Circuit Court for Baltimore County
Case No. 03-K-14-6613

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 125

September Term, 2016

JAMES MURPHY

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 James Murphy 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 five questions for our review:

1. Did the [c]ircuit [c]ourt err when it refused to instruct the jury, pursuant to *Mumford v. State*, 19 Md. App. 640 (1974), that there is no criminal liability on the part of others when one person commits a homicide in the course of a crime or conspiracy if the homicide was a fresh and independent product of the mind of one of the confederates, outside of, or foreign to, the common design because more than mere coincidence in time and place between the two must be shown?

2. A. Did the [c]ircuit [c]ourt err when it instructed the jury that it could infer consciousness of guilt from the [a]ppellant's departure from the crime scene when there was no evidence that the [a]ppellant believed that he had committed a crime, that he had rushed away from the scene of a crime, or attempted to conceal his identity in response to police or citizen action?

   B. Did the [c]ircuit [c]ourt erred [sic] when it instructed the jury that it could infer consciousness of guilt based on the [a]ppellant's departure from the crime scene without also informing the jury that any consciousness of guilt that it may infer must be limited to the crime which likely prompted the [a]ppellant to flee the scene without inferring consciousness of guilt as to all crimes charged?

3. Did the [c]ircuit [c]ourt err when it refused to provide additional instruction to clarify to the jury that the intent to commit a theft must exist at the time of entry into the dwelling of another and may not be formed after entry into the dwelling to find a person guilty of First Degree Burglary

4. Did the [c]ircuit [c]ourt err when it denied the [a]ppellant's Motion for Judgment of Acquittal at the close of the evidence on the basis that the State had presented sufficient evidence for a reasonable jury to find guilt on all counts?

5. Did the [c]ircuit [c]ourt abuse its discretion by allowing the prosecution to elicit hearsay statement [sic] during the testimony of Chadon Bradshaw[?]

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 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.

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

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 exchange for her wallet. At approximately 2:00 p.m., appellant 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]

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 appellant left together for Forde's mother's house. On the way, they picked up Latray Hughes ("Hughes") and Delonte Epps ("Epps") 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, appellant, Hughes, and Epps 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

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

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

of the house. The back door, however, was locked, so Epps 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. Appellant and Hughes went up the stairs with Bradshaw, but Epps 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 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 appellant that they should leave because they were in the wrong house. Appellant 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 appellant with her car, and then appellant and Epps, followed by Hughes, entered Bradshaw's vehicle.

Once inside the vehicle, Hughes passed the gun to Epps, and Epps 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 Epps's house. Epps 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 Epps and Hughes called their respective girlfriends and Bradshaw picked them up. The six of them: Bradshaw, Hughes, Epps, appellant, Hughes's girlfriend and Epps'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 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, Epps, 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. *Mumford* Instruction

Appellant first 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 v. State*, 434 Md. 88, 133 (2013). "We review a trial court's decision 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 Bradshaw, [appellant] and Epps perceived Hughes's sudden use of a handgun as being in furtherance of their common design or a fresh and independent product of Hughes's mind." 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.

II. Jury Instruction on Flight

A. Evidence of flight

Appellant next argues that the trial court committed error in providing the jury instruction for flight because "[t]here was simply no evidence that [appellant] acted as though he was fleeing to avoid detection or apprehension." In Maryland,

> for an instruction on flight to be given properly, the following four inferences must reasonably be able to be drawn from the facts of the case as ultimately tried: that the behavior of the defendant suggests flight; that the flight suggests a consciousness of guilt; that the consciousness of guilt is related to the crime charged or a closely related crime; and that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

Thompson v. State, 393 Md. 291, 312 (2006). As stated *supra*, we review the trial court's decision to grant a jury instruction for an abuse of discretion. *Derr*, 434 Md. at 133.

Appellant compares his case to *Hoerauf v. State*, 178 Md. App. 292 (2008), where this Court held that a defendant merely walking away from a crime scene should not ordinarily trigger a jury instruction on flight. There, Hoerauf and his friends were involved in a fight and subsequent robbery with another group. *Id*. at 298. On appeal, Hoerauf disputed the trial court's decision to give a flight instruction. *Id*. at 318. In holding that the trial court erred by providing the flight instruction, we explained, "the classic case of flight is where a defendant leaves the scene shortly after the crime is committed and is running, rather than walking, or is driving a speeding motor vehicle. On the other hand, merely walking away from the scene of a crime ordinarily does not constitute flight." *Id*. at 324. We held that,

> taking the evidence in a light most favorable to the State, [Hoerauf] simply walked away from the scene of the crime with the group of individuals who had just perpetrated the robberies. . . . There was no evidence that [Hoerauf] attempted to flee the neighborhood or secrete himself from public view to avoid apprehension. . . . Under the facts of this case, we conclude that there were no circumstances attendant to [Hoerauf's] departure from the scene of the crime that would reasonably justify the inference of a consciousness of guilt.

Id. at 326.

Appellant's case is readily distinguishable. Two witnesses, Lauren Rachuba ("Rachuba") and Alisha Riley ("Riley") testified to hearing the gunshots and seeing two males enter a vehicle on the night of the murder. Rachuba testified that she was outside when she heard loud banging sounds. The sounds drew her attention to a parked car that began to head down the street with its headlights turned off. She saw two young males "take off running" in the direction of the car. Eventually, the vehicle turned on its headlights and then stopped next to the corner of the block and picked up the two young males. Rachuba saw the vehicle take off, and police swarmed the entire street shortly thereafter.

Riley testified that after hearing the shots and seeing the parked vehicle begin to drive away, she saw two males approach and then enter the vehicle. According to Riley, once the two males entered the vehicle, it "just went flying up the street."

The State produced evidence that, shortly after shots were fired, appellant *ran* towards a car which sped away after he entered it. Indeed, "the classic case of flight is where a defendant leaves the scene shortly after the crime is committed and is running, rather than walking, or is driving a speeding motor vehicle." *Id*. at 324. We therefore

reject appellant's assertion that "[t]here were no circumstances attendant to [appellant's] departure from the Warren residence that would reasonably justify the inference of a consciousness of guilt." Accordingly, the trial court did not abuse its discretion in providing a flight instruction based on the argument that appellant was never seen running from the Warren residence.[4]

B. Limitation of the Flight Instruction

Appellant next argues that the flight instruction should have been explicitly limited to the burglary crime. Appellant concedes that he did not raise this issue at trial but suggests that the plain error doctrine "may" apply. Nowhere in his brief, however, does appellant articulate why this court should exercise plain error review.[5]

Plain error is "reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of [a] fair trial." *Robinson v. State*, 410 Md. 91, 111 (2009) (internal quotation marks omitted) (quoting *Rubin v. State*, 325 Md.

[4] In his brief appellant claims that he was not seen running from the Warren residence, and instead was only seen walking. We hope this is an innocent mistake rather than an intentional misrepresentation of the record—which indicates that two males were seen running to a car which promptly sped away. Appellant even acknowledged in his brief that, pursuant to the State's theory of the case, he was one of the two males seen running in the direction of the vehicle that sped off on the night of the murder. Indeed, Bradshaw testified that she picked up appellant and Epps first (accidentally striking appellant with her vehicle), and that she picked up Hughes last. The State's case showed that appellant and Epps were the two males Rachuba and Riley saw running towards Bradshaw's vehicle.

[5] Additionally, appellant provides no legal authority to support this argument. "[A]pellate courts cannot be expected to either (1) search the record on appeal for facts that appear to support a party's position, or (2) search for the law that is applicable to the issue presented." *Ruffin Hotel Corp. v. Gasper*, 418 Md. 594, 618 (2011).

552, 588 (1992)). The "exercise of discretion to engage in plain error review is 'rare[,]'" *Yates v. State*, 429 Md. 112, 131 (2012), and appellate courts will only do so when the error is "so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial." *Diggs v. State*, 409 Md. 260, 286 (2009) (quoting *Trimble v. State*, 300 Md. 387, 397 (1984)). Appellant's failure to argue this issue before the trial court did not preclude an impartial trial. Accordingly, we decline to review this argument for plain error.

III. 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.

IV. Sufficiency of the Evidence

Appellant next argues that the trial court erred in denying his motion for judgment of acquittal because the evidence was insufficient to support his convictions. 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*, 434 Md. at 129). "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 quotation marks 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)).

In arguing that the evidence was insufficient to support any of his four convictions, appellant adopts and incorporates the arguments in co-appellants Hughes's and Epps's briefs in addition to his own arguments. We shall address each argument in turn.[6]

[6] We do not address Hughes's argument that the evidence was insufficient to support first-degree premeditated murder because appellant was not convicted of this offense.

A. Evidence of Intent to Commit Theft

Appellant first argues that there was no evidence of intent to commit a theft and that the evidence did not support the conviction for first-degree burglary. 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. Epps broke into the house by entering through a back window, and opened the back door for appellant and 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.[7]

B. Evidence of Conspiracy

Appellant next challenges the sufficiency of the evidence to establish the existence of an unlawful conspiracy. Conspiracy is defined as "the combination of two or more persons, who, by some concerted action, seek to accomplish some unlawful purpose, or lawful purpose by unlawful means." *Rich v. State*, 93 Md. App. 142, 151 (1992), *vacated on other grounds*, 331 Md. 195 (1993). Appellant notes that Bradshaw did not testify as to an overt agreement to commit a burglary. According to appellant, without direct evidence showing an agreement to commit the theft, the evidence was insufficient to sustain the count for conspiracy to commit burglary.

Viewing the facts in the light most favorable to the State, we note that the evidence showed that appellant willingly traveled with Bradshaw, Epps, and Hughes to a house he had never been to in order to repossess clothes that did not belong to him. Once at the house, Epps illegally entered through a window and opened the back door for appellant to enter. Even assuming a lawful purpose (which we need not assume under the applicable standard here), appellant aided in the attempted recovery of clothes through unlawful means. In actuality, appellant's purpose was not lawful. He broke and entered another's

[7] 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.

house with the intent to deprive Forde of property. The evidence was sufficient to establish a conspiracy to commit burglary.

C. Evidence of Use of a Firearm

As argued in Hughes's brief and incorporated by appellant, the evidence was insufficient to support the conviction for use of a firearm in the commission of a felony because the murder weapon was never recovered, thus precluding experts from matching the bullets to the gun. CL § 4-204 defines a firearm as:

> (i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or
>
> (ii) the frame or receiver of such a weapon.

> (2) "Firearm" includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

Bradshaw testified that she saw Hughes pointing a gun at Warren, and that appellant told her to leave because Hughes was going to kill Warren. Additionally, Bradshaw testified that she heard several loud gunshots. Finally, Warren died of gunshot wounds. That the State could not recover the firearm is not fatal to its case for sufficiency purposes. This Court has previously stated,

> It is one thing to say that, where the weapon alleged to be a handgun is produced and examined, and the evidence either shows that it was not a handgun or fails to demonstrate adequately that it was, there can be no conviction. It is quite another to extend the 'sufficiency' theory to produce the same result when, despite credible testimony that the assailant used a weapon described as a handgun, a small pistol, the weapon was not subject to empirical examination because it was not recovered. There is no suggestion . . . that a conviction is unobtainable under this latter circumstance.

Brown v. State, 64 Md. App. 324, 335 (1985) (quoting *Couplin v. State*, 37 Md. App. 567, 578 (1977)), *cert. denied* 281 Md. 735 (1978), *overruled in part on other grounds by State v. Ferrell*, 313 Md. 291 (1988). The evidence was sufficient to sustain appellant's conviction.

D. No Meaningful Corroboration

Appellant next argues that there was no meaningful corroboration of Bradshaw's testimony. Appellant correctly notes that "a person accused of a crime may not be convicted on the uncorroborated testimony of an accomplice." *Ayers v. State*, 335 Md. 602, 637 (1994). "Notwithstanding the important reasons behind the rule . . . only slight corroboration is required." *Id*. Though only slight,

> [T]he corroborative evidence . . . must relate to material facts tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself . . . . If with some degree of cogency the corroborative evidence tends to establish either of these matters, the trier of fact may credit the accomplice's testimony even with respect to matters as to which no corroboration was adduced. *McDowell v. State,* 231 Md. 205, 189 A.2d 611 (1963). That corroboration need not extend to every detail . . . is also settled by our cases.

McCray v. State, 122 Md. App. 598, 605 (1998) (quoting *Brown v. State*, 281 Md. 241, 244 (1977).

Here, there was more than slight corroboration of Bradshaw's testimony. Police officers lifted Epps's fingerprint from the Warrens' kitchen window, confirming Bradshaw's testimony that he climbed in through the window in order to let the rest of the group into the house. Rachuba and Riley corroborated the manner in which Bradshaw's

SUV pulled away from the scene of the crime, and picked up two males before speeding away. Surveillance footage from Denny's verified that Bradshaw, appellant, Epps, Hughes, and Epps's and Hughes's respective girlfriends were at a Denny's restaurant later that night, identifying appellant with the other perpetrators. Finally, the jury heard testimony regarding cell phone towers pinging appellant's cell phone to an approximate location near the Warrens' home at the time of the murder. We hold that Bradshaw's testimony was adequately corroborated.

V. Admission of Hearsay Statements During Bradshaw's Testimony

Finally, appellant adopts the argument from Hughes's brief in which Hughes challenges the admissibility of statements made during and immediately after the burglary and murder. By incorporating Hughes's brief, appellant identified and challenged the admission of statements that the court anticipated Bradshaw would introduce through her testimony.

The trial court found the evidence sufficient to make a threshold determination that a conspiracy existed, and admitted the statements pursuant to Maryland Rule 5-803(a)(5), which permits the admission of a hearsay statement when it is made by "a coconspirator of the party during the course and in furtherance of the conspiracy." Appellant argues that the trial court abused its discretion in finding that these statements were made in furtherance of a conspiracy because "There was no unlawful conspiracy proven in this case. If there was some agreement, its central objective was a lawful one, *i.e.*, to enter the house on St. Claire Lane to retrieve [Bradshaw's] clothing."

The Committee Note to Maryland Rule 5-803(a)(5) provides that, "Where there is a disputed issue as to . . . the existence of a conspiracy . . . the court must make a finding on that issue before the statement may be admitted." We hold that the evidence was sufficient to establish the existence of a conspiracy here. According to the State's case, Bradshaw recruited appellant to help her recover clothes she had stolen through credit card fraud. Once at the Warren house, appellant entered through the door that Epps had opened for the group after climbing through a back window. Inside the house, appellant climbed the stairs with Bradshaw and Hughes in search of the clothes. As we explained, *supra*, conspiracy is defined as "the combination of two or more persons, who, by some concerted action, seek to accomplish some unlawful purpose, or lawful purpose by unlawful means." *Rich*, 93 Md. App. at 151. Not only was there evidence that appellant's purpose (to recover twice-stolen property) was unlawful, but there was also evidence that the manner of doing so was equally unlawful.

Finally, appellant adopts Hughes's objection to the statement "They said, 'Hurry up.'" A thorough review of the record, however, reveals that Bradshaw did not testify that Hughes stated "They said, 'Hurry up.'" Instead, Bradshaw testified that Hughes stated that they told him to do it. Obviously, appellant does not ask us to rule on the admissibility of a statement that was never introduced. For our analysis, we treat the two statements interchangeably.

At trial, Bradshaw testified that when appellant, Epps and Hughes were in her car, she asked them why they killed Warren. Bradshaw testified that in response to her

question, Hughes stated that they told him to do it. Appellant argues that this statement "was made after the unsuccessful effort to find the clothing occurred, that is, after the central objective of the alleged conspiracy failed, and so it was inadmissible."

We note that at trial, appellant's trial counsel never adopted the objections made by appellant's co-defendants. Instead, appellant's trial counsel only explicitly objected to the admission of appellant's own statement instructing Bradshaw to go outside because Hughes was about to kill Warren. By failing to object to the admission of the statement, and by failing to adopt the arguments of appellant's co-defendants, appellant failed to preserve this issue for appeal. *See Williams v. State*, 216 Md. App. 235, 254 (2014) ("Under Maryland law, in cases involving multiple defendants each defendant must lodge his own objection in order to preserve it for appellate review and may not rely, for preservation purposes, on the mere fact that a co-defendant objected.").

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