

Circuit Court for Baltimore City
Case No. 117012001

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2009

September Term, 2017

ISIAH SMITHSON

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 4, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Baltimore City, Isiah Smithson, appellant, was convicted of theft of property valued less than \$1,000; conspiracy to commit theft of property valued less than \$1,000; reckless endangerment; wearing or carrying a handgun; conspiracy to wear or carry a handgun, and unlawful possession of a firearm after conviction of a disqualifying crime. Smithson’s sole claim on appeal is that the evidence was insufficient to sustain his convictions. For the reasons that follow, we affirm.

At trial, the State presented evidence that Smithson sold a PlayStation 4 game console to Lamont Johnson. The next morning, Smithson and a man wearing a mask entered Johnson’s house. The house was also occupied by Jazzman Loadholt and Lynette Quickley. The man in the mask “pulled out” a gun and said, “kick it out.” At some point, Smithson asked the man in the mask for the gun and, after obtaining the gun, he went into Quickley’s bedroom. Meanwhile the man in the mask went into another bedroom. Shortly thereafter, the man in the mask ran out of that bedroom carrying the PlayStation 4, yelled at Smithson to “come on,” and fled the house. Loadholt followed the man outside and then heard a gunshot inside the house. Quickley, who had locked herself in another bedroom, also heard the gunshot. When she went into her bedroom to investigate, she saw Smithson and Johnson fighting on the floor. Quickley then struck Smithson with her cane and she and Johnson held Smithson down until the police arrived.

During a search of Quickley’s bedroom, the police found a gun magazine and five 9mm bullets; however, no gun was recovered. The police also noticed what appeared to be a bullet hole in the wall next to the bedroom door and another bullet hole in the side of the china cabinet that was just outside the bedroom door. There was no bullet hole on the

other side of the china cabinet and a “spent” 9mm bullet was located inside the china cabinet. Neither bullet hole was present prior to the incident.

On appeal, Smithson contends that the evidence was insufficient to sustain his convictions. Specifically, he claims that the State failed to prove (1) that he was one of the people who entered the residence; (2) that he conspired with the man in the mask to possess the gun or to steal the PlayStation 4; (3) that he personally stole the PlayStation 4; and (4) that the gun he allegedly possessed was a “handgun,” within the meaning of Section 4-201(c) of the Criminal Law Article. In analyzing the sufficiency of the evidence admitted at a bench trial to sustain a defendant’s convictions, we “review the case on both the law and the evidence,” but will not “set aside the judgment . . . on the evidence unless clearly erroneous.” Maryland Rule 8-131(c). “We review sufficiency of the evidence to determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *White v. State*, 217 Md. App. 709, 713 (2014) (internal quotation marks and citation omitted).

Viewing “the evidence in the light most favorable to the State,” *see White*, 217 Md. App. at 713, as we are required to do, we conclude that the State presented sufficient evidence to support Smithson’s convictions. First, Smithson’s identity as one of the perpetrators was established by Quickly and Loadholt, who both testified that they were familiar with Smithson prior to the incident and that they recognized him as one of the two men who entered the residence. *See Handy v. State*, 201 Md. App. 521, 559 (2011) (“It is

well settled that the evidence of a single eyewitness is sufficient to sustain a conviction.” (citation omitted)).

And the trial court could reasonably find that Smithson conspired with the man in the mask to possess the gun and to steal the PlayStation 4 based on the evidence that (1) Smithson sold Johnson the PlayStation 4 the previous evening; (2) Smithson and the man in the mask then returned the next day and entered Johnson’s residence together; (3) the man in the mask pulled out the gun and then gave it to Smithson upon request; (4) Smithson and the man in the mask then went into separate bedrooms, as if looking for something; and (5) the man in the mask exited one of the bedrooms with the PlayStation 4 and immediately urged Smithson to “come on” before fleeing the residence. *See Armstead v. State*, 195 Md. App. 599 646 (2010) (noting that a conspiracy may be shown by “circumstantial evidence from which an inference of common design may be draw” (citation omitted)). Moreover, because the evidence was sufficient to establish a conspiracy to steal the PlayStation 4, it is of no consequence that Smithson was not the person who actually removed it from the residence. *Grandison v. State*, 305 Md. 685, 703 (1986) (“[W]here the existence of a conspiracy is established, the law imposes upon a conspirator full responsibility for the logical and natural consequences of acts committed by his [or her] fellow conspirators if such acts are done in pursuance of the common design or purpose of the conspiracy.”).

Finally, the State presented sufficient evidence to prove that the gun Smithson possessed was a handgun. *See Md. Code Ann., Crim. Law Art., Sec. 4-201* (2017) (defining a “handgun” as “a pistol, revolver, or other firearm capable of being concealed on the

person”). According to Detective Ramirez, she spoke with the witnesses after the incident and they described the gun as a “black handgun” that was “similar to” the semiautomatic gun that Ramirez carried. Loadholt also testified that the gun was a black “police” gun and that the man in the mask had “pulled out” the gun after he entered the house, supporting an inference that the gun had been concealed up to that point. Combined with the fact that a handgun clip, 9mm bullets, and what appeared to be a fresh bullet hole were found in the bedroom where Johnson was located and the gun was allegedly fired, the trial court could reasonably conclude that the gun was a “handgun,” despite it not having been recovered. *See Brown v. State*, 182 Md. App. 138, 166-67 (2008) (noting that “tangible evidence in the form of the weapon is not necessary to sustain a conviction for [wearing or carrying a handgun]; the weapon’s identity as a handgun can be established by testimony or by inference”).

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