Circuit Court for Baltimore County
Case No. 03-K-16001501

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1656

September Term, 2016

WHITNEY RUBY

v.

STATE OF MARYLAND

Woodward, C.J.,
Nazarian,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Davis, J.

Filed: January 17, 2018

Appellant, Whitney Ruby, was tried and convicted by a jury in the Circuit Court for Baltimore County (Jakubowski, J.) of armed robbery, attempted armed robbery, two counts of first degree assault, use of a handgun in the commission of a crime of violence; first degree burglary and conspiracy to commit armed robbery. On September 8, 2016, Judge Jakubowski sentenced Appellant to fifteen years' imprisonment, suspending all but five years on the attempted armed robbery conviction; a concurrent five years without the possibility of parole on the use of a handgun conviction; a concurrent fifteen years, suspending all but five years, on the first degree burglary conviction; and a concurrent fifteen years suspending all but five years on the remaining first degree assault conviction, and a merger of the other count of first degree assault. Appellant filed the instant appeal, positing the following questions for our review:

1. Did the trial court err in allowing the State to impeach its own witness and/or in admitting into evidence William Truman's prior statement as a prior inconsistent statement?

2. Did the trial court err in admitting the recorded jail telephone call into evidence?

3. Was the evidence legally insufficient to sustain the convictions?

FACTS AND LEGAL PROCEEDINGS

Baltimore County Police Corporal Christopher Mazan testified that, in the late hours of February 18 and into the early hours of February 19, 2016, he was in his marked cruiser stationed in a parking lot at Merit Boulevard and German Hill Road when he received the report of a home invasion at nearby 810 Wise Avenue and he observed the suspected

vehicle pass at a high rate of speed. He conducted a traffic stop of the vehicle driven by Appellant, the only occupant therein. Corporal Mazon detained Appellant, advising her that she had been implicated, by name, in the reported home invasion and, accordingly, he transported her to the Precinct.

Officer Andre Smith testified that, on the aforementioned date and time, he and other officers responded to 8407 Kings Ridge Road to secure the residence for the execution of a search warrant. According to Officer Smith, William Truman answered their knock on the door and the officers secured the premises and arrested Shane Thompson, who was also inside. They also recovered a revolver from the premises.

Candace Honeycutt testified that she had known Ruby for several years and that they were friends and partied together and that, in January of 2016, she met Shane Thompson, whom she knew as "Chem," at Ruby's house on Kings Ridge Road. Honeycutt said that Chem was a "black male with an islander accent." According to Honeycutt, Appellant called her on or about February 18, 2016, "inquiring about needing some pills and drugs." Honeycutt testified that Appellant picked her up from a bar near her home in a silver car and that Chem was in the passenger seat. According to Honeycutt, Ruby gave her $600 (of what Candace believed was Chem's money) and they drove to the nearby "Three Garden Village" neighborhood where Honeycutt met a drug dealer named "D" in an alleyway to make a transaction. According to Honeycutt, "D" instructed her to wait while he entered a house nearby, and she waited for approximately twenty minutes and then went over to the house and knocked on the door and encountered a female who said

that "D" was not there.

Candace Honeycutt testified that she then called Appellant and told her that she had been "taken" and, according the Candace, Appellant told her "not to come back to the car" because Chem was "angry" and that he was a "dangerous person." Candace then took a bus home to 810 Wise Avenue, where her mother, Loretta, and brother, Wesley, were present. She arrived at her home at approximately 11:30 p.m. According to Candace's testimony, she then told Wesley what had happened. At 12:57 a.m., Appellant texted her, stating, "make this shit right because this dude is fucking crazy and lent you $ [money] and you straight dipped." After twenty minutes and no response from Candace, Appellant texted her again, stating: "Have it your way."

Sometime thereafter, Chem appeared in the house, having entered the premises through the back door, and pointed a gun at Wesley, backing him through Candace's bedroom door. Candace testified that Chem was asking for $650 from her and was "very irate." He continued to point the gun at Wesley and Candace, threatening to shoot Candace's dog (which was caged). Chem struck the butt of the gun on the wall and told her that she had 48 hours to get his money and then exited the house, again through the back door. Candace did not witness the vehicle that transported Chem to or from her house.

Wesley Honeycutt testified that, in the early morning hours of February 19, 2016, he had been talking to Candace and walked out of her room to find a "black man" standing in the kitchen pointing a revolver at him. Wesley testified that the man said, "Where's your sister?" According to Wesley, the man had an "islander or African" accent. Wesley said

that he backed into his sister's room and the man came in and pointed the gun at Candace and they had a conversation about money in which he told her that he wanted his $650 in 48 hours. Wesley said that the man was "irate" and "was saying he was going to shoot me, he was going to shoot my dog, which was in the kennel," and that he then "slammed his gun against the wall" before leaving. Wesley said that Candace then called the police but hung up, and Wesley was outside as the police conducted a "drive by" within about five minutes.

William Truman was originally charged in connection with this case but, as of the time of trial, those charges were entered *nolle prosequi.* Truman was Ruby's boyfriend at the time of the events herein and he testified that they were living together at 8407 Kings Ridge Road in Parkville, Maryland. Truman said that, on February 18, 2016 at approximately 11:30 p.m., he was home with Ruby, "Don" and Chem. Truman, however, claimed that he did not remember much about the night because he had been drinking. He did acknowledge that, when the police officers came to the residence the next morning, he provided a handwritten, signed statement which read as follows:

> Whitney left here with Chem to grab something from Candace, she supposedly stole the money[;] Chem was pissed off about it [sic] asked to go talk to her about it. Whitney drove and dropped him off near [D]undalk. When Whitney came home I asked what happened[;] she said she didn't know cause [sic] she parked down the street. She then texted Candace she had a photo album and would throw it away & [sic] Candace said she'd pay him back.

At trial, Truman disavowed his written statement, claiming that the police told him what to write and that he "signed it thinking he would get [his] girlfriend out of jail." The

following colloquy transpired.

[PROSECUTOR]: You wrote it? You signed it?

[TRUMAN]: Uh-huh.

Q. And you signed it actually saying that it was true, didn't you?

A. I did.

Q. And you're saying—so is it your testimony today that what you wrote in there is not true?

A. Yes, ma'am.

Q. So what is included in the State's Exhibit No. 7 is all a lie?

A. I'm not saying it's a lie; I'm saying I was asked to write this, and then I signed it thinking it would get my girlfriend out of jail.

Q. So my question is, is what's in State's Ex. No. 7, is that the truth?

A. Is it my truth or their truth, I don't know.

Q. Is it your truth?

A. It's not my truth, no. I don't know what happened.

Detective Matthew Homey testified that he investigated this case and that he first responded to 810 Wise Avenue and spoke to Wesley and Candace Honeycutt. Thereafter, Detective Homey returned to the precinct to speak to Appellant. It was Detective Homey's testimony that, subsequent to Appellant's Miranda waiver, she told him that she and Chem drove to Dundalk to pick up Candace, to give her some money and take her to an area in Dundalk "unknown to Ms. Ruby," and that Candace got out of the car "to retrieve whatever it was that she needed." Detective Homey testified that Appellant told him that she and

Chem drove to a gas station and returned to where they had dropped Candace off, but were unable to locate her, so Appellant left and dropped Chem off at an apartment complex in Parkville. Appellant then reduced her statement to writing, which was admitted into evidence. In that statement, Appellant recounts:

> I left my home with a friend to lend $600 to Candace ... after she hadn't returned for about 5 minutes I left and got gas. I drove back . . . she wasn't there, so I left figuring she had stolen the [money], which I told her was my friend's in hopes that she would take care of it. I went home and called and texted her with no response until I told her that I would destroy her photo album and she called and said her mom would return the **[**money**]** . . . she stated that someone had come and threatened her with a weapon which, to my knowledge, is untrue.

According to Detective Homey, Appellant gave him permission to examine her cell phone, and Detective Homey took several photographs of text conversations reflected on Ms. Ruby's cell phone, as well as a contact for "Chem," and those photographs were admitted into evidence. Further, Appellant identified the person she knew as Chem from a photo array, whom Detective Homey identified as Shane Thompson, and whom Detective Homey described as having an "islander" accent. Detective Homey also testified regarding a recorded "jail call" from Appellant, at the Baltimore County Detention Center, which was played for the jury and in which Appellant says, *inter alia*, that she dropped a guy off to get his money back, that he "beat two people with a gun" because they "took him off . . . took money from him . . . robbed him;" but that she was "nowhere near it" and "didn't know anything about it."

Appellant testified, in her defense, that she had driven Chem to pick up Candace from her house on February 18th and drove to an unfamiliar neighborhood in order to have

Candace get Chem some "Percocets." Appellant maintained that Chem gave Candace $600 and Candace got out of the car and that Appellant did not see her after that. Appellant said that she went to get gas and could not contact Candace thereafter, so she took Chem to his apartment and then went home and watched TV and that Don and Tony (Truman) took her car for a few hours. Appellant testified that she later traded text messages with Candace regarding the availability of the money and proceeded to go to Candace's house when she was pulled over by police. Appellant acknowledged that she had earlier sent Candace a text message that Chem was crazy and that she also threatened to burn a photo album because Candace was not responding to her.

DISCUSSION

I.

Appellant first contends that the trial court erred in allowing the State to impeach its own witness and/or admitting into evidence William Truman's prior statement as a prior inconsistent statement. Specifically, Appellant refers to an exception to impeachment, cited in *Bradley v. State*, 333 Md. 593, 604 (1994), which does not allow the State to circumvent the rules of evidence by admitting an inadmissible prior inconsistent statement *via* "opportunistic" impeachment. Appellant argues that, in the instant case, the State "likely knew that William Truman's live testimony would contradict his prior written statement because of his reluctance to cooperate[.]" Therefore, maintains Appellant, "the written statement was inadmissible as impeachment."

The State responds that the trial court properly admitted the prior written statements

of a witness which was inconsistent with the witness's trial testimony. First, the State asserts that we should decline to address Appellant's argument that the statement was inadmissible for impeachment because Appellant failed to preserve the argument for our review. The State further argues that, if we do review Appellant's claim, "whether the State 'likely knew' that Truman would recant the content of his written statement is immaterial because the statement was offered as substantive evidence." The State finally argues that "it was not necessary for [it] to demonstrate (or the trial court to find) 'feigned memory loss' to establish implicit inconsistency[,]" as the witness's testimony and written statement "were inconsistent by virtue of positive contradiction."

As a preliminary matter, we will address the State's contention that Appellant's first issue has not been preserved for our review.

Md. Rule 8–131(a) provides that, "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" The typical vehicle for doing so is *via* a contemporaneous objection. MD. RULE 4–323(a). The grounds for an objection do not have to be stated, unless volunteered by the party or requested by the court. "[W]hen particular grounds for an objection are volunteered or requested by the court, 'that party will be limited on appeal to a review of those grounds and will be deemed to have waived any ground not stated.'" *State v. Jones*, 138 Md. App. 178, 218 (2001).

In the instant appeal, when the State moved to admit Truman's handwritten and signed statement as a "prior inconsistent statement," Defense counsel objected and the

following colloquy occurred in a bench conference:

> [DEFENSE COUNSEL]: It's not a prior inconsistency.
>
> THE COURT: Because?
>
> [DEFENSE COUNSEL]: He's saying he passed out; he doesn't know what happened. He has not testified that she—he testified he doesn't know what happened. This is not a prior inconsistent statement.
>
> [PROSECUTOR]: What he just said is, what's included in that statement is not his truth.
>
> [DEFENSE COUNSEL]: That's not a prior—that isn't a prior inconsistent statement.
>
> [PROSECUTOR]: I thought frankly, from what he was saying at the beginning about not remember that I was going to have to go down that road and prove that he was feigning his memory loss, but given that he just said that what's included in that statement and signed by him as true is not true—
>
> [DEFENSE COUNSEL]: He said it's not his (inaudible) speculation or hearsay. Once she leaves the house (inaudible).
>
> THE COURT: Sounds like cross-examination, that's coming up, I'm going to allow it.

Clearly, from the above excerpt, Appellant volunteered that the grounds for the objection were "prior inconsistency," *i.e.*, prior inconsistent statement. Appellant did not volunteer, as the grounds for the objection, that the State "likely knew" that Truman's trial testimony would contradict his written statement and, therefore, Truman was called as a way to circumvent the rules of evidence and admitting the otherwise inadmissible written statement. Therefore, we hold that Appellant has not preserved the particular contention for our review.

Appellant's next contention is that the written statement is inadmissible as substantive evidence because Rule 5–802.1(a) "only permits such admission when the witness' memory loss is 'feigned,' and the witness is not being truthful about his or her ability to remember." Specifically, Appellant distinguishes Truman's testimony that he "did not know what happened," from that which he did not remember. Additionally, Appellant argues that trial court "made no finding that Truman's memory loss was feigned."

The State responds that, "Truman did not claim a lapse of memory"; rather, "he expressly recanted his written statement as 'not his truth.'" The State argues that this is the essence of an inconsistent statement. Finally, the State asserts that, "[e]ven if the trial court had admitted the written statement based on a determination that Truman's lack of memory was 'feigned,' it would not have been required to announce its determination on-the-record."

> As a general rule, prior statements by a witness that are inconsistent with the witness's in-court testimony are admissible to impeach the credibility of the witness. When offered to prove the truth of the matter asserted in the statements, however, a witness's prior inconsistent statements are hearsay and thus traditionally were held to be inadmissible as substantive evidence.

Stewart v. State, 342 Md. 230, 236 (1996) (citations omitted).

> In [*Nance v. State*, 331 Md. 549 (1993)], however, [the Court of Appeals] carved out an important exception to the general rule against the admissibility of prior inconsistent statements as substantive evidence. In *Nance*, we held that the factual portion of a witness's out-of-court statement is admissible as substantive evidence when: (1) the out-of-court statement is inconsistent with the witness's in-court testimony; (2) the prior statement is based on the declarant's own knowledge; (3) the prior statement is reduced to writing and signed or otherwise adopted by the

> witness; and (4) the witness is subject to cross-examination at the trial where the out-of-court statement is introduced.

Stewart, 342 Md. at 237 (citing *Nance*, 331 Md. at 569).

In the instant case, as the State points out, Appellant does not dispute that the statement was based on the declarant's own knowledge. The statement was obviously reduced to writing and signed by Truman, who was also available at trial for cross-examination. Therefore, the first prong of the *Nance* factors is at issue, *i.e.*, whether the out-of-court statement is inconsistent with the witness's in-court testimony.

In his written and signed statement, Truman expounds upon what happened on the night in question. During his trial testimony, Truman testified that he did not know what happened and that his written statement was "not true." We are persuaded that this is the very essence of inconsistency and, therefore, a finding of "feigned" memory loss was not required. Accordingly, we hold that the trial court properly admitted Truman's statement into evidence as a prior inconsistent statement.

II.

Appellant next contends that the trial court erred in admitting the recorded jail telephone call into evidence without a proper foundation as to authentication. Appellant argues that, "the State did nothing to show by clear and convincing evidence that the recording was a true, accurate and authentic recording of the conversation, at a given time, between the parties involved. Specifically, Appellant asserts that the State did not demonstrate that the device used to record the call was "capable of making recordings and

was in working order and that the operator was competent." Appellant maintains that reversal is required.

The State responds that Appellant failed to preserve any challenge with respect to the admissibility of the jail call recording. Despite the fact that Appellant objected before the recorded call was played, the State alleges that Appellant failed to object *after* the call was played and then admitted into evidence. If preserved, the State maintains that the exhibit was self-authenticating. Specifically, the "supporting documentation" that was referenced when the recorded call from the jail was admitted into evidence was "included a July 6, 2016, certification from the custodian of records for the Baltimore County Department of Corrections," which included an affirmance, under a penalty of perjury, that the attached record, *i.e.*, the recorded jail call, was true and correct. The State maintains that the lower court's ruling should be affirmed.

As a preliminary matter, we will address the State's contention that the matter has not been preserved for our review.

As discussed, *supra*, Md. Rule 8–131(a) provides that, "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" The typical vehicle for doing so is *via* a contemporaneous objection. MD. RULE 4–323(a).

"[T]he admissibility of evidence may only be reviewed when an objection is timely made." *Ware v. State*, 170 Md. App. 1, 19 (2006). "[I]t is fundamental that a party opposing the admission of evidence must object at the time that evidence is offered. This also

requires the party opposing the admission of evidence to object each time the evidence is offered by its proponent." *Klauenberg v. State*, 355 Md. 528, 545 (1999) (citing MD. RULE 4–323(a)).

In the instant case, the State sought to play and then admit the recorded phone call during the testimony of Detective Horney. The colloquy concerning the evidence occurred as follows:

> [DET. HORNEY] There's a system to monitor jail calls from the Detention Center. It's called the "Inmate Calling Solutions Program." It's a computer interface that we have access to in our office to monitor recorded phone conversations from the Detention Center. We are provided with a user name and password to log into the system.
>
> [THE STATE]: And, to your knowledge, are inmates advised, at the beginning of every call, that those calls are monitored and subject—I'm sorry, subject to monitoring and recording?
>
> A. That's correct.
>
> Q. And did you listen to any calls of inmate Whitney Ruby in this case?
>
> A. I did.
>
> [THE STATE]: All right, I'm sorry, what number am I on?
>
> THE CLERK: 16.
>
> [THE STATE]: 16, thank you.
>
> [DEFENSE COUNSEL]: I'm going to object to the playing of this, Your Honor. I don't believe there's proper foundation yet.
>
> [THE STATE]: It's a self-authenticating document, Your Honor.
>
> THE COURT: Overruled.

(Whereupon, Exhibit No. 16 was played.)

[THE STATE]: Your Honor, at this time, I would move to enter State's Exhibit No. 16 into evidence, which is that portion of the call, as well as the accompanying documentation.

THE COURT: *Is there any objection?*

[DEFENSE COUNSEL]: *No objection, Your Honor*.

THE COURT: It will be admitted.

(Emphasis supplied). Supporting documentation accompanied the exhibit, including a July 6, 2016, certification from the custodian of records for the Baltimore County Department of Corrections, Randy Mentzell, which included a statement of "true and correct copies," "accurate reproduction of the records" and an attestation declaring under penalty of perjury that the certification was true.

Although Appellant objected when the evidence was played for the jury, citing a lack of proper foundation, when the State sought to formally introduce the exhibit into evidence, Appellant failed to object. Furthermore, when the trial judge specifically asked Appellant if there was an objection at the time the recording was to be admitted into evidence, Appellant responded that there was "no objection." This is not an instance of Appellant failing to assert and objection; rather, by responding that there was "no objection," Appellant affirmatively waived her right to appellate review on this issue. *See State v. Rich*, 415 Md. 567, 580 (2010) ("Forfeiture is the failure to make a timely assertion of a right, whereas waiver is the 'intentional relinquishment or abandonment of a known right.'").

Accordingly, we hold that the issue has not been preserved for our review.

Even if reviewed, Appellant's claim is without merit. The State proffered, at trial and on appeal, that the recorded jail telephone call was self-authenticating as certified records of regularly conducted business activity without providing citation in support. However, we do not need to determine this issue here, as we are persuaded that, pursuant to Md. Rule 5–901(a), the evidence was properly authenticated before admitted into evidence.

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." *Walls v. State*, 228 Md. App. 646, 688 (2016) (citing Md. Rule 5–901(a)). "[T]he burden of proof for authentication is slight, and the court need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the jury ultimately might do so." *Darling v. State*, 232 Md. App. 430, 455 (2017), *cert. denied*, 454 Md. 655 (2017) (quoting *Johnson v. State*, 228 Md. App. 27, 59 (2016), *cert. denied*, 450 Md. 120 (2016).

> Rule 5–901(b)(5) provides "[b]y way of illustration only" that voice identification may be authenticated: "whether heard firsthand or through mechanical or electronic transmission or recording, based upon the witness having heard the voice at any time under circumstances connecting it with the alleged speaker."

Id.

Appellant contends that "some commentators have observed, [that], although there is widespread belief in the reliability of audio recordings, 'there is a tendency to allow this

belief to obscure the fact that audio records can be, and have been, falsified . . . [.]" Appellant asserts that "the burden of production is on the party attempting to admit a recording into evidence, and it must meet that burden by clear and convincing evidence that the recording is a true, accurate and authentic recording of the conversation, at a given time, between the parties involved." Appellant cites the secondary source *American Jurisprudence Proof of Fact*[1] as support. However, this is contrary to the law in the State of Maryland which holds that the burden is "slight." *Darling*, *supra.*

In the case *sub judice*, the telephone call from the jail was recorded by the "Inmate Calling Solutions Program," *i.e.*, "IC Solutions," a third-party vendor which runs the telephone system for inmates at the Baltimore County Detention Center.[2] As Detective Horney testified, the program is a "computer interface" where the officers have access, *via* a user name and password, to monitor the recorded calls of inmates. The Detective further testified that he listened to the calls of Appellant. Furthermore, a signed certification accompanied the recording that attested, under penalty of perjury, that the recording was true and correct.

Accordingly, we are persuaded that a jury could have found that the recording was what the State proclaimed, *i.e.*, a true and correct recording of Appellant's jail telephone

[1] 23 AMJUR POF 3d 315 §§ 33–40.

[2] *Frequently Asked Questions*, BALTIMORE COUNTY GOVERNMENT, https://www.baltimorecountymd.gov/Agencies/corrections/faq.html#anchor8 (last visited December 29, 2017).

call, and therefore, there would be no error on the part of the trial court, had Appellant preserved the issue for our review.

III.

Appellant's final contention is that the evidence presented was legally insufficient to sustain the convictions. Specifically, Appellant notes that, at trial, counsel moved for judgment of acquittal, which was later denied, "on the basis that there was no evidence of any 'knowledge' or 'intent' on the part of [Appellant] as it related to any of the charged crimes[.]" Because Appellant's criminal culpability rests upon accomplice liability, Appellant maintains that "it [was] incumbent upon the State to prove the existence of the elements of 'knowledge' and 'intent' as to each charged offense[,]" which Appellant asserts, the State failed to do.

The State responds that the evidence was sufficient to sustain Appellant's convictions. The State notes that, "[w]ith the exception of her conspiracy conviction, [Appellant's] convictions were premised upon a theory of accomplice liability." The State asserts that Appellant's contention that it was required to prove her personal "knowledge" and "intent" regarding the charges "overstates the prosecution's burden." Quoting *Sheppard*, 312 Md. 118, the State explains that, "when two or more persons participate in a criminal offense, each is responsible for the commission of the offense and for any other criminal acts done in furtherance of the commission of the offense." The State maintains that "the evidence was sufficient to allow a jury to conclude that [Appellant] drove Chem to Candace's house knowing, or having ample reason to know, that he intended to seek

repayment by force or threat of force through the use of a handgun—*i.e.*, to commit a robbery with a dangerous weapon." According to the State, the other charges were "incidental to, and in furtherance of, that primary offense."

In reviewing a case for the sufficiency of the evidence,

> the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . 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.

Smith v. State, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). "The Due Process Clause of the Fourteenth Amendment . . . requires the State to prove every element of an offense charged beyond a reasonable doubt." *Savoy v. State*, 420 Md. 232, 246 (2011) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)).

Appellant was convicted of attempted armed robbery, two counts of first-degree assault, use of a handgun in the commission of a crime of violence, first-degree burglary and conspiracy to commit armed robbery. As the State points out, all but Appellant's conspiracy conviction are premised upon accomplice liability.

> An accomplice is a person who, as a result of his or her status as a party to an offense, is criminally responsible for a crime committed by another. This responsibility, known as accomplice liability, takes two forms: (1) responsibility for the planned, or principal offense (or offenses), and (2) responsibility for other criminal acts incidental to the commission of the principal offense. In order to establish complicity for the principal offense, the State must prove that the accused participated in the offense either as a principal in the second degree (aider and abettor) or as an accessory before the fact (inciter). In order to establish complicity for other crimes committed during the course of the criminal episode, the State must prove that the accused participated in the principal offense either as a principal in the first degree (perpetrator), a principal in the second degree (aider and abettor) or as an accessory before the fact (inciter) and, in addition, the State must establish that

> the charged offense was done in furtherance of the commission of the principal offense or the escape therefrom.

Diggs & Allen v. State, 213 Md. App. 28, 85 (2013) (quoting *Sheppard v. State*, 312 Md. 118, 122–23 (1988)).

Appellant does not contest the sufficiency of the evidence to establish that Shane Thompson, *i.e.*, Chem, as the principal in the first degree for the aforementioned convictions. Appellant only asserts that the State failed to provide that she had "knowledge" and "intent" regarding the convictions.

We agree with the State that "the evidence was sufficient to allow a jury to conclude that [Appellant] drove Chem to Candace's house knowing, or having ample reason to know, that he intended to seek repayment by force or threat of force through the use of a handgun[.]" Appellant, by her own testimony and statements, acknowledged that she reached out to Candace to purchase drugs for Appellant and Chem. Chem provided the $600 in currency and, when the drug transaction failed, both Appellant and Chem believed that Candace stole the money. There was evidence presented that Appellant knew Chem to be an "angry" and "dangerous" person and that he was "pissed" about Candace allegedly stealing the money. Moreover, there was evidence that, at least on one occasion, Chem had previously brought a handgun to Appellant's apartment. Accordingly, a jury could concluded that Appellant acted in furtherance of the commission of the principal offense, *i.e.*, armed robbery.

The evidence also supports the jury's finding that Appellant acted in aid of Chem's

escape. Appellant admits, in the recorded jail telephone call, to "dropping" Chem off at Candace's house, but she denies driving him back to her apartment after the confrontation. However, Appellant had driven Chem earlier to pick up Candace, to the site of the drug transaction and then, after the sale was not consummated, back to Appellant's apartment. After the confrontation with Candace, Chem and the handgun were discovered by police at her apartment, which is an approximate 20-minute drive from Candace's house. It is a rational inference that Appellant drove Chem to her apartment after the confrontation, thereby aiding Chem's escape and it was reasonable for the jury to view this inference credibly.

Therefore, as the evidence supports the premise that Appellant acted in furtherance of the commission of the principal offense and the escape, therefrom, the evidence was legally sufficient to support Appellant's convictions, based upon accomplice liability, for armed robbery, two counts of first-degree assault, use of a handgun in the commission of a crime of violence and first-degree burglary.

The final offense which Appellant was convicted of was conspiracy to commit armed robbery.

> Although a conspiracy may be shown by circumstantial evidence, from which a common design may be inferred, the requirement that there must be a meeting of the minds-a unity of purpose and design-means that the parties to a conspiracy, at the very least, must (1) have given sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy-the objective to be achieved or the act to be committed, and (2) whether informed by words or by gesture, understand that another person also has achieved that conceptualization and agrees to cooperate in the achievement of that objective or the commission of that act.

Mitchell v. State, 363 Md. 130, 145–46 (2001).

In the instant appeal, as discussed, *supra*, the evidence that supported the rational inference that Appellant knew or had reason to know that Chem was going to Candace's house with a handgun to commit armed robbery, also supports the premise that Appellant and Chem had a meeting of the minds concerning the conspiracy to commit armed robbery. Additionally, Appellant's text message to Candace, stating "make this shit right, because this dude is fucking crazy and lent you $," which, after no response from Candace, was followed by another text message, stating, "Have it your way," and then Appellant's recorded telephone call from jail acknowledging that she dropped Chem off at Candace's house afterward, supports the existing of a meeting of the minds between Appellant and Chem to engage in an unlawful agreement, *i.e.*, to commit armed robbery.

Accordingly, we hold that the evidence presented was sufficient to support Appellant's convictions.

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