especially considering the conflicting inferences regarding his involvement in the shooting.

The State further notes that the jury had trouble reaching a verdict and deliberated for six to seven hours over two days. The jury also asked several questions about accomplice liability.[6] Under these circumstances, we are unable to conclude that the error

[6] The pertinent jury notes included the following: "Did the shooting come from one firearm?"; "[T]o which charges does the accomplice liability clause apply? A.k.a. can you be an accomplice to a premediated [sic] murder, first-degree murder, felony first, second-degree murder, robbery with a dangerous weapon, conspiracy, and use a firearm, or does it only apply to the robbery of a dangerous weapon and use of a firearm?"; "[I]s conspiracy before or after the fact?"; "[D]oes accomplice liability apply to first degree felony murder of Brian Palmer?"; "For [robbery with a dangerous weapon] can Griffin be found guilty or liable due to the actions of his accomplice or does this charge solely apply to Griffin's actions?"; "Do we have to be unanimous on all charges or can we agree on some and be quote 'hung' unquote on others?"

in admitting Griffin's invocation of his right to counsel was harmless beyond a reasonable doubt; therefore, we reverse and remand.

II.

Sufficiency of Evidence

Griffin also claims that the evidence was insufficient to sustain his convictions. The State disagrees and contends the evidence was sufficient for the jury to find him guilty beyond a reasonable doubt. We agree with the State.[7]

In considering a challenge to the sufficiency of the evidence, we "examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Beckwitt v. State*, 477 Md. 398, 429 (2022) (quoting *State v. Wilson*, 471 Md. 136, 159 (2020)); a*ccord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Further, "we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State." *Id*. This standard of review applies to both direct and circumstantial evidence. *Beckwitt*, 477 Md. at 429 (citing *White v. State*, 363 Md. 150, 162 (2001). Indeed, "[c]ircumstantial evidence may support a conviction if the circumstances, taken together, do not require the trier of fact to resort to speculation or conjecture, but circumstantial evidence which merely

[7] Where we have reversed "a conviction, and a criminal defendant raises the sufficiency of the evidence on appeal, we must address that issue, because a retrial may not occur if the evidence was insufficient to sustain the conviction in the first place." *Benton v. State*, 224 Md. App. 612, 629 (2015) (citing *Ware v. State*, 360 Md. 650, 708-09 (2001)). *Accord Thompson v. State*, 229 Md. App. 385, 412 (2016).

arouses suspicion or leaves room for conjecture is obviously insufficient." *Beckwitt*, 477 Md. at 429 (quoting *Smith v. State*, 415 Md. 174, 185 (2010)).

Furthermore, "[w]hen making this determination, the appellate court is not required to determine 'whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *Roes v. State*, 236 Md. App. 569, 583 (2018) (quoting *State v. Manion*, 442 Md. 419, 431 (2015) (emphasis in *Manion*). "This is because weighing the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (quotation marks and citation omitted). Ordinarily, we will defer to "the factual findings of the trier of fact[.]" *Tarray v. State*, 410 Md. 594, 608 (2009). "Our deference to reasonable inferences drawn by the fact-finder means we resolve conflicting possible inferences in the State's favor, because we do not second-guess the jury's determination where there are competing rational inferences available." *State v. Krikstan*, 483 Md. 43, 64 (2023) (quotations marks and citation omitted); *accord State v. Smith*, 374 Md. 527, 534 (2003). In other words, the relevant question for the appellate court "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." *Scriber*, 236 Md. App. at 344 (emphasis in original, quotation marks and citation omitted).

A. The evidence was sufficient to sustain Griffin's convictions for first-degree felony murder and robbery with a dangerous weapon.

Griffin first argues the evidence was insufficient to sustain his conviction for first-degree felony murder of Brian Palmer and robbery with a dangerous weapon. Specifically,

Griffin asserts "there is no evidence to show that [he] or Shuler attempted or perpetuated a robbery before the shooting occurred in this case." The State disagrees, asserting that "[t]he evidence, viewed collectively, supported a rational inference that Griffin had a plan to rob Palmer that pre-existed the shooting." The State continues, "[f]urther, the evidence permitted the jury to rationally conclude that Palmer was shot and killed during the armed robbery, justifying Griffin's conviction for felony-murder." We agree with the State.

Under Maryland common law, felony murder is "a criminal homicide committed in the perpetration of or in the attempted perpetration of a dangerous to life felony . . . [t]he crime retains its common law definition, even though the General Assembly has divided murder into degrees of culpability for penalty purposes." *Yates v. State*, 429 Md. 112, 125-26 (2012) (internal citations and quotation marks omitted). Section 2-201 of the Criminal Law Article of the Maryland Code (2002, 2021 Repl. Vol.) ("CR") states, in pertinent part, "murder is in the first degree if it is . . . committed in the perpetration of or an attempt to perpetrate . . . robbery under § 3-402 or § 3-403 of this article[.]"

Moreover, "a killing constitutes felony murder when the homicide and the felony are part of a continuous transaction and are closely related in time, place, and causal relation." *Yates*, 429 Md. at 128. "[T]o secure a conviction . . . under the felony murder doctrine, the State is required to prove the underlying felony and the death occurring in the perpetration of the felony." *State v. Johnson*, 442 Md. 211, 220 (2015) (quoting *Newton v. State*, 280 Md. 260, 268-69 (1977)). An "afterthought felony will not suffice as a predicate for felony-murder." *Morris v. State*, 192 Md. App. 1, 34 (2010) (quotation marks omitted); *accord Purnell v. State*, 250 Md. App. 703, 719 (2021).

Armed robbery "requires the taking of property of any value, by force, with a dangerous or deadly weapon." *Bellamy v. State*, 119 Md. App. 296, 306 (1998); *see* CR §§ 3-402 (robbery), 3-403 (robbery with dangerous weapon); *see also* CR § 3-401(e) (providing that robbery retains its "judicially determined meaning" and requires, *inter alia*, "proof of intent to withhold property of another . . . permanently"). "'The crime, however, is not committed unless there is an intention to deprive the owner permanently of his property or the property of another lawfully in his possession.'" *State v. Gover*, 267 Md. 602, 606 (1973) (citation omitted).

Griffin's text messages, in which he sets up a meeting with Palmer, reasonably support an inference that he lured Palmer to the meeting to rob him. The meeting took place near where Griffin used to live, and Griffin went there with Shuler. Five minutes after Palmer texted Griffin "red focus pulling up[,]" the 911 homicide call took place. During this call, which was played to the jury, the caller told the dispatcher "[i]'ve heard some shooting, and then I saw two guys go run to a car." The caller identified a white car and provided a specific tag number for the car. This vehicle was later identified as Schuler's car. Sean Dorr, a forensic scientist for the Baltimore City Police Department, testified that Griffin's fingerprints were found on the rear passenger door of the car.

The jail call between Schuler and Pointer, also played to the jury, supports the inference as well. During that call, Shuler told Pointer that he didn't obtain "what [he] was trying to get[.]" Schuler also told Pointer that he wanted to get a "P," which is, according to Sergeant Koo's testimony, code language for "a pound of marijuana." Schuler stated that he instead obtained a "5.7," which is code language for a 5.7 x 28 millimeter caliber

Ruger handgun. A Ruger 5.7 caliber handgun that was registered to Palmer was recovered from Schuler's car. A fair inference could be made that Shuler went to the meeting with Griffin to steal marijuana from Palmer, but instead, decided to shoot Palmer and Stewart during this robbery and steal Palmer's Ruger 5.7, considered by Sergeant Koo to be "a very rare type of firearm." This was supported by the ballistics evidence that established that the only cartridge casings found at the scene were not fired from Palmer's Ruger 5.7.

In addition, the (unchallenged) admission of Griffin's other bad act suggested he was planning a robbery of another unidentified drug dealer at around the same time. This evidence was especially relevant as it tended to show Griffin's identity and his intent to commit a similar crime upon Palmer. *See State v. Faulkner*, 314 Md. 630, 638 (1989) (recognizing that other crimes may be admissible to prove identity when the evidence shows "that a peculiar modus operandi used by the defendant on another occasion was used by the perpetrator of the crime on trial"); *Emory v. State*, 101 Md. App. 585, 610-11 (1994) (listing several examples of when other bad acts are relevant to show identity), *cert. denied*, 337 Md. 90 (1995); *see also Howard v. State*, 324 Md. 505, 514 (1991) (observing that where intent is legitimately an issue and "where by reason of similarity of conduct or temporal proximity" other bad acts may have a probative value that outweighs the danger of unfair prejudice).

Further, Griffin's consciousness of guilt was also established when he cancelled service on his cell phone within minutes of the murders. *See Decker v. State*, 408 Md. 631, 640 (2009) ("Consciousness of guilt evidence can take various forms, including 'flight

after a crime, escape from confinement, use of a false name, and destruction or concealment of evidence'").

In sum, there was a rational inference from the evidence properly admitted of a pre-existing plan to rob Palmer of his marijuana and that Palmer was shot and his own handgun taken in furtherance of that robbery. There was more than sufficient evidence to support the jury's decision to convict Griffin as an accomplice in the first-degree felony murder and the robbery with a dangerous weapon.

B. The evidence was sufficient to sustain Griffin's convictions for second-degree murder and use of a firearm.

Lastly, Griffin argues the evidence was insufficient to sustain his convictions for second-degree murder of Stewart and use of a firearm in commission of a crime of violence. Griffin asserts "[t]he State produced no evidence to show that [he] somehow aided, counseled, encouraged, or commanded Shuler's decision to shoot Palmer and Stewart or aided him in any other crime." The State disagrees, contending that Griffin was guilty as an accomplice for all the crimes, and that was sufficient to sustain his convictions.

In Maryland, "the crime of murder remains a common law crime, although first-degree and second-degree murder have been delineated by statute." *Thornton v. State*, 397 Md. 704, 721 (2007). Murder is defined as "the killing of one human being by another with the requisite malevolent state of mind and without justification, excuse, or mitigation." *Kouadio v. State*, 235 Md. App. 621, 627 (2018) (citations omitted). As we have restated:

> All murder – first and second-degree – requires proof of malice. As related to murder, malice has been defined as "the intentional doing of a wrongful act to another without legal excuse or justification" and as including "any wrongful act done willfully or purposely." . . . [M]alice may be express or

> implied from the circumstances, that a specific intent to kill is not necessary, and that malice may be implied "from the attendant circumstances in some unintentional killings."

Id. at 627-28 (cleaned up); *see also* CL §§ 2-201 (a) (delineating the degrees of murder and their attendant states of mind); 2-204 (a) ("A murder that is not in the first degree under § 2-201 of this subtitle is in the second degree"). Second-degree murder includes the following states of mind:

> (1) killing another with the intent to kill—"bring[ing] about the death of another," —without premeditation; (2) killing another person with the intent to inflict serious bodily harm that death would be the likely result; (3) depraved-heart murder; and (4) felony murders, where the killing is done during the commission of certain felonies.

Garcia v. State, 480 Md. 467, 476-77 (2022) (cleaned up).

For use of a handgun in commission of a crime, CR § 4-204 (b) provides that, "[a] person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime." "The elements of that offense are (1) that a firearm was used by the defendant, and (2) that he used it in the commission of a felony or crime of violence." *Hallowell v. State*, 235 Md. App. 484, 507 (2018).

The Supreme Court of Maryland has explained accomplice liability as follows:

> [A]n accomplice as one who "as a result of [their] status as a party to an offense, is criminally responsible for a crime committed by another." [We] further held that not only is the accessory criminally responsible for the "planned, or principal offense" but also the "incidental" offenses. Thus, the definition is of an accomplice is one who, as a result of their status as a party to an offense, is criminally responsible for planned and incidental crimes committed by another.

Garcia, 480 Md. at 485 (cleaned up) (affirming conviction for second-degree murder as an accessory before the fact); *see also Reed v. State*, 52 Md. App. 345, 355 (1982) (applying accomplice liability to use of a handgun).

The facts presented at trial that support these convictions are similar to those that supported Griffin's conviction for first-degree felony murder—namely, that a rational juror could conclude, beyond a reasonable doubt, that Griffin planned to rob Palmer of a pound of marijuana, and that he brought his "brother," Shuler to the meeting. During that meeting, there was a "tussle" and someone produced a handgun and fired at least two shots. Considering that the ballistics evidence recovered from the scene included cartridge casings from a weapon that was not a Ruger 5.7, it was a fair inference that Shuler shot and killed Palmer and Palmer's companion, Stewart, during the robbery. Shuler then stole Palmer's Ruger 5.7 and fled with Griffin.

As evidence of consciousness of guilt, Griffin terminated his cellphone service, which contained evidence of his text conversations with Palmer prior to the meeting. And, after the murders, Shuler confessed his involvement to a third person, Pointer. There was also evidence that Griffin was planning a similar robbery of another drug dealer at around the same time as the robbery of Palmer, showing Griffin's identity and intent. Admittedly, while the evidence was both direct and circumstantial, a jury may consider both types of evidence when assessing criminal culpability. As we have explained:

> "Maryland has long held that there is no difference between direct and circumstantial evidence." *Hebron v. State*, 331 Md. 219, 226, 627 A.2d 1029 (1993). A conviction may be sustained on the basis of "a single strand" or "successive links" of circumstantial evidence, *id*. at 228, 627 A.2d 1029, so long as the circumstances, taken together, support an inference of guilt

> beyond a reasonable doubt, [*Taylor v. State*, 346 Md. 452, 458 (1997)]. Such inferences "must rest upon more than mere speculation or conjecture*." Smith v. State*, 415 Md. 174, 185, 999 A.2d 986 (2010). "We do not second-guess the jury's determination where there are competing rational inferences available." *Id*. at 183, 999 A.2d 986.

Williams v. State, 251 Md. App. 523, 569 (2021).

Griffin asks us to draw these inferences in his favor, but our job is only to decide if there was sufficient evidence and reasonable inferences to support the jury's findings. Under that standard, we are persuaded that the evidence was sufficient to sustain his convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID ONE HALF BY APPELLANT AND ONE HALF BY MAYOR AND CITY COUNCIL OF BALTIMORE.