Circuit Court for Baltimore County
Case No. 03-K-14-6614

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 72

September Term, 2016

DELONTE EPPS

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 17, 2017

*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 nine-day jury trial in the Circuit Court for Baltimore County, appellant Delonte Epps was convicted of first-degree felony murder, first-degree burglary, conspiracy to commit first-degree burglary, and use of a firearm in the commission of a crime of violence. The court merged appellant's first-degree burglary conviction into appellant's conviction for first-degree felony murder, and sentenced appellant to life, all but sixty years suspended for first-degree felony murder; fifteen years consecutive for conspiracy to commit first-degree burglary; fifteen years consecutive for use of a firearm in the commission of a crime of violence; and three years' probation. Appellant timely appealed and presents four questions for our review:

1. Was the evidence sufficient to sustain the convictions?

2. Did the [t]rial [c]ourt abuse its discretion by failing to properly instruct the jury prior to deliberations?

3. Did the [t]rial [c]ourt commit error by allowing the admission of [a]ppellant's answer to Detective Schrott's inquiry as an answer to a routine booking question?

4. Did the [t]rial [c]ourt commit error by allowing improperly certified business records to be admitted?

We affirm.

BACKGROUND

In early October 2014, Chadon Bradshaw ("Bradshaw"), who lived in Baltimore at the time, received an offer from a friend in Atlanta, Georgia, to learn how to perform credit card fraud. Bradshaw and her niece's mother accepted the offer. In Atlanta, Bradshaw's friend put Bradshaw's name on PayPal cards associated with stolen credit card numbers.

Due to disagreements with her friend, however, Bradshaw and her niece's mother left before learning the entire process. On their drive back to Baltimore, Bradshaw stopped in North Carolina and purchased approximately $5,000 worth of clothes and shoes with the PayPal cards her friend had given her while in Atlanta. When she arrived in Baltimore, Bradshaw placed the clothing and shoes in trash bags and stored them at her mother's house at 4555 Reisterstown Road, where Bradshaw, her children, two brothers, and three sisters lived.

One of Bradshaw's brothers, Irvin Tuck ("Tuck"), fathered a child, S.T., with a woman named Yanick Forde ("Forde"). In July 2014, Forde began living at 4555 Reisterstown Road with her two sons: T.E. and S.T. In mid-October 2014, Forde and Bradshaw became involved in a dispute after Forde suspected that Bradshaw had used Forde's identity in order to purchase the clothes and shoes during Bradshaw's trip back from Atlanta. On October 19, 2014, Forde saw pictures of her identification, social security card, credit cards, and other papers on Bradshaw's phone. Rather than confront Bradshaw about the pictures she had seen, Forde assumed that Bradshaw had used her identity to steal the clothes during Bradshaw's trip to Atlanta, and decided to steal the already stolen clothes. On October 22, Forde and two of her friends, Tanisha and Crystal, went to 4555 Reisterstown Road and loaded up a "hack cab[1]" with Bradshaw's trash bags filled with the clothes. In addition to taking Bradshaw's stolen clothes, Forde packed up most of her

[1] Ford described a "hack cab" as a stranger whom you ask to give you a ride, as opposed to a commercial Yellow cab.

personal belongings to take with her. Forde forgot to take her school bag, however, which contained her wallet and some other personal possessions, including a piece of mail addressed to Forde at her mother's residence at 7851 St. Claire Lane in Dundalk, Maryland. While unloading her possessions and the stolen clothes at Tanisha's house, the hack cab driver became suspicious of the situation and drove away with approximately fifteen percent of the stolen clothes before Forde could unload them.

The next day, Forde was walking with Tanisha to Crystal's house when Bradshaw began to chase after them in a truck. Forde and Tanisha hid from Bradshaw, and called Crystal to ask for help. Crystal informed Forde and Tanisha, however, that Bradshaw had been arrested. Apparently, the vehicle Bradshaw had used to chase Forde and Tanisha was the rental vehicle Bradshaw had used for her trip to Atlanta, but Bradshaw was not on the rental agreement.

Forde initially refused to return the stolen clothes, believing that they had been purchased with her identity. A week later, on October 29, however, Forde agreed to return the clothes to Bradshaw. An exchange was supposed to occur that day at Crystal's house in which Forde would return the clothes in return for her wallet. At approximately 2:00 p.m., Bradshaw's friend James Murphy ("Murphy") and Tuck went to retrieve Bradshaw's items. At the exchange, however, Bradshaw only received approximately fifty percent of the stolen clothes—apparently Forde, Tanisha and Crystal had sold some of the items.[2]

[2] According to Bradshaw, Forde only returned approximately $300 worth of the stolen clothing.

Later that same day, when Bradshaw learned that most of her clothes were still missing, she became angry and decided to go to 7851 St. Claire to attempt to recover whatever she could. Bradshaw felt so strongly that the clothes belonged to her that she anticipated and was willing to fight Forde in order to recover the clothes. That night, Bradshaw and Murphy left together for Forde's mother's house. On the way, they picked up Latray Hughes ("Hughes") and appellant separately, telling both that they were going to 7851 St. Claire in Dundalk to "go get the clothes back."

At approximately 10:00 p.m., Bradshaw, Murphy, Hughes, and appellant arrived at what they believed was the correct address.[3] All four exited Bradshaw's SUV and attempted to verify the correct address before knocking on the front door. They proceeded to knock on the front door, and when no one answered, the four went around to the back of the house. The back door, however, was locked, so appellant went through a window and unlocked the back door for the others.

The four walked around the downstairs living room area, and eventually all four went up the stairs. Bradshaw looked at the pictures hanging in the house, but did not recognize Forde, causing her to wonder whether they were in the right place. Murphy and Hughes went up the stairs with Bradshaw, but appellant remained only halfway up the steps. Bradshaw entered a baby's bedroom and began to doubt that they were in the correct house. As she walked out of the baby's bedroom, Bradshaw heard Hughes talking to a

[3] Bradshaw relied on the piece of mail found in Forde's bag to determine that 7851 St. Claire Lane was the right address.

man later identified as Barquese Warren ("Warren"), Forde's brother. Hughes asked Warren about the clothes, and Warren responded that he "didn't know anything about any clothes." Hughes then asked Warren about some marijuana and money, and Warren replied that he had money in the next bedroom. Bradshaw saw Hughes pointing a gun at Warren. At that point, Bradshaw told Murphy that they should leave because they were in the wrong house. Murphy replied that Bradshaw should go outside because Hughes was about to kill the man he was speaking to. Bradshaw left the house through the front door and entered her vehicle. After starting the vehicle, Bradshaw waited a few seconds and then heard five or six gunshots. Bradshaw pulled up to the front of the house without turning on her headlights and waited for the others to emerge, but soon drove off. At the top of the street, Bradshaw accidentally struck Murphy with her car, and then Murphy and appellant, followed by Hughes, entered Bradshaw's vehicle.

Once inside the vehicle, Hughes passed the gun to appellant, and appellant instructed Bradshaw to take him home so that he could "drop the gun off" as well as some clothing he had apparently taken from Warren's home. Bradshaw did as instructed and drove the group to appellant's house. Appellant went inside his home with the gun and returned empty-handed to Bradshaw's vehicle three minutes later. The men told Bradshaw that she "couldn't go home" and then appellant and Hughes called their respective girlfriends and Bradshaw picked them up. The six of them: Bradshaw, Hughes, appellant, Murphy, Hughes's girlfriend and appellant's girlfriend all ate at a Denny's restaurant for

approximately an hour or two, and then Bradshaw dropped them off and returned to her home.

Forde's and Warren's mother, Tracy Warren ("Tracy"), was home at the time of the shooting. After hearing the shots, she went downstairs to see that the back door was open. After calling out for Warren, Tracy went back up the stairs and heard Warren call out "Ma." Tracy went into the bedroom to find Warren bleeding, and called 911. By the time emergency medical personnel arrived, Warren had died.

On February 3, 2015, Bradshaw was charged with first-degree murder and several related charges in Warren's death. Bradshaw pled guilty to first-degree burglary and second-degree murder and agreed to testify against appellant, Murphy, and Hughes. Following a consolidated nine-day jury trial, the jury convicted appellant of first-degree felony murder, first-degree burglary, conspiracy to commit first-degree burglary, and use of a firearm in the commission of a crime of violence. We shall provide additional facts as necessary.

DISCUSSION

I. Sufficiency of the Evidence

Appellant first argues that the trial court erred in denying his motion for judgment of acquittal because the evidence was insufficient to support his convictions. Specifically, appellant argues that there was insufficient evidence to establish his intent to commit theft, and that therefore all of his convictions must be vacated.

The standard of review for 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." *Hobby v. State,* 436 Md. 526, 538 (2014) (quoting *Derr v. State*, 434 Md. 88, 129 (2013)). "The test is not whether the evidence *should have or probably would have* persuaded the majority of the fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Painter v. State*, 157 Md. App. 1, 11 (2004) (internal citations and quotations omitted) (quoting *Mora v. State*, 123 Md. App. 699, 727 (1998)). In applying this test, "[w]e defer to the fact finder's opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence." *Neal v. State*, 191 Md. App. 297, 314 (2010) (internal quotation marks omitted) (quoting *Sparkman v. State*, 184 Md. App. 716, 740 (2009)).

Appellant argues that there was no evidence of intent to commit a theft and that the evidence therefore did not support any of his convictions. According to appellant, "theft was not the reason for the entry." Rather than intend to commit the crime of theft, appellant argues that the evidence only supported that he entered with a good faith intent to "find" or "get" the clothes which belonged to Bradshaw.

The Court of Appeals has repeatedly held that "the intention at the time of the break may be inferred from the circumstances." See *Winder v. State*, 362 Md. 275, 329 (2001); *Reed v. State*, 316 Md. 521, 527 (1989); *Ridley v. State*, 228 Md. 281, 282 (1962). Additionally, due to the challenges of establishing subjective intent, "it must therefore be

inferred from the circumstances of the case." *Winder*, 362 Md. at 329 (quoting *Reed*, 316 Md. at 527).

Here, the jury heard evidence that Bradshaw had recruited appellant to help her recover the clothes which she had stolen in North Carolina. Appellant broke into the house by entering through a back window, and opened the back door for the others to enter. While in the house—which no one in the group knew for sure was the correct house—appellant helped Bradshaw search for clothes that did not legally belong to her. A rational fact finder could conclude that appellant broke and entered the Warren house with the intent to deprive Forde of property.[4] Accordingly, the trial court did not err.

II. Requested Jury Instructions

A. *Mumford* Instruction

Appellant next argues that the trial court erred by refusing to instruct the jury, pursuant to *Mumford v. State*, 19 Md. App. 640 (1974), that accomplice liability does not extend to an independent homicide committed separately from the originally planned felony. Trial courts are required to give a requested jury instruction when: 1) the instruction correctly states the law, 2) the instruction applies to the facts of the case and has been generated by some evidence, and 3) the content of the jury instruction is not covered by another given instruction. *Derr*, 434 Md. at 133. "We review a trial court's decision

[4] We express doubt that appellant, as a confederate to Bradshaw's plan, can even claim the defense of interest in property pursuant to CL § 7-110 when there was no evidence that appellant had an interest in the property that was the subject of the theft. Appellant has provided no legal support for this position.

whether to grant a jury instruction under an abuse of discretion standard." *Id*. (quoting *Cost v. State*, 417 Md. 360, 368-69 (2010)).

Appellant argues that when Hughes produced a handgun and demanded marijuana and money from Warren, this situation created a question of fact for the jury—whether "the killing of [Warren] was the natural and probable consequence of the alleged Burglary in the First-Degree." According to appellant, *Mumford* required the trial court to instruct the jury on this issue.

In *Mumford*, Mumford, a fifteen-year-old female, along with four youthful males, spent the day committing burglaries, robberies, larcenies, and assaults. 19 Md. App. at 641. At the group's third and final destination that day, Mumford and a cohort broke into a house to look for things to steal while two other cohorts went into a garage approximately thirty-three yards away. *Id*. at 642. Shortly thereafter, the homeowner arrived home and parked her car in the garage. *Id*. The two males attacked, raped, and murdered her. *Id*. At her criminal trial, Mumford admitted participation in the burglary and robbery, but denied any involvement in the rape, which she claimed she only learned about from police the following day. *Id*. This Court was tasked with determining whether Mumford should have received a jury instruction that required the jury to find a causal nexus between the underlying felony and the resultant homicide. *Id*. at 644.

We began by noting that "Each person engaged in the commission of the criminal act bears legal responsibility for all consequences which naturally and necessarily flow from the act of each and every participant." *Id*. at 643. We explained that "a killing, even

if unintentional, by one, in furtherance of or pursuant to the common object for which they combine, extends criminal liability for murder in the first degree to each and every accomplice." *Id*. We recognized the limits of this principle, however, stating "There is no criminal liability on the part of the others when the homicide was a fresh and independent product of the mind of one of the confederates, outside of, or foreign to, the common design." *Id*. at 644 (quoting C. Torcia, 1 *Wharton's Criminal Law and Procedure*, § 252 at 547 (Anderson ed. 1957)).

Applying the rule to Mumford's case, we held that,

> The medical examiner's report, in connection with the other evidence, was sufficient for the jury to find the killing of the decedent resulted from the rape; consequently, had the trial judge's instructions as to the felony-murder rule included a requirement of causal nexus between the underlying felony and the resultant homicide, the jury could have chosen not to believe that death occurred pursuant to the burglary, but rather from rape, fresh and independent of the common design. This factual issue should have been presented to the jury[.]

Id.

Mumford is distinguishable from the instant case. Whereas in *Mumford* there was sufficient evidence for the jury to conclude that the killing resulted from the rape rather than the burglary—a factual issue for the jury to resolve—here, Hughes's actions were a natural consequence of the burglary with the uninterrupted intent to commit theft of property in the house. Md. Code (2002, 2012 Repl. Vol.) § 6-202(a) of the Criminal Law Article ("CL") defines first-degree burglary as the breaking and entering of the dwelling of another with the intent to commit theft. CL § 7-104(a), which defines theft, provides that:

> (a) A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:
>
> (1) intends to deprive the owner of the property;
>
> (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
>
> (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

Regardless of whether the theft was of clothes or of Warren's marijuana and money, the killing naturally and necessarily flowed from the first-degree burglary—the breaking and entering with the intent to commit a theft. Warren was killed during the first-degree burglary. Because an instruction pursuant to *Mumford* was not warranted here, the trial court did not abuse its discretion in declining to give the requested instruction.

B. Jury Instruction on Intent

Appellant next argues that the trial court erred in refusing to instruct the jury that the intent to commit a theft must exist at the time of entry into a dwelling, a distinction separating first and fourth-degree burglary. Whereas first-degree burglary occurs when one breaks and enters the dwelling of another with the intent to commit theft, fourth-degree burglary occurs when one simply breaks and enters the dwelling of another. CL §§ 6-202, -205. Because of this distinction, appellant requested the following jury instruction: "The attempt to commit a theft in a crime of violence must be formed at the time of the entry . . . . If the intent was not formed at the time of the entry, there is no first-degree burglary."

Although the trial court denied the request, the record indicates that the trial court properly instructed the jury on the distinction between first and fourth-degree burglary.

Maryland Rule 4-325(c) states that,

> The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. *The court need not grant a requested instruction if the matter is fairly covered by instructions actually given*.

(Emphasis added). In giving the pattern jury instruction for first-degree burglary, the trial court instructed the jury:

> In order to convict the Defendants of burglary in the first degree, the State must prove the following: First, that there was a breaking; second that there was an entry; third that the breaking and entry was into someone else's dwelling; *fourth, that the breaking and entry was done with the intent to commit theft inside the dwelling*; and fifth, that the Defendants were the persons who broke and entered.

(Emphasis added). Because the court instructed the jury that, in order to convict appellant of first-degree burglary, it needed to find that the breaking and entering was done with the intent to commit theft, the jury instruction fairly covered this issue. Additionally, the court also instructed the jury of the elements of fourth-degree burglary, providing the jury with the opportunity to conclude that appellant lacked the intent to commit theft, but still illegally entered the Warren dwelling. The trial court provided relevant pattern jury instructions, and "[a]ppellate courts in Maryland strongly favor the use of pattern jury instructions." *Minger v. State*, 157 Md. App. 157, 161 n.1 (2004); *see also Green v. State*, 127 Md. App. 758, 771 (1999) (stating that "the wise course of action [for trial judges] is to give instructions in the form, where applicable, of our Maryland Pattern Jury

Instructions"). By providing instructions for both first and fourth-degree burglary, the trial court allowed the jury to resolve the factual dispute regarding the existence of the intent to commit theft prior to entering the Warren dwelling. Accordingly, the trial court did not abuse its discretion. *Derr*, 434 Md. at 133.

III. Admission of Appellant's Phone Number into Evidence

When police lifted the fingerprints from the rear window of the Warren home, they matched them to appellant. In their database, the police found background information regarding appellant, including his date of birth, address and phone number. Using the phone number from the database, on October 31, 2014, Detective Craig Schrott obtained a court order so that he could gather subscriber information from the telephone company associated with appellant's phone number.

On November 13, 2014, police brought appellant to headquarters to interview him regarding his involvement in Warren's murder. Detective Schrott conducted the interview. Before he began the interview, however, Detective Schrott filled out an information sheet by asking appellant routine booking questions to verify appellant's name, nicknames, race, sex, age, date of birth, home address, parent information, and phone number. At trial, appellant objected to the admission of his answers to the routine booking questions, arguing that the question seeking appellant's phone number constituted an interrogation rather than a routine booking question. The trial court admitted the evidence of appellant's phone number. Appellant now appeals that decision.

We need not decide whether the trial court erred in admitting into evidence appellant's answers to the routine booking questions in which appellant provided his phone number. When the State sought to introduce the information sheet itself, which contained all of the answers to the routine booking questions appellant provided, including his phone number, appellant raised no objection. This Court has long held that failure to object to the admission of evidence, regardless of previous court rulings, waives the issue. "It is fundamental that, irrespective of the disposition of an original objection, a subsequent failure to object to the same evidence introduced through the same or different witnesses waives the error on appeal." *Ellerba v. State*, 41 Md. App. 712, 725 (1979). "[I]t is not reversible error when evidence, claimed to be inadmissible, is later admitted without objection." *Tichnell v. State*, 287 Md. 695, 716 (1980). "Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection." *DeLeon v. State*, 407 Md. 16, 31 (2008). Accordingly, appellant failed to preserve this issue for appeal.[5]

IV. Admission of Business Records

Appellant's final argument on appeal is that the trial court erred in admitting phone records into evidence. Due to appellant's misunderstanding of the record, we must clarify

[5] We also note that, "[u]nder [Maryland] Rule 4-252 an allegation that an admission, statement, or confession was unlawfully obtained must be raised by pretrial motion or it is waived." *State v. Brown*, 327 Md. 81, 94 (1992). Here, appellant does not explain why he raised this issue for the first time eleven days after his trial commenced.

what exhibits were admitted, and which objections were lodged below before we can address appellant's arguments.

During the trial, the State sought to introduce appellant's phone records, as well as the phone records of appellant's co-defendants. The State first introduced exhibit 60, appellant's Sprint phone records, over objection that the certification for these records was provided more than a year after the record itself was created. Subsequently, the State introduced exhibits 61-A and 61-B, the T-Mobile phone records for Hughes. Appellant and his co-defendants objected to the admissibility of 61-A and 61-B on the basis that the same certification sheet was used to authenticate both 61-A and 61-B.

In his brief, appellant appears to conflate exhibit 60 with exhibits 61-A and 61-B as well as the certification issues each exhibit generated at trial. We shall do our best to make sense of appellant's inaccurate representation of the record and explain why the trial court did not abuse its discretion.

We begin with exhibit 60, appellant's phone records. Detective Christopher Needham, who investigated Warren's murder, testified that he first obtained records of appellant's cell phone information from the provider, Sprint, on October 31, 2014. The certification for these records, however, was dated November 10, 2015.

On appeal, appellant argues that "on October 31, 2014 [Detective Needham] received records from Sprint the provider . . . and on November 10, 2015 he received a

second set of records with a Certification in compliance with Maryland Rule 5-803(b)(6)."[6] Although it is true that Detective Needham received appellant's phone records on October 31, 2014, and received the certification for those records on November 10, 2015, Detective Needham never testified that he received a *second* set of records along with the November 10, 2015 certification. Instead, Detective Needham testified specifically that the only certification from Sprint was for the records he received in October of 2014. Our understanding of the record is supported by the fact that the State only introduced one Sprint record into evidence as it pertained to appellant's phone number—exhibit 60. The record does not support appellant's contention that Sprint sent two different sets of appellant's phone records, but only a single certification. Sprint sent a single set of records, and a single certification for those records a year later.

Regardless of this misunderstanding, appellant argues that the certification itself was improper pursuant to Maryland Rule 5-803(b)(6) because it was dated more than a year after the record itself was generated. Rule 5-803(b)(6) provides, in pertinent part, that a record is not excluded by the rule against hearsay if it is a record "made at or near the time of the act, event, or condition . . . by a person with knowledge." The Rule does not require that the *certification* be made near the time that the record is created. Rather, the Rule merely requires that the *record itself* be created at or near the time that the act, event,

[6] We note that, whereas Rule 5-803(b)(6) provides the hearsay exception for business records, Rule 5-902(b) provides the requisite procedure for the certification of such records.

or condition occurred. Appellant misunderstands the mandates of the Rule, and, accordingly, his argument lacks merit.

Finally, we will explain why the admission of exhibits 61-A and 61-B were also proper. As explained above, at the trial, all defendants, including appellant, objected to the admission of exhibits 61-A and 61-B on the basis that two separate sets of documents had only one certification sheet. According to Detective Needham, he received these T-Mobile records in the same manner that he received the Sprint records—"the carriers email [him] a digital copy of the records." Here, the certification for exhibits 61-A and 61-B states that the records are an accurate reproduction of "subscriber information, call detail records with cell site information, [and] cell tower identification list." Exhibit 61-A consists of Hughes's subscriber sheet and call detail records. Exhibit 61-B consists of Hughes's master cell tower list. The fact that the State bifurcated this single record into two exhibits—61-A and 61-B—does not negate the fact that the certification clearly applies to the contents of both. The State did not bootstrap an inapplicable certification to a separate exhibit. The trial court, therefore, did not abuse its discretion in admitting these phone records into evidence.

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