UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1362

September Term, 2014

DEANTE D. TUCKER

v.

STATE OF MARYLAND

Wright,
Graeff,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 30, 2016

*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.

After a jury trial in the Circuit Court for Baltimore City, Deante D. Tucker, appellant, was convicted of first-degree murder, conspiracy to commit first-degree murder, and use of a handgun in the commission of a crime of violence. He was sentenced to incarceration for life for the first-degree murder conviction, a concurrent term of life for the conspiracy conviction, and a consecutive term of twenty years for the handgun conviction.

On appeal, appellant presents three questions for our review, which we have renumbered as follows:

1. Did the trial court err in admitting two jail call recordings?

2. Did the trial court abuse its discretion in denying appellant's motion for mistrial, and as a result, deprive him of a fair trial?

3. Was the evidence legally insufficient to convict appellant?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On April 8, 2012, shortly before 6:00 p.m., Robert Laney was shot to death. Eight of the nine gunshots were in the back of his body.

On the day of the shooting, Tavon Kenan was celebrating Easter at his grandmother's house, located on Kirk Avenue in Baltimore City. Mr. Kenan was outside on Fillmore Street, near his grandmother's house, with some friends, including Mr. Laney, Kevin Kennedy and Bryant Cade, whose nickname was Bee. When Mr. Kenan returned to his grandmother's house, Mr. Laney joined him but stayed out on the porch.

Roslyn Deshields, Mr. Kenan's aunt, also was at the house for Easter dinner. She testified that Mr. Laney was intoxicated. A person whom Ms. Deshields did not know drove up in a gold Cadillac, exited the driver's side door, and came to the house to see Mr. Kenan. Mr. Laney became aggressive and yelled, "don't come on my people's porch." Ms. Deshields told Mr. Kenan that someone was at the door waiting for him. When Mr. Kenan went to the door, he saw Mr. Laney with appellant. Mr. Kenan took Mr. Laney inside his grandmother's home.

Approximately thirty minutes after Ms. Deshields told Mr. Kenan that someone was at the door for him, she went out onto the porch to look for him. She saw a group of five or six people, including Mr. Cade, Mr. Kennedy, and a boy named Twin passing around a bottle of alcohol and drinking. Mr. Kenan was not there. Ms. Deshields heard gunshots and saw the group scatter and the shooter run into an alley. She described the shooter as wearing a black hoodie and black pants and being a little bigger than the person who had come to the door earlier, but she was unable to identify him.

Mr. Kenan testified that, when appellant came to his grandmother's house, he asked Mr. Kenan to take a ride in his Cadillac to purchase marijuana, which they did. Appellant drove Mr. Kenan back to Kirk Avenue, and appellant "went his way" and Mr. Kenan went to see someone at another house on Kirk Avenue. Approximately forty-five minutes to an hour later, someone ran into the house where Mr. Kenan was and said "something about [Mr. Laney] just got killed." Mr. Kenan ran outside and saw people talking to Mr. Laney, who was on the ground bleeding. Mr. Kenan then "rolled out" and left the area.

Sometime after the shooting, Mr. Kenan went to see his parole officer, who told Mr. Kenan that the police wanted to ask him some questions. The parole officer took Mr. Kenan to the Homicide Division, where he spoke with detectives. Mr. Kenan was shown a photographic array and identified appellant, writing on the back of the photograph: "This is the person who Bobby was arguing with when he got killed on Easter." Mr. Kenan, however, denied witnessing the shooting.

In a recorded statement made to police, Mr. Kenan gave a different accounting of events. Mr. Kenan told police that when appellant came to his grandmother's house, he told appellant that Mr. Laney was his "brother" and his "home boy." Appellant responded "all right" and then "hopped in his car and he left." According to Mr. Kenan, the windows on the Cadillac were dark tinted, and he could not see if anyone else was in the car. Mr. Kenan did not state that he accompanied appellant to get some marijuana.

Kevin White, a witness called by the State, was hanging out on the corner when he observed a gold Cadillac with tinted windows pull up in an alley near Fillmore Street. He saw a man wearing a hood get out of the passenger side of the vehicle and walk up the alley. He could not see if anyone else was in the Cadillac.

In a recorded statement to police that was played for the jury, Mr. White stated that the driver of the Cadillac sounded his horn and the passenger, who was walking in the alley, returned to speak with him. Mr. White saw the passenger "digging down in the front of his pants" as he returned to the Cadillac. The driver rolled down the passenger window, and the passenger leaned into the vehicle. After the driver said something to the passenger, the passenger walked up the alley, and the driver rolled up the window. Shortly thereafter,

Mr. White heard gunshots. Mr. White observed the passenger return to the Cadillac. The Cadillac pulled off and turned right on Homewood Avenue and then left on Gorsuch Avenue. Mr. White wrote down the make and model of the vehicle and the license plate number, and he gave them to the police. He described the tags on the Cadillac as yellow and black.

Detectives canvassed the area near the shooting and obtained video recordings from a number of surveillance cameras. Those video recordings showed a Cadillac Eldorado with tinted windows near the crime scene shortly before and shortly after the time of the shooting.

A patrol officer located a Cadillac matching the description given by White, except that the license plate number was off one digit. Further investigation indicated that the Cadillac was stolen. The Cadillac was towed to a police crime lab, where White identified it as the vehicle he had seen in the alley on the day of the shooting.

Police obtained and executed a search warrant on the Cadillac. A cologne bottle with appellant's fingerprint on it was found in the vehicle. In addition, police found two documents bearing appellant's name, address, and signature. One was a receipt dated April 3, 2012, from a Jiffy Lube for an oil change on a Cadillac Eldorado with tag number A216647. The other was a repair order issued to appellant on March 2, 2012, for illegally tinted windows on the same vehicle. Police determined that the Cadillac was registered to Lawrence Price, who did not have the vehicle in his possession.

After appellant was charged with Mr. Laney's murder, he made telephone calls from the jail to his mother. Two of those calls were recorded, and over appellant's objection, they were played for the jury.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Prior to trial, appellant sought to exclude two recorded jail phone calls between him and his mother. In both calls, appellant asked his mother to contact individuals on his behalf. In the first call, the following conversation occurred:

> [APPELLANT]: Well, this is what I want you – next time you talk to Pat, right, this is what I want you to tell him, right?
>
> [APPELLANT'S MOTHER]: Uh-huh, what?
>
> [APPELLANT]: Tell him, like – because I – you know the dude that I was talking about? He's locked up, too. You listening?
>
> [APPELLANT'S MOTHER]: Uh-huh.
>
> [APPELLANT]: The dude that they said – that they said supposedly said something that I was the person, right, I just talked to him. He's saying something different, you know what I mean? He's saying that – you know what I mean, that he wouldn't tell them what happened, so they locked him up, too, for a gun or whatever, you feel me?
>
> [APPELLANT'S MOTHER]: What?
>
> [APPELLANT]: Yeah, he in here, too. Whereas though, I told him how – and he said there was another dude that probably said something, so I told him, like, then why don't you write an affidavit; you feel me?
>
> [APPELLANT'S MOTHER]: Yeah, uh-huh.

[APPELLANT]: Whereas though, like – like – like – you feel me, like, he knows, like, who the person is; like, Pat knows who I'm talking about, right?

[APPELLANT'S MOTHER]: Yeah.

[APPELLANT]: And he gonna be – he gonna be held. I mean, he ain't gonna come out, so I feel I need somebody to go over to there and try to get the aunt to sign the affidavit or something.

[APPELLANT'S MOTHER]: To go over where?

[APPELLANT]: Or, uh, I think it's 2615 Kirk Avenue.

[APPELLANT'S MOTHER]: To sign an affidavit?

[APPELLANT]: Yeah, to go downtown to get an affidavit saying that I wasn't the person.

[APPELLANT'S MOTHER]: Well, who needs to do that?

[APPELLANT]: The aunt.

[APPELLANT'S MOTHER]: Whose aunt?

[APPELLANT]: The – the person in the house. There's a lady in the house.

[APPELLANT'S MOTHER]: And – and –

[APPELLANT]: There's a lady in –

[APPELLANT'S MOTHER]: So, who do you want me to – who want me – who do you want me to tell to do that?

[APPELLANT]: I want you to do it. No, I don't want you to do none of that. I just want you to try to get some money for me to get a lawyer.

In the second call, appellant told his mother that he needed someone named "Pat" to "holler" at a man named "Bee" who lived in the 2600 block of Kirk Avenue and drove a silver Charger. Appellant said Bee was the only person who "could say I did anything."

Appellant stated he did not know "why he's saying it," but he wanted Pat to get Bee to "sign an affidavit saying I'm not the person."

Prior to trial, appellant argued that the recordings were irrelevant because he was not charged with witness intimidation, there was no evidence that he or anyone acting on his behalf asked a witness to change his or her statement, the statements were consistent with innocence, he would be prejudiced if the jury learned through the recordings that he had been in jail, and the evidence was irrelevant and would "inflame the jury." The court rejected appellant's arguments and held that the calls constituted circumstantial evidence of consciousness of guilt and were admissible as certified copies of public records.

At trial, when the defense learned that the State would not be calling Mr. Cade, also known as Bee, as a witness, counsel again objected to the admission of the recorded telephone calls. Appellant argued that, by introducing them, the State would create "an irrebuttable inference" that appellant kept Mr. Cade away and had engaged in witness intimidation. The court overruled appellant's objection, stating that it was "satisfied that the Court had already ruled on the admissibility of these calls."

When the State later moved to admit the recordings of the telephone conversations into evidence, defense counsel objected on the ground that they were not authenticated properly because no one had identified the voice on the recording as belonging to appellant. That objection was sustained. Thereafter, the State recalled Detective Gary Niedermeier, who identified the voice on the recording as belonging to appellant. The State offered in evidence the certification for the telephone calls made by appellant and the accompanying recordings. Defense counsel objected, "for the record," based on the objections made at

the bench. That objection was overruled, and the recordings of the telephone calls were played for the jury.

On appeal, appellant contends that the trial court erred in admitting the recordings of the telephone calls. He maintains that the calls were too ambiguous to support a theory of witness intimidation, and the potential for prejudice and confusion of the jury far outweighed any relevance the recordings might have had.

The State asserts that this issue is not preserved for our review because the specific objection below was that the recordings were inadmissible because they had not been authenticated. We are not persuaded. Appellant sufficiently raised below the issue he asserts on appeal.

The State next contends that "the trial court properly exercised its discretion in admitting two jail phone calls from which jurors could reasonably infer guilt or a consciousness of guilt." We agree.

Maryland Rule 5-401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "[R]elevant evidence is admissible, under Maryland Rule 5-402, subject to the court's exercise of discretion to exclude it, under Maryland Rule 5-403, 'if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the

jury.'" *Odum v. State*, 412 Md. 593, 615 (2010) (quoting Md. Rule 5-403). Evidence that is not relevant is inadmissible. Md. Rule 5-402.

The Court of Appeals explained in *State v. Simms*, 420 Md. 705 (2011), that the appellate court reviews a trial court's decision to admit evidence for abuse of discretion, but we conduct an independent analysis of whether evidence is relevant:

> "It is frequently stated that the issue of whether a particular item of evidence should be admitted or excluded 'is committed to the considerable and sound discretion of the trial court,' and that the 'abuse of discretion' standard of review is applicable to 'the trial court's determination of relevancy.'. . . Maryland Rule 5-402, however, makes it clear that the trial court does not have discretion to admit irrelevant evidence. . . . [T]he 'de novo' standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not 'of consequence to the determination of the action.'"

Id. at 724-25 (quoting *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619-20 (2011)). *Accord Donati v. State*, 215 Md. App. 686, 708-09, *cert. denied*, 438 Md. 143 (2014).

As the Court of Appeals has noted, "[a] person's behavior after the commission of a crime may be admissible circumstantial evidence from which guilt may be inferred." *Thomas v. State*, 397 Md. 557, 575 (2007); *Stevenson v. State*, 222 Md. App. 118, 145, *cert. denied*, 443 Md. 737 (2015). "'The proper inquiry is whether the evidence *could* support an inference that the defendant's conduct demonstrates a consciousness of guilt.'" *Thomas*, 397 Md. at 577 (quoting *Thomas v. State*, 168 Md. App. 682, 712 (2006)).

Here, the trial court did not abuse its discretion in admitting the recordings of the jail calls. The calls were relevant as consciousness of guilt because they supported a reasonable inference that appellant wanted someone to speak to witnesses to influence them to say that he was not involved, even though they already had implicated him in the

murder. He wanted to "take care of the situation" and have witnesses sign affidavits that differed from what he believed they had told the police. For example, with respect to Bee, he told his mother that someone needed to get Bee "to sign an affidavit saying it wasn't me," noting that "he's the only person that can say I did anything and I don't know why he's saying it."

This evidence was relevant to appellant's consciousness of guilt. Although the jury could have drawn another inference from the phone calls, that does not detract from their relevance.

With respect to the potential prejudice arising from the jury's knowledge that appellant had been incarcerated, given that appellant was charged with first-degree murder, it would not be a surprise to the jury that he would be in jail pending trial, and therefore, the evidence that he was in jail was not unduly prejudicial. Under these circumstances, and given the probative value of the recorded telephone calls, we cannot say that the trial court abused its discretion in determining that the prejudice to appellant did not substantially outweigh the probative value of appellant's statements in the phone calls.

II.

Appellant next contends that the trial court abused its discretion in denying his motion for a mistrial, and as a result, he was denied a fair trial. This contention is based on the prosecutor's statements in closing argument regarding the significance of the jail phone calls.

In closing argument, the prosecutor discussed the recorded telephone calls, including one that involved a person who was in jail with appellant for a gun charge. The

prosecutor suggested that the calls explained Mr. Kenan's reluctance to testify about his identification of appellant, what happened on the day of the shooting, and how he responded to the victim, Mr. Laney. The prosecutor argued as follows:

> [PROSECUTOR]: Well ladies and gentlemen, you heard testimony from Mr. Kenan that Bee was Bryant Cade; and Bryant was in Mr. Kenan's statement that you heard. Why would you go ask Bee to say I wasn't there or you weren't there? Why? Because there's a level of guilt, ladies and gentlemen.
>
> Ladies and gentlemen, in addition to that, the Defendant talks rather freely about being locked up with somebody; but he's not worried about that guy, because he's not going to say anything. That guy, he's got a gun charge.
>
> And, what does the Defense Counsel elicit out of Tavon Kenan? That he had been locked up on a gun charge. Now, ladies and gentlemen, why is that significant? If you use your common sense and you evaluate the evidence, it's significant because Mr. Kenan came in and took that witness stand and he didn't want to say anything, did he?
>
> He didn't want to say a darn thing about his identification, what happened on Easter Sunday, and what it did for the victim. Ladies and gentlemen, you have heard –
>
> [DEFENSE COUNSEL]: Objection.

Defense counsel explained his objection and requested a mistrial, stating:

> There was no evidence in front of the jury that my client intimidated, asked someone to alter a contact, or had contact with him in the jail in front of the jury, at all; and it infers that, because they were both locked up, that they're there together and that they're doing something together.
>
> And, that, he's not charged with that. That didn't come out in evidence at all; and it's highly prejudicial. I was not allowed to even go into anything more about the case; what – where he was incarcerated, to say: Were you at the same facility (inaudible) person?
>
> I wasn't allowed to go into any of it. That was objected to and I was not allowed to go into anything about that incarceration at all. The question

> was: Did you receive the result of some benefit because the State opened the door.
>
> And, now, it – and now it entails – I cannot impeach – it can't – and I can't un-ring the bell. Because, now, they're saying that they're incarcerated, they're at the same place, and it somehow intimidated him into changing his testimony; and that, Your Honor, I cannot undo.
>
> And, in that regard, I think that is a motion – we'd make a motion for mistrial.

The State argued that it was permitted to argue the evidence, including the statements contained in the recorded telephone calls and the evidence elicited by defense counsel from Mr. Kenan that he had a handgun charge, that he was incarcerated, and that he had "numerous incarcerable offenses."

The trial court denied appellant's motion for mistrial, but it sustained appellant's objection and instructed the jury "that there is no evidence in this case that there was an agreement between the Defendant, Mr. Tucker, and Mr. Kenan." No objection was made with respect to the court's curative instruction to the jury.

Appellant contends that the State's argument, inferring that Mr. Kenan was "the guy" with the gun charge who was incarcerated with appellant and whom appellant was sure would stay quiet, was not supported by the evidence. He argues that there was no evidence of any specific charges against Mr. Kenan, or that he had been incarcerated, much less that he had been incarcerated in the same facility as appellant. As a result, appellant asserts, the State's argument, encouraging jurors to infer that Mr. Kenan's inconsistent trial testimony was the result of coercion or witness tampering by appellant, constituted improper reference to facts not in evidence. He asserts that the prosecutor "intentionally

injected the specter of witness tampering based on facts that she herself had previously ensured could not be admitted during the trial," and no curative instruction could "cure the taint" caused by such "egregious' conduct.[1]

The State agrees that there was no evidence elicited that Mr. Kenan had been "locked up on a gun charge," and therefore, it concedes that the argument was improper. It contends, however, that the court did not abuse its discretion in denying the motion for a mistrial because the remark was not severe, it was not repeated, the court sustained the objection and gave a curative instruction to which appellant did not object, and there was substantial evidence implicating appellant in the murder.

A mistrial is "'an extreme sanction that sometimes must be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice.'" *Coffey*, 100 Md. App. at 597 (quoting *Burks v. State*, 96 Md. App. 173, 187, *cert. denied*, 332 Md. 381 (1993)). The decision to grant a motion for a mistrial, however, rests in the discretion of the trial judge. *Parker v. State*, 189 Md. App. 474, 493 (2009). "Our review 'is limited to determining whether there has been an abuse of discretion.'" *Id.* (quoting *Coffey v. State*, 100 Md. App. 587, 597 (1994)). A trial court's denial of a motion for mistrial will not be reversed "unless the defendant was so clearly prejudiced that the denial constituted an abuse of discretion." *Hunt v. State*, 321 Md. 387, 422 (1990) (citing

[1] The State objected to defense counsel's question to Mr. Kenan regarding his arrest on a handgun charge, and the court sustained the objection, limiting defense counsel's questions to whether charges against him had been dismissed in exchange for his testimony. As the State notes, however, the court did not strike Mr. Kenan's affirmative answer that he had been arrested for a handgun violation.

Johnson v. State, 303 Md. 487, 516 (1985)). *Accord Oesby v. State*, 142 Md. App. 144, 168 (reversal warranted under abuse of discretion standard only on rare occasion when court's exercise of discretion is "not only wrong but flagrantly and outrageously so"), *cert. denied*, 369 Md. 181 (2002).

Here, we agree with the State that appellant was not prejudiced by the prosecutor's single, improper statement that defense counsel had elicited that Mr. Kenan "had been locked up on a gun charge." There was evidence from which the jury could have inferred that Mr. Kenan was the witness about whom appellant was speaking in the recorded telephone call with his mother. In one of the recorded calls, appellant spoke of the "aunt," who defense counsel conceded in closing was Ms. Deshields, Mr. Kenan's aunt.[2] From this evidence, the jury could reasonably infer that Mr. Kenan was the "guy" who was in jail with appellant. As a result, the prosecutor's single, isolated comment during closing argument was not prejudicial to appellant.

In addition, we note that the State's case, although based entirely on circumstantial evidence, was quite strong. The evidence established that Mr. Laney was shot nine times, and he was the only person in a crowd of several men to be shot. He clearly was a targeted victim, and the evidence indicated that the shooting was retaliation for the argument between the victim and appellant.

Ms. Deshields' testimony established that Mr. Laney was shot just before 6 p.m., approximately a half hour after appellant left in a gold Cadillac. Surveillance videos

[2] Mr. Kenan was the only person mentioned in the trial as being a relative of Ms. Deshields.

showed that a gold Cadillac left the area and returned a few minutes before the shooting. Shortly thereafter, Mr. White observed a gold Cadillac back into the alley behind Fillmore Avenue and drop off a passenger wearing a dark hoodie who adjusted something in his pants. Mr. White also observed a conversation between the driver and the passenger before the passenger headed up the alley. After Mr. White heard gunshots, he saw the passenger return to the alley and get into the passenger seat of the gold Cadillac. The Cadillac subsequently was searched, and items connected to appellant were found in the car.

The evidence, although circumstantial, established a motive for appellant to kill Mr. Laney, appellant's connection to the gold Cadillac, and a very short time frame between appellant's argument with Mr. Laney and the murder. Moreover, the recorded jail telephone conversations showed appellant's knowledge that certain witnesses could implicate him in the murder, and he told his mother he wanted to "take care of the situation," asking her to contact witnesses to obtain affidavits stating that he "was not the person." There was significant evidence against appellant, and the single statement suggesting that Mr. Kenan had been in jail with appellant, a fact that the jury could infer from the evidence, was not so unduly prejudicial that the court abused its discretion in denying the motion for a mistrial and giving instead a curative instruction.

III.

Appellant's final contention is that the evidence was insufficient to support his convictions of first-degree murder and conspiracy. He argues that there was no evidence that he was in the Cadillac at the time of the shooting or that there was "any prior agreement with the passenger in the car to commit any crimes." We disagree and explain.

The standard for reviewing the sufficiency of the evidence is "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Allen v. State*, 402 Md. 59, 71 (2007). We give "due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Harrison v. State*, 382 Md. 477, 488 (2004). In performing its function, the jury is free to accept the evidence it believes and reject that which it does not believe. *Grimm v. State*, 447 Md. 482, 505-06 (2016). In reviewing a challenge to the sufficiency of the evidence, we "view the evidence, and all inferences fairly deducible from the evidence, in a light most favorable to the State." *Hackley v. State*, 389 Md. 387, 389 (2005).

A. Accomplice Liability

Appellant contends that the evidence was insufficient to support his conviction for first-degree murder because the State failed to present any evidence that he was in the Cadillac at the time of the shooting, that he knew a shooting would take place, or that he participated in some element of the offense. This contention is devoid of merit.

In Maryland, a person who did not personally commit a crime, but aided another in the crime, may be found guilty to the same extent as the other person. *Kohler v. State*, 203 Md. App. 110, 119 (2012). "Whereas principals in the first degree 'commit the deed as perpetrating actors, either by their own hand or by the hand of an innocent agent,' principals in the second degree are 'present, actually or constructively, aiding and abetting the commission of the crime, but not themselves committing it.'" *Id.*

In *Moody v. State*, 209 Md. App. 366, 389 (2013), this Court held that the evidence was sufficient to support appellant's conviction for first degree assault as an accomplice where appellant drove the attacker to the scene, positioned the vehicle to provide an easy escape, waited for the perpetrator to complete the assault, and then provided for the perpetrator to escape. The facts here compel the same conclusion.

The testimony of Ms. Deshields and Mr. Kenan established that appellant drove a gold Cadillac and had a contentious encounter with Mr. Laney just thirty minutes prior to the time Mr. Laney was murdered. From that evidence, Mr. White's testimony, and the video recordings from surveillance cameras, the jury reasonably could have inferred that appellant picked up the shooter, drove to Mr. Laney's location, backed the gold Cadillac into the alley for a quick getaway, consulted with the shooter after he exited the Cadillac, waited for the shooter, and when the shooter returned to the vehicle, provided escape to himself and the shooter. In addition, appellant's statements made in the jail calls, particularly his statement that Bee was "the only person that can say I did anything and I don't know why he's saying it," supported an inference that appellant was an accomplice in Mr. Laney's murder.

B. Conspiracy

With respect to the conspiracy conviction, appellant argues that the "record fails to establish the existence of a criminal agreement necessary to sustain a conspiracy conviction." Again, we disagree.

A criminal conspiracy is a combination of two or more persons who agree to "'accomplish some unlawful purpose.'" *Bordley v. State*, 205 Md. App. 692, 723 (2012)

(quoting *Townes v. State*, 314 Md. 71, 75 (1988)). "'The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design.'" *Id.* (quoting *Townes*, 314 Md. at 75). The crime is complete "'when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown.'" *Alston v. State*, 414 Md. 92, 114 (2010) (quoting *Townes*, 314 Md. at 75). A criminal conspiracy may be shown by "'circumstantial evidence from which an inference of common design may be drawn.'" *McClurkin v. State*, 222 Md. App. 461, 486 (quoting *McMillan v. State*, 325 Md. 272, 292 (1992)), *cert denied*, 443 Md. 736, *cert. denied*, 136 S. Ct. 564 (2015).

Here, the evidence was sufficient to support an inference that appellant and the shooter were acting together for the purpose of shooting and killing Mr. Laney. The jury could infer from the evidence that, after appellant engaged in an aggressive encounter with Mr. Laney, he drove to another location and picked up someone with a gun, returned to Mr. Laney's location, consulted with the shooter in the alley, and after the shooting, drove away from the scene with the shooter. This evidence was sufficient to support appellant's conviction for conspiracy.

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