UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1904

September Term, 2014

LAMONT DORIAN BEASLEY

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

Opinion by Hotten, J.

Filed: August 21, 2015

Appellant was charged with one count of attempted first degree murder, in violation of Maryland Code (2002 Repl. Vol. 2012), §2-205 of the Criminal Law Article [hereinafter "Crim. Law"]; one count of attempted second degree murder, in violation of Crim. Law § 2-206; one count of first degree assault, in violation of Crim. Law §3-202; one count of second degree assault, in violation of Crim. Law § 3-203; two counts of use of a firearm in the commission of a felony or crime of violence, in violation of Crim. Law §4-204[1]; one count of reckless endangerment, in violation of Crim. Law §3-204; and one count of conspiracy to commit first degree murder, in violation of the common law. Following a jury trial in the Circuit Court for Anne Arundel County, appellant was convicted of attempted first degree murder, first degree assault, use of a firearm in a felony or crime of violence, reckless endangerment, and conspiracy to commit first degree murder. Appellant noted a timely appeal and presents three questions for our consideration, which we have consolidated and rephrased for clarity[2]:

> I. Whether there was sufficient evidence to sustain appellant's convictions for attempted first degree murder, conspiracy to commit

[1] The State nol prossed one of the counts.

[2] Appellant's original questions presented for appeal stated:

> [I]. Is the evidence sufficient to sustain the conviction for attempted first degree murder?
>
> [II]. Is the evidence sufficient to sustain the conviction for conspiracy to commit first degree murder?
>
> [III]. Is the evidence sufficient to sustain the conviction for use of a firearm in a felony or crime of violence?

first degree murder, and use of a firearm in the commission of a felony or crime of violence?

For the following reasons, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL HISTORY

On April 25, 2013, Melvin Johnson ("Mr. Johnson"), was shot in the back of the head at about 9:30 p.m. in the Brooklyn Park area of Anne Arundel County. Prior to the shooting, appellant[3] contacted Mr. Johnson at about 8:30 p.m. or 9:00 p.m. to purchase drugs. Mr. Johnson testified that he knew appellant prior to that night, but they only communicated in passing. The two agreed to meet at a convenience store named "Charlie Ward's" in Brooklyn Park, Anne Arundel County. Mr. Johnson waited there for appellant, who arrived in a truck, and walked across the street. Mr. Johnson testified that the two were talking when suddenly, "it went black" and he woke up three hours later in Shock Trauma at the University of Maryland Hospital in Baltimore, suffering from a gunshot wound to the back of his head.

Corporal Keith Fultz of the Anne Arundel County Police Department arrived to the crime scene, responding to a shooting call, and obtained a copy of the surveillance video from Charlie Ward's. In the video, appellant and another man, later identified as "Boosy",[4] arrived in a pickup truck and both exited the vehicle. Appellant walked across the street and then walked down the block with Mr. Johnson. Thereafter, Boosy is seen walking

[3] During testimony, Mr. Johnson referred to appellant as "Chuckie" and stated that he did not know him by the name Lamont Beasley.

[4] Boosy's real name was later identified as Jarrell Stewart.

across the street and down the block in the same direction as appellant and Mr. Johnson. At some point, the three men were out of range of the camera. Some seconds elapsed and suddenly appellant and Boosy were seen running back to the truck and speeding off.

Anne Arundel County Police Detective, Joe Goldberg, was the case detective who conducted the follow-up investigation into the shooting. Investigating Anne Arundel police officers discovered Mr. Johnson's cellular phone at the scene and Detective Goldberg was asked to go to the hospital. The call log indicated that Mr. Johnson was in contact with appellant.[5] Detective Goldberg put the phone number into the criminal justice database and discovered that the number previously called 911 in Baltimore City as associated with Lamont Beasley. The number was registered under appellant's girlfriend's name, Tamia Hill ("Ms. Hill"). Detectives took the name and the physical description and matched it to the general description that was provided for "Chuckie." Thereafter, they produced a previous arrest photograph of appellant and presented it to Mr. Johnson. Subsequently, Mr. Johnson identified the photograph as appellant or Chuckie.

Detectives arrested appellant pursuant to a warrant on May 15, 2013.[6] He was interviewed at the police station by Detectives Goldberg and Baldwin. The audio-recorded interview was admitted into evidence and played for the jury. Initially, appellant denied any involvement or knowledge of the shooting, having the nickname Chuckie, using Ms.

[5] The name listed in the call log is "Chuckie."

[6] The detectives brought the arrest warrant to Ms. Hill's apartment where appellant was discovered hiding in a closet.

Hill's cellular phone, and seeing Mr. Johnson[7] the night of the crime. However, appellant did admit that he purchased Percocet[8] pills from Mr. Johnson sometimes.

During the interview, appellant was informed that he was captured on video surveillance and then he changed his story. He admitted to the nickname Chuckie and that he sometimes used Ms. Hill's phone to call Mr. Johnson. He stated that Mr. Johnson was "caught up in something with the bloods" and he "ratted on somebody." Appellant also belonged to the gang, however when he tried to quit a "ranking member"[9] by the name of Eighty, threatened his daughter and daughter's mother. Eighty told appellant to call Mr. Johnson and ask him for some Percocet pills. Thereafter, appellant paid a man, Melvin Damran, forty dollars to borrow his pickup truck and drove Boosy, who appellant claimed to not know, to meet Mr. Johnson. Appellant stated that he did not know Boosy was going to shoot Mr. Johnson and thought he was going to beat him up. Appellant wrote a statement for the police, stating:

> Eighty is the one who handled this. He told me he would kill me, my kid, my baby mother if I didn't call Mellow. And he told me to ride Boosy up to Mellow in the black pickup truck, so I did. When I got out to talk to Mel, Boosy walked up to him, shot him in the head and pointed the gun at me, said get in the car, so I did. He said, drop me off at Eighty house which is by Ballman and I drove home.

[7]Appellant referred to Mr. Johnson as "Mellow."

[8] Percocet is a prescription drug used to treat moderate to severe pain. *Drugs and Medication Percocet,* WebMd, http://www.webmd.com/drugs/2/drug-7277/percocet-oral/details (last accessed August 11, 2015).

[9] Appellant described a "[r]anking member" as gang member who is "more of a boss."

Detective Goldberg presented a photo array to appellant, including a photograph of Boosy. Initially, appellant identified another man as Boosy, but when asked to look again, correctly identified him.

Appellant was charged with one count of attempted first degree murder, one count of attempted second degree murder, one count of second degree assault, two counts of use of a firearm in a felony or crime of violence, one count of reckless endangerment, and one count of conspiracy to commit first degree murder. A jury trial was held on May 29 to May 30, 2014 in the Circuit Court for Anne Arundel County. At the end of the State's case, appellant's counsel motioned for a judgment of acquittal:

> [APPELLANT'S COUNSEL]: Yes, Your Honor. At this time, Your Honor, on behalf of [appellant], I'm making a motion for judgment of acquittal as to each and every count. Your Honor—
>
> THE COURT: Oh, you want to be heard on it?
>
> [APPELLANT'S COUNSEL]: Yes, please.
>
> THE COURT: Okay.
>
> [APPELLANT'S COUNSEL]: Your Honor, I think the State and I can basically agree to the factual setting is that obviously [appellant] [was] present [when] Mr. Johnson was shot. There was phone communication between—
>
> THE COURT: For the record, [appellant is] in court next to Counsel.
>
> [APPELLANT'S COUNSEL]: Yes, Your Honor. This one contact preceding Mr. Johnson's shooting between [appellant] and Mr. Johnson and then it's obviously the statement which the [c]ourt heard, but I guess it won't be transcribed as part of the record, so the summary of that is that [appellant], after initially denying being present, ultimately agrees that he was present, that he came there with another individual, that he was not the shooter, this other individual shot Mr. Johnson and that [appellant] did not know this other individual was going to shoot Mr. Johnson.

> Attempted first degree murder and attempted second degree murder both require an intention to kill. I think in this case there's no proof that [appellant] possessed the intent to kill. [The State] said in her opening statement there'd be no proof . . . what the [appellant's] intentions were at that time, I mean, even in an aiding and abetting context, to suggest that aided and abetted in some offenses doesn't necessarily aid[ ] and abet[ ] in that offense, the attempted murder charges for purposes of this portion of my argument.
>
> I also think, Your Honor, it's not a fair inference to say the State's burden o[f] proof is satisfied by disbelieving the [appellant's] statement. There has to be affirmative proof of some conduct action on behalf of [appellant], so I submit, Your Honor, based on that argument that there's insufficient proof that this man had any intention to kill, any agreement between him and this other individual, this third party, if you will, Boosy, that Mr. Johnson was going to be shot or killed. There's no evidence of any kind of agreement beyond I'm going to drive you over there and there's some unknown beef between an individual and Melvin Johnson. That doesn't equate to an agreement to commit the murder of Mr. Johnson.
>
> Likewise, Your Honor, there's no proof that he was aware of this other individual's possession of a gun, so it's affirmative they're submitted on those basis. The Motion for Judgment of Acquittal as to those four counts, to attempted murder and conspiracy to handgun, I'll submit on the record (indiscernible) counts, Your Honor.

In response, the State indicated:

> All of those counts should go to the jury, Your Honor. These are all questions of facts based on the totality of all the evidence, so I think it's something the jury needs to consider. I did not say in opening that there would be no proof of his intent. I was talking in conjunction with his statement that, just in terms of what he had told the police what he says he was told, but the jury's free to look at all of the evidence to be able to determine other things that would indicate differently to them.
>
> * * *
>
> The [appellant] specifically says first of all in his own statement that he thought ["]he was just going to get beat up. That was it. That's not what he fucking told me. What he just did was not what he told me.["]

> So we start at he knew he was going to get beaten. He knew that he was setting up a situation where the guy was being set up to be beaten up by the other guy. You watch the video, and the way that the video plays, I think that they can infer what they wish from the factual evidence of the video in terms of how they go, the way the other [d]efendant loops around and all of those things. It's going to be up to them to determine, based on this credibility, to judge his credibility in terms of statement, as to whether they do believe what he says that he was never told that he would be shot or that he was never told that there was a gun and never saw a gun.

The circuit court denied the motion indicating:

> Okay. Well, the evidence on that point with regard to attempted murder is not overwhelming in the sense of completely persuasive to me. That's not the standard, and I think that's sufficient to survive a motion, so . . . the motion is denied. Okay.

Appellant was sentenced on October 2, 2014, in which the court indicated:

> With regard to Count I, attempted first-degree murder, the [c]ourt imposes a sentence of 20 years, I'll suspend 10 of it. Count III, assault, first-degree, the [c]ourt determines that that will merge into Count I. Count VI, use of a firearm in the commission of a crime of violence. The [c]ourt hereby sentences you to 10 years, the first five of which are without parole. And this sentence will be consecutive, consecutive to the first sentence. That first sentence having 10 years of active time. So the gun sentence will follow after that one.
>
> With regard to Count VII, reckless endangerment, the [c]ourt finds that that merges into the attempted first-degree murder, that is Count I. With regard to Count VIII, conspiracy to commit murder, the [c]ourt's going to impose a sentence of five years. This one will run concurrently with Count I. That is Count VIII, conspiracy to commit first-degree murder, the sentence is five years. It will be merged into the sentence under Count I.
>
> So what have you just heard? You've heard 20 years, 10 suspended. And then after that 10 years of active time, with all those many credits they give you up there in the DOC, you're going to have to spend 10 years on the handgun charge, five of which are mandatory.

Appellant noted a timely appeal. Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues presented.

STANDARD OF REVIEW

When reviewing whether there was sufficient evidence to support a criminal conviction, we consider '"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."' *Tichnell v. State* 287 Md. 695, 717 (1980) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). "In other words, a guilty verdict may be set aside only if there is no legally sufficient evidence or inferences drawable therefrom on which the jury could find the accused guilty beyond a reasonable doubt." *Diggs & Allen v. State*, 213 Md. App. 28, 88 (2013) (quoting *Morgan v. State,* 134 Md. App. 113, 121 (2000)).

In *Jackson*, the Court stated:

> This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the fact finder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution.

443 U.S at 319 (emphasis in the original) (footnote omitted).

In *Morris v. State*, 192 Md. App. 1, 30-31 (2010), this Court explained the standard of review for the sufficiency of evidence to support a conviction:

> We defer to the fact-finder's decisions on which evidence to accept and which inferences to draw when the evidence supports differing inferences. In other words, we "'give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether . . . [we] would have chosen a different reasonable inference.'" In our independent review of the evidence, we do not distinguish between circumstantial and direct evidence because

> "[a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence."

(citations omitted).

DISCUSSION

Appellant raises three challenges relative to the sufficiency of the evidence. First, appellant contends that the evidence was insufficient to support the jury's verdict of guilty of attempted first degree murder. Second, he argues that there was insufficient evidence to sustain his conspiracy to commit first degree murder. Third, he contends that there was insufficient evidence to sustain his use of a firearm in the commission of a felony or crime of violence. The State avers that the jury possessed enough evidence to conclude that appellant knew there was a plan to shoot Mr. Johnson with an intent to kill him, and therefore, the evidence supported the verdicts.

A. Attempted First Degree Murder

Crim. Law §2-205 indicates that "[a] person who attempts to commit murder in the first degree is guilty of a felony and on conviction is subject to imprisonment not exceeding life." Appellant asserts that a conviction for attempted first degree murder requires that appellant possessed the specific intent to kill and that the intent to do grievous bodily harm will not suffice. In support of this argument, appellant cites to the Court of Appeals decision in *State v. Raines*, 326 Md. 582 (1992). In *Raines*, a driver of a vehicle and the passenger were convicted of first degree murder at a bench trial in the Circuit Court for Baltimore County when the passenger fired a handgun at a moving tractor-trailer, killing the driver. *Id.* at 585-86. On appeal, we reversed the convictions and held that the evidence

did not show a specific intent to kill on the part of either of the defendants. *Id.* at 588. The Court of Appeals granted certiorari and affirmed, in part, and reversed, in part, this Court's ruling. *Id.* at 599. The Court of Appeals described first degree murder, indicating:

> For a killing to be "willful" there must be a specific purpose and intent to kill; to be "deliberate" there must be a full and conscious knowledge of the purpose to kill; and to be "premeditated" the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate. It is unnecessary that the deliberation or premeditation shall have existed for any particular length of time.

Id. at 589 (quoting *Tichnell,* 287 Md. at 717-18 (internal quotations omitted)). The Court first assessed the circuit court's findings regarding the passenger and determined that there was ample evidence to support that the victim's murder was "wilful, deliberate, and premediated" and therefore, the circuit court committed no error. *Raines*, 326 Md. at 592. However, the Court of Appeals determined that the circuit court erred regarding the driver because it stated that he could be convicted as a principal in the second degree "whether he knew the [d]efendant, [the passenger], was going to shoot at the window or not." *Id.* at 593. The Court noted:

> A second degree principal must be either actually or constructively present at the commission of a criminal offense and aid, counsel, command, or encourage the principal in the first degree in the commission of that offense.

Id. (citations omitted). The Court of Appeals affirmed this Court's decision to vacate the driver's conviction and concluded:

> In the instant case there is no suggestion that the victim was shot by [the driver] in furtherance of the commission of a criminal offense which [the driver and passenger] had undertaken. . . . Nor is there any evidence from which it could be inferred that [the driver] knew or believed that [the passenger] intended to kill, or that he himself acted with such intent. We

> agree with the Court of Special Appeals that the evidence was insufficient to convict [the driver] of murder in the first degree.

Id. at 599.

Appellant avers that the circuit court's statement at sentencing that, "although I acknowledge what the jury found, I don't believe that you went out there with the intention to kill anybody[,]" confirms that the court erred when it denied his motion for acquittal. We disagree. The case at bar involved a jury trial as opposed to a bench trial in *Raines.* As the fact finder, the jury "possesses the ability to 'choose among differing inferences that might possibly be made from a factual situation' and [the appellate court] must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference." *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *State v. Suddith,* 379 Md. 425, 430 (2004) (citations and footnote omitted)). Additionally, the Court of Appeals stated in *Raines*:

> This Court has noted that the trier of fact may infer the intent to kill from surrounding circumstances:
>
> > "[S]ince intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence."

326 Md. at 591 (citing *State v. Earp,* 319 Md. 156, 167 (1990), *quoting Davis v. State,* 204 Md. 44, 51 (1954)).

The circuit court, as the fact finder, in *Raines* erred when it determined that the driver could have been convicted regardless of whether he knew the passenger was going to shoot at the window or not. Furthermore, in *Raines*, there was no indication that the

passenger shot the victim in furtherance of the commission of a crime. Here, it is undisputed that appellant arranged for Boosy and Mr. Johnson to be at the scene because Mr. Johnson got into trouble with a gang.

When determining intent, the fact finder must consider "the accused's acts, conduct and words." *Raines* 326 Md. at 591 (citing *Taylor v. State*, 238 Md. 424, 433 (1965)). In the case at bar, the jury was presented with evidence such as: appellant's recorded statement to the police, which included him changing his story midway through the interview, a recorded video of appellant and Boosy getting out of the same vehicle and then later running to the vehicle and driving off, appellant admitting to setting Mr. Johnson up, and appellant admitting that he was there when Mr. Johnson was shot. Despite appellant's statement that he thought Boosy was only going to beat Mr. Johnson, the jury had enough evidence to conclude that appellant possessed the requisite intent to be convicted of attempted first degree murder. Accordingly, we perceive no error in the circuit court's denial of appellant's motion.

B. Conspiracy to Commit First Degree Murder

In Maryland, conspiracy is a common law crime. The Court of Appeals has described the crime, indicating:

> A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The essence of a criminal conspiracy is an unlawful agreement. The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design. In Maryland, the crime is complete when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown.

Mitchell v. State, 363 Md. 130, 145 (2001) (citations and quotation marks omitted).

Appellant relies on the same arguments regarding the attempted first degree charge for the conspiracy to commit first degree murder charge. He asserts that the circuit court was not satisfied beyond a reasonable doubt that he possessed the specific intent to kill and that the evidence was insufficient to sustain the conviction. We disagree for the same reasons cited above. Furthermore, the circuit court was not the trier of fact and the jury was presented with sufficient evidence to support its conclusion. Thus, we perceive no error.

C. Use of a Firearm in the Commission of a Felony or Crime of Violence

Crim. Law §4-204 addresses the use of a handgun in the commission of a crime:

> (a) *"Firearm" defined.*— In this section, "firearm" means:
>
> > (i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or
> >
> > (ii) the frame or receiver of such a weapon.
>
> (2) "Firearm" includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.
>
> (b) *Prohibited.*— 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,[10] or any felony, whether the firearm is operable or inoperable at the time of the crime.

[10] Maryland Code (2003 Repl. Vol. 2011), §5-101(c) of the Public Safety Article defines a "Crime of violence" as:

(1) abduction;

(2) arson in the first degree;

(c) *Penalty.*—(1) (i) A person who violates this section is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

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(3) assault in the first or second degree;

(4) burglary in the first, second, or third degree;

(5) carjacking and armed carjacking;

(6) escape in the first degree;

(7) kidnapping;

(8) voluntary manslaughter;

(9) maiming as previously proscribed under former Article 27, § 386 of the Code;

(10) mayhem as previously proscribed under former Article 27, § 384 of the Code;

(11) murder in the first or second degree;

(12) rape in the first or second degree;

(13) robbery;

(14) robbery with a dangerous weapon;

(15) sexual offense in the first, second, or third degree;

(16) an attempt to commit any of the crimes listed in items (1) through (15) of this subsection; or

(continued…)

(…continued)

(17) assault with intent to commit any of the crimes listed in items (1) through (15) of this subsection or a crime punishable by imprisonment for more than 1 year.

> (ii) The court may not impose less than the minimum sentence of 5 years and, except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole in less than 5 years.
>
> (2) For each subsequent violation, the sentence shall be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

Appellant contends that he could not have aided Boosy in his use of the firearm because the evidence was insufficient to establish that he had knowledge Boosy possessed a gun and that he was aware of Boosy's plan to shoot Mr. Johnson. The Court of Appeals described the intent required for aiding and abetting, indicating:

> Aid or encouragement to another who is actually perpetrating a felony will not make the aider or encourager guilty of the crime if it is rendered without *mens rea.* It is without *mens rea* if the giver does not know or have reason to know of the criminal intention of the other. . . .

Diggs & Allen, 213 Md. App. at 90 (quoting *State v. Williams,* 397 Md. 172, 194 (2007)) (internal quotation marks and citations omitted). The applicable standard here is:

> [W]hen two or more persons participate in a criminal offense, each is responsible for the commission of the offense and for any other criminal acts done in furtherance of the commission of the offense or the escape therefrom.

Diggs & Allen, 213 Md. App. at 90 (quoting *Williams,* 397 Md. at 195) (citations omitted)). Furthermore, to be convicted for use of a firearm in the commission of a felony or crime of violence, appellant is "not required to have actual personal possession of the weapon." *Bellamy v. State,* 403 Md. 308, 355 fn.26 (2008). His actions as "an aider and abettor are sufficient." *Id.*

Appellant avers that the statement by the circuit court at sentencing supports his argument of insufficiency of the evidence.[11] We disagree for the same reasons cited previously regarding the circuit court's statements at sentencing. The evidence was sufficient to establish that Boosy committed attempted first degree murder. Additionally, jurors were presented with evidence that appellant arranged the meeting between himself and Mr. Johnson knowing that Boosy was going to harm Mr. Johnson. Thus, there was sufficient evidence to infer that appellant and Boosy were participating in a criminal offense, even though Boosy possessed the gun. We perceive no error in the circuit court's denial. Accordingly, we shall affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[11] At sentencing the circuit court indicated:

> It was my impression during the trial, and I expressed this at the motion when your lawyer made the motion, that it seemed to me that what I heard that you were as surprised as anybody when a gun was pulled.