Circuit Court for Baltimore City
Case No. 117058002

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1908

September Term, 2017

DIMAS OSORIO-VASQUEZ

v.

STATE OF MARYLAND

Wright,
Graeff,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: March 20, 2019

After a jury trial in the Circuit Court for Baltimore City, Dimas Osorio-Vasquez, appellant, was found guilty of attempted murder, use of a firearm in the commission of a crime of violence, and conspiracy to commit murder. The court sentenced him to concurrent terms of life, with all but forty-five years suspended, for attempted murder and conspiracy to commit murder, and a concurrent term of fifteen years, the first five years to be served without the possibility of parole, for use of a firearm in the commission of a crime of violence. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents the following questions for our consideration:

> I. Did the circuit court err in not requiring the State to disclose to the defense the names of and contact information for two witnesses who, when shown photo arrays, did not identify appellant?
>
> II. Did the circuit court err in allowing the State to make a speculative argument relying upon facts not in evidence?
>
> III. Did the circuit court err in denying the motion for judgment of acquittal as to the charge of conspiracy?

For the reasons set forth below, we shall reverse on the ground that the circuit court erred in allowing the State to make a speculative argument relying upon facts not in evidence.

FACTUAL BACKGROUND

On the night of January 15, 2017, Jerry Williams was working part time as a security guard checking identification at the main door to the Playbook Sports Bar and Lounge on German Hill Road in Baltimore City. At one point, appellant, who was with a friend, asked

Mr. Williams[1] if he wanted to smoke "a blunt." Mr. Williams declined stating that he did not smoke. According to Mr. Williams, appellant "moved on." Mr. Williams knew appellant as a customer who had come to the nightclub "a lot of times before," but he had never had any discussions or problems with him.

Later, Mr. Williams saw appellant outside on the deck of the nightclub. Appellant called out to Mr. Williams and asked him to come outside to talk and smoke, but Mr. Williams did not respond. Appellant became "real upset" when Mr. Williams would not pay attention to him and said something like, "well you don't know who we are." Appellant and his friend left the nightclub. About twenty to twenty-five minutes later, appellant's friend came to the door of the nightclub. Initially, Mr. Williams did not recognize appellant's friend, but he realized who the man was when he pointed his finger at Mr. Williams's face and asked, "do you have a problem with us?" At that point, Mr. Williams observed appellant come up the steps with a shot gun, point it at him, and shoot him in the arm. The shooting was captured by video cameras at the nightclub and those recordings were played for the jury.

Mr. Williams yelled out that he had been shot, ran out the back door of the nightclub, and tried to call 911. Once outside, he saw the manager of the nightclub. The manager was going to take Mr. Williams to the hospital, but the ambulance arrived and transported him to Johns Hopkins Bayview.

[1] Because there are two witnesses with the last name Williams, we shall refer to Jerry Williams as Mr. Williams and Alexis Williams by his full name.

When interviewed by police, Mr. Williams stated that he did not see the shooter and that it all happened very fast. At trial, Mr. Williams clarified that he did not see appellant before he came up onto the deck of the nightclub and that appellant wore a mask, but it did not cover all of his face.

Alexis Williams also worked part time as a security guard at the Playbook Sports Bar and Lounge. He knew Mr. Williams and had seen appellant at the nightclub about four or five times before the night of January 15, 2017. On the night of the shooting, Alexis Williams observed appellant and a friend sitting at the front of the night club near to the place where Mr. Williams was working. At one point, the owner of the night club smelled marijuana coming from the bathroom. Alexis Williams observed Mr. Williams enter the bathroom to deal with the situation. According to Alexis Williams, appellant and his friend were smoking marijuana in the bathroom. At first, appellant and his friend went "back and forth" with Mr. Williams, but later, in the front of the bar, they had a "heated exchange."

After the shooting, Alexis Williams observed Mr. Williams running while holding his arm. The security guards directed everyone out the back door and Alexis Williams went out that door with Mr. Williams. Alexis Williams was putting Mr. Williams in a car when an ambulance arrived. Thereafter, Alexis Williams met with police officers in the surveillance room at the nightclub, reviewed video recordings, and identified individuals on the recordings. The police showed Alexis Williams a photographic array from which he identified appellant as the man who was sitting in the front of the nightclub and who talked to Mr. Williams on the night of the shooting.

Baltimore City Police Officer Tiffany Vlard responded to the call for an aggravated assault and shooting at the Playbook Bar and Lounge. Officer Vlard was wearing a body camera and the video recording from that camera was played for the jury.

Baltimore City Police Detective Alton McCallum was the primary investigator for the shooting. He reviewed the video footage from the cameras at the nightclub, examined the scene of the shooting, and met with Mr. Williams in the emergency room at the hospital. In an interview with Detective McCallum at the hospital, Mr. Williams stated that he did not see the shooter, that "everything happened so fact," and that the shooter "came out of nowhere." Detective McCallum prepared a photographic array that included appellant's photograph and showed it to Mr. Williams, who identified appellant as the person who shot him. Mr. Williams could not identify the man who was with appellant at the time of the shooting.

Detective McCallum also presented a photographic array to Alexis Williams, who identified appellant as the man who "was sitting in the front of the club/and also He was the guy that got into it with Jerry." Alexis Williams could not identify appellant's friend. In addition, Detective McCallum showed photographic arrays containing appellant's photograph to two other potential witnesses who were not identified by name at trial. We shall include additional facts in our discussion of the issues presented.

DISCUSSION

I.

Appellant contends that the trial court erred in denying his motion to compel the State to provide the defense with the names of and contact information for two witnesses

who, when shown photographic arrays, did not identify appellant as being involved in the shooting. Prior to trial, the State provided defense counsel with two reports prepared by Detective McCallum that contained information about two potential witnesses to the shooting, each of whom were shown photographic arrays that included a photograph of appellant, but failed to identify him as the shooter. The names of the potential witnesses were redacted from the reports provided to the defense. The first report provided that Detective McCallum and another detective met with "Witness #1" who "was unable to identify anyone in the photo array as the person who shot the victim due to the shooter having an object covering his face along with a hat and hood." At some point after Witness #1 viewed the photographic array, Detective McCallum contacted him or her by telephone to advise that the investigation would continue despite the fact that the witness could not identify the suspect in the photographic array. According to the progress report:

> _____ expressed that _____ is scared due to the fact that the suspect along with other patrons of the club are known gang members and would harm _____ and _____ if they knew _____ was supplying information to police. Your writer then asked _____ if _____ recognized anyone in the photos was inside the club the night of the incident at which time _____ stated that photo #5 (SID# 4166634) was inside the club the night of the shooting. Photograph #5 (SID# 4166634) is identified as Dimas Osorio-Vasquez.

In the report for Witness #2, Detective McCallum reported that he presented the witness with a photographic array containing a photograph of appellant, but the witness "was unable to identify anyone in the photo array as the person who shot the victim nor could _____ identify anyone in the photographs as being in the bar the night of the incident." During pre-trial discussions, the prosecutor informed defense counsel that

because he was not going to call either witness to testify at trial, he was not required to give the names and contact information to the defense.

The defense filed a motion to compel the State to disclose the names of and contact information for Witnesses #1 and #2. At the hearing on that motion, the defense advised the court that he had been made aware of the two witnesses by the prosecutor and, otherwise, would not have known about them. In support of its motion to compel, the defense relied on Maryland Rule 4-263(d)(5), which requires the State to provide to the defense:

> Exculpatory information. All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged[.]

Defense counsel argued that the witnesses must have indicated to the police that they observed the shooting because the police asked both of them to view photographic arrays to see if they could identify the shooter or his accomplice. According to defense counsel, the witnesses' inability to identify appellant "clearly is in the form of exculpatory information that Mr. Osorio-Vasquez should be able to use at his trial."

Defense counsel also argued that the State's failure to provide the requested information constituted a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and a denial of due process, because the witnesses' statements that they did not see the shooter in the photographic arrays constituted exculpatory evidence. In support of that argument, defense counsel stated:

> Once again, in this situation, I believe the – and I speak to – excuse me – to the two witnesses who I don't know who they are. For them to be able to say – for whatever reason, an officer felt necessary to show them a

photo array. And for them to say we don't see the person, I think that is exculpatory.

Lastly, in my discussion with [the prosecutor], he explained to me that, at least one of these two, was then contacted again by officers. And that potentially – because this is coming second hand from the officer to [the prosecutor] to me – that potentially the person said, oh, well, I – I did see the person in the photo array, but I'm scared to say anything.

The issue with that is that, once again, it goes to the fact that officers felt a further need to investigate with these two individuals.

* * *

The way it was related to me was that they reached out again. The person says, I do – I know who it is.

But this still wasn't said to mean the person said it was number 2 or whatever Mr. Osorio-Vasquez was. It was, I seen the person. I'm just scared to say.

And once again, I also informed [the prosecutor] that if that is the case, I'm also willing to make sure that I don't share their name, information, or anything to my client prior to trial or prior to any determination by the Court that it – if, you know, they're fearful, that or they may not want to talk.

I believe that by the State not providing me with this information, it – it violates Maryland rules of discovery as well as Mr. Osorio-Vasquez's due process.

The State countered that the individuals at issue were not being called by the State to testify. Nevertheless, in addition to orally informing defense counsel about them and the two photographic arrays, the State provided recorded statements made by the witnesses at the time they viewed the photographic arrays, and "three pages of police reports that detailed the circumstances of those arrays and . . . a written description of exactly what happened and what the outcomes were." The only items not provided were the individual's names and contact information, which were redacted. Because the individuals were not

being called as witnesses, the State argued that it was not obligated under Rule 4-263 to provide the names or contact information. Moreover, with respect to the disclosure of exculpatory information, the prosecutor argued:

> The defense is in possession of that information. I made very clear, not only with the reports, but up front as soon as discovery was to be provided. In the very first conversation I had with counsel, I said, I'm just letting you know up front that I'm not providing you this information because the State does not believe that it is required to be disclosed. And the State believes that, under the circumstances of this case, it would expose these persons to danger.
>
> And, in fact, the report is here regarding the person – one of those two persons did, in fact, subsequently tell police that she did know who it was, but she didn't want to pick anybody out.
>
> And, in fact, in the report that was provided, it stated expressly the fact that this person is scared because of the fact that the suspect, along with the patrons of the club, are known gang members and would harm the person and the person's family if they knew the person was supplying information to the police.

Lastly, the State argued that because it had disclosed the police body camera recordings and surveillance videos from the night of the incident, the defense had the information it needed to track down the two individuals.

The motions court ordered the State to provide the defense with the photographic arrays that were shown to Witness #1 and #2, but denied appellant's motion to compel on the ground that there was nothing obligating the State to disclose the names and contact information of the two individuals. In reaching that conclusion, the court noted that the defense had an obligation to investigate the case, that the video recordings had been provided, and the defense investigator was free to go to the nightclub and attempt to locate the people who were present on the night of the shooting. Defense counsel expressed

concern that if, at trial, he questioned a police officer about the negative photographic arrays shown to Witness #1 and #2, the State would object on hearsay grounds, but the State agreed not to make any such objection. The court and the parties agreed that the State would provide copies of the photographic arrays that were shown to the unidentified individuals and that the defense would be allowed to elicit at trial that two non-testifying witnesses did not select appellant's photograph from the array.

In this appeal, appellant contends that the trial court's denial of his motion to compel the State to provide the names and contact information for Witnesses #1 and #2 constituted a violation of *Brady* and was inconsistent with Maryland Rule 4-263(d)(5), thereby depriving him of the effective assistance of counsel. We disagree and explain.

In a case such as this, where the trial court determined that there was no discovery violation on the part of the State, we exercise independent *de novo* review to determine whether a discovery violation occurred. *Williams v. State*, 364 Md. 160, 169 (2001). "If the trial judge erred because the State did in fact violate the discovery rule, we consider the prejudice to the defendant in evaluating whether such error was harmless." *Id.* With these standards in mind, we turn to appellant's contention that the trial court's denial of his motion to compel the State to provide the names and contact information of the unidentified witnesses constituted a violation of *Brady* and was inconsistent with Maryland Rule 4-263(d)(5).

A. *Brady* Violation

Appellant's claim that his rights under *Brady* were violated is without merit. In *Brady*, the Supreme Court held that "the suppression by the prosecution of evidence

favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. An alleged *Brady* violation is a constitutional claim, based on the Due Process Clauses of the Fifth and Fourteenth Amendments. *United States v. Agurs*, 427 U.S. 97, 107 (1976); *Yearby v. State*, 414 Md. 708, 719-20 (2010). Such a violation is distinct from discovery rules, which further spell out a State's (and to a lesser extent, a defendant's) obligations to disclose information prior to trial, but are not grounded in either the Federal or State Constitutions. *Yearby*, 414 Md. at 721.

A *Brady* violation occurs when the State withholds or suppresses evidence that is favorable to the defense, because it was either exculpatory or impeaching, and material to the guilt or punishment of the defendant. *Wilson v. State*, 363 Md. 333, 345-46 (2001). There are limits to the prosecutor's automatic duty of disclosure. *United States v. Bagley*, 473 U.S. 667, 675 n.7 (1985)("An interpretation of *Brady* to create a broad, constitutionally required right of discovery 'would entirely alter the character and balance of our present systems of criminal justice.'")(quoting *Giles v. Maryland*, 386 U.S. 66, 117 (1967))(Harlan, J. dissenting). Further, the defense is not relieved of its "obligation to investigate the case and prepare for trial." *Ware v. State*, 348 Md. 19, 39 (1997). It cannot be said that the prosecution suppressed evidence when the information allegedly suppressed was available to the defendant through reasonable and diligent investigation." *Id.*

"There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching;

the evidence must have been suppressed by the State, either willfully or inadvertently; and, prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). In cases where the alleged *Brady* violation involves the failure to disclose favorable evidence, the evidence is "material" if "'there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Ware*, 348 Md. at 46 (quoting *State v. Thomas*, 325 Md. 160, 190 & n.8 (1992)). The Court of Appeals has interpreted the "reasonable probability" standard to mean a "'substantial possibility that . . . the result of [the] trial would have been any different.'" *Wilson v. State*, 363 Md. 333, 347 n.3 (2001)(quoting *Thomas*, 325 Md. at 190).

In the instant case, neither of the witnesses were State witnesses, as the State did not intend to call either of them to testify at trial and neither did testify. Nor did the State suppress information about the specific photographic arrays that were shown to Witness #1 and Witness #2 or the witnesses' responses. The State withheld only the names and contact information of the witnesses. The defense was permitted to introduce at trial evidence about the photographic arrays viewed by the two witnesses and elicited testimony that neither witness was able to identify appellant in the array. Thus, there was no reasonable probability that, if the names and contact information had been disclosed to the defense, the result would have been different. In fact, appellant was placed in a better position than he would have been if the State had disclosed the identity of the witnesses because he presented to the jury evidence that the witnesses failed to identify him in the photographic array without the jury learning that one of the witnesses later advised the police that she saw him in the nightclub prior to the shooting and that she was scared

because appellant and other patrons of the bar are known gang members who might harm her if they knew she was supplying information to the police. As a result, the third component of a true *Brady* violation cannot be shown, because appellant did not suffer any prejudice.

B. Maryland Rule 4-263(d)(5)

Similarly, with respect to appellant's contention that the State was required, under Md. Rule 4-263(d)(5), to disclose the names and contact information for the unidentified witnesses, even if those witnesses possessed exculpatory evidence and their identities should have been disclosed to the defense, such error was harmless beyond a reasonable doubt. *Dorsey v.* State, 276 Md. 638, 659 (1976)("[W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent view of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless[.]'").

As we have already noted, during cross-examination of Detective McCallum, the defense elicited testimony that neither Witness #1 nor Witness #2 identified appellant in the photographic array. The court limited the State to eliciting evidence that Witness #1 did not cooperate with police. Defense counsel did not pursue further questioning about the witnesses' statements and specifically acknowledged that his questions were phrased so as to avoid inquiries about other conversations because he did not want "to cross that line." As a result, the defense put before the jury evidence that the two witnesses failed to identify appellant as being involved in the shooting without the jury learning that Witness #1 saw appellant in the nightclub on the night of the incident but did not identify him in

the photographic array because she was "scared due to the fact that [appellant] along with other patrons of the club are known gang members and would" harm her if they knew she was supplying information to the police. Thus, any error in the court's denial of appellant's motion to compel based on a violation of Md. Rule 4-263(d)(5) was harmless beyond a reasonable doubt.

II.

Appellant next contends that the circuit court erred in allowing the State to make a speculative statement during its rebuttal closing argument that relied upon facts not in evidence. As we have already noted, the defense elicited testimony at trial that the police showed a photographic array containing a photograph of appellant to Witness #1 and Witness #2 and that neither identified appellant. In response to that testimony, the court permitted Detective McCollum to testify that Witness #1 was not cooperative in the investigation, but did not permit the State to elicit why the witness was not cooperative. At trial, there was evidence presented that Witness #1 was present where and when the shooting took place and that she could be seen in some of the video recordings at the scene of the crime.

During the defense's closing argument, counsel argued:

> Now, they want to try to make light of the fact that the young lady that is in the video, and the second person that also was shown a photo array. And I asked Detective McCallum, why he said from his investigation, that they believed that that other person had some information.
>
> Now, focus on this first young lady. What I'm going to ask you to do – everybody please remember this. Focus on her. She sees the shooter first. Watch her expression. Watch how she turns to run first, and then the blast, and then Mr. Williams turns to go.

So she actually identifies – sees the person first. And she turns and runs first. She sees the person.

Now, what perplexes me, and what I don't like, is them trying to paint her as someone who doesn't want to cooperate.

Now, how do I get to that conclusion? As Detective McCallum said, they made an appointment to come to her house. She was there. She didn't leave trying to avoid them. When they came to her house, she opened the door, invited them in. They told her why they were there. They showed her a photo array.

They showed her the photo array that contained the picture of Mr. Vasquez. And she said, I do not see the shooter.

Now, simply because she didn't say what they wanted her to say, that means she didn't cooperate? How fair is that? I'll come in. I'll do the photo array. Sorry, I don't see the shooter. You're not cooperative.

Next, the other one, once again, they didn't just haphazardly drag this other person out of the crowd and say come and do a photo array. Based on their investigations, she must have said something that made them comfortable enough to show her a photo array. And once again, this photo array contained a picture of Mr. Vasquez. And she said, I don't see the shooter.

In rebuttal closing argument, the prosecutor returned to the topic of the unidentified witnesses who did not pick appellant's photograph from the arrays and the following occurred:

[Prosecutor]: And then lastly, of course, there was the infamous two people. Now, it needs to be noted. The defense says that the two people, and I wrote this down, quote, said, I did not see the shooter. The defense even said that at the very beginning of the case and promised you that is exactly what the evidence was going to be.

Did you hear anybody say those two people said, quote, I did not see the shooter? No. What you heard was that somebody that wasn't even there in that hallway said nothing. Just looked through a set of photographs because the detectives were being thorough and trying to see is there anybody

in this club who might have seen something that might be able to identify. And one of the person [sic] didn't recognize anything. Well, what are we to deduce from that? He is not even there.

But the other person, the woman who is there in the moments before the blast, well, she was there. But when the police showed up at her house to do the photographic array, did you hear any evidence that she said I don't see the shooter? That anybody tried to, you know pressure her to say any particular thing? No. She didn't identify anybody. And you heard the detective say that she was not willing to cooperate with the police investigation.

* * *

But what do you think might be the reason? Well, if this defendant is willing to come back to a club over a petty argument and shoot you with a shotgun, what do you think he –

[Defense Counsel]: Objection, Your Honor.

[Prosecutor]: -- is going to do to someone who cooperates with –

THE COURT: I'm sustaining the objection to going any further.

[Defense Counsel]: Thank you, Your Honor.

[Prosecutor]: Ask yourselves that, ladies and gentlemen.

[Defense Counsel]: Objection, Your Honor.

THE COURT: Overruled. That is what he – I allowed him to say.

Appellant contends that the trial court erred in allowing the prosecutor to speculate about why the unidentified witness might not have cooperated with the police investigation, an issue about which there was no evidence presented at trial. We agree.

As a general rule, attorneys are afforded "a great deal of leeway in making closing arguments." *Whack v. State*, 433 Md. 728, 742 (2013). *See also Ware v. State*, 360 Md. 650, 681 (2000). Although attorneys are permitted to comment on the evidence and to

state all reasonable inferences that may reasonably be drawn from the evidence, the freedom to make arguments to the jury during closing is not unlimited. *Id.* It does not include the right to discuss facts not in evidence. *Id.* Certainly, not every improper prosecutorial remark necessitates reversal. *Whack*, 433 Md. at 742; *Reidy v. State*, 8 Md. App. 169, 172 (1969). Whether a reversal of a conviction based upon improper closing argument is warranted "depends on the facts in each case." *Whack*, 433 Md. at 742. Generally, the trial court is in the best position to determine the propriety of the State's argument in relation to the evidence adduced at trial and whether counsel has stepped outside the bounds of propriety during closing argument. *Ingram v. State*, 427 Md. 717, 726-28 (2012). As such, we do not disturb the trial court's decision in that regard unless there is a clear abuse of discretion that likely injured a party. *Id.* at 726 (citing *Grandison v. State*, 341 Md. 175, 225 (1995)). In determining whether there was an abuse of discretion, we examine whether the jury was actually or likely misled or otherwise "influenced to the prejudice of the accused" by the prosecutor's comments. *Reidy*, 8 Md. App. at 172. Only where there has been prejudice to the defendant will we reverse a conviction. *Rainville v. State*, 328 Md. 398, 408 (1992).

In the case at hand, the trial court abused its discretion in allowing the State to present argument that speculated about why the unidentified witness did not want to cooperate with the police investigation. Certainly, the prosecutor's comments were not made in response to any improper argument by defense counsel. Moreover, there was absolutely no evidence presented at trial regarding fear of retaliation or any other explanation for either witness's failure to cooperate. Contrary to the State's argument,

neither evidence that Witness #1 failed to cooperate with the police, nor the possibility that the witness was in an area of the nightclub where she might have been able to identify appellant as the shooter, supported the prosecutor's rebuttal argument that the witness was fearful of retaliation by appellant. Defense counsel promptly objected to the improper argument, but the trial court failed to take any meaningful step to cure the harm, choosing instead to tell the prosecutor not to go any further into speculating about the witness's fear of retaliation. This error cannot be said to be harmless. The State's case rested on the strength of Mr. William's identification of appellant. The prosecutor's argument downplayed the significance of the unidentified witness who did not identify appellant in the photographic array and appealed to the jurors' passions and prejudices in suggesting that the witness was fearful of retaliation from appellant. Reversal is required.

III.

Appellant's final contention is that the circuit court erred in denying his motion for judgment of acquittal as to the charge of conspiracy to commit murder because the State failed to prove that a second individual agreed with appellant to shoot Mr. Williams. We disagree.

In reviewing a challenge to the sufficiency of evidence, we 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.'" *McClurkin v. State*, 222 Md. App. 461, 486 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)), *cert. denied*, 443 Md. 736, *cert denied* __ U.S. __, 136 S.Ct. 564 (2015). "In applying that standard, we give 'due regard to the [fact-finder's] findings of facts, its

resolution of conflicting evidence, and, significantly, its opportunity to observe an assess the credibility of witnesses.'" *Id.* (quoting *Harrison v. State*, 382 Md. 477, 488 (2004)). Evidence is sufficient to sustain a conviction if it "'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt.'" *Donati v. State*, 215 Md. App. 686, 718 (2014)(quoting *State v. Albrecht*, 336 Md. 475, 479 (1994)).

In *Corbin v. State*, the Court of Appeals explained that circumstantial evidence alone can support a conviction so long as the evidence supports a finding of guilt, stating:

> Circumstantial evidence is sufficient to sustain a conviction, but not if that evidence amounts only to strong suspicion or mere probability. Although circumstantial evidence alone is sufficient to sustain a conviction, the inferences made from circumstantial evidence must rest upon more than mere speculation or conjecture. (Citations and quotation marks omitted.)

Corbin, 428 Md. 488, 514 (2012)(quoting *Smith v. State*, 415 Md. 174, 185 (2010)).

Criminal conspiracy is a common law crime that:

> [C]onsists 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, 145-46 (2001)(quotation marks and citations omitted).

In order for the State to meet its burden of proof, it "is sufficient if the parties tacitly come to an understanding regarding the unlawful purpose." *Darling v. State*, 232 Md. App. 430, 467 (2017). "In fact, the State [is] only required to present facts that would allow the

jury to infer that the parties entered into an unlawful agreement." The State can show this by "circumstantial evidence from which an inference of common design may be drawn." *McClurkin v. State*, 222 Md. App. 461, 486 (2015)(internal citations omitted).

Appellant argues that the State failed to provide direct proof that he entered into an agreement to carry out the attempted murder of Mr. Williams. This contention ignores the principle of law that "a conspiracy may be shown by circumstantial evidence from which a common design may be inferred." *Mitchell*, 363 Md. at 145 (citation omitted). In the case at hand, there was sufficient evidence to prove that appellant reached a meeting of the minds with his unidentified friend to murder Mr. Williams. Appellant and his friend left the nightclub together and returned about twenty to twenty-five minutes later. Video surveillance from outside the bar showed appellant and his friend together outside the nightclub immediately before the shooting. As the friend approached the front door of the nightclub, appellant looked up and down the street. The friend walked up to the front door of the nightclub, opened it, and pointed at Mr. Williams asking "do you have a problem with us?" and do "you have a problem with my friend?" Appellant then approached and, while his friend held the door open, shot Mr. Williams through the open door. After the shooting, appellant and his friend ran away together in the same direction. From this evidence, the jury could reasonably infer that appellant and his friend conspired to murder

Mr. Williams. Accordingly, we hold that there was sufficient evidence to sustain appellant's conviction for conspiracy to commit murder.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS; COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.