Circuit Court for Baltimore City
Case No. 116354015

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2070

September Term, 2018

STEVEN MILHOUSE

v.

STATE OF MARYLAND

Reed,
Gould,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: January 27, 2020

Following separate trials, Steven Milhouse was convicted by juries in the Circuit Court for Baltimore City of possession of a firearm after having been previously convicted of a disqualifying crime, and of first-degree murder, conspiracy to commit murder, and use of a handgun in the commission of a crime of violence.[1] All of the offenses were charged in a single indictment.

Procedural Background

Milhouse was tried three times under the same indictment charging the crimes noted, *supra*. The first trial ended in a mistrial declared during the State's case-in-chief because of the admission of inadmissible and prejudicial evidence. That evidentiary issue is not implicated in this appeal.

The second trial proceeded to deliberations, which lasted several days. Ultimately, the jury returned a partial verdict of guilty on the firearm possession count but was deadlocked on the remaining counts. The court declared a mistrial and ordered a new trial on the remaining counts—first-degree murder, conspiracy, and use of a handgun.

The third jury trial resulted in convictions on each of the remaining counts. In his timely appeal from that trial, Milhouse challenges the sufficiency of the evidence for the earlier conviction of unlawful possession of a firearm, and the sufficiency of the evidence of his criminal agency for the murder and related offenses.[2]

[1] Milhouse was sentenced to a term of five years on the firearm possession count on October 17, 2017. Later, on July 30, 2018, Milhouse was sentenced to two life sentences, plus 20 years, for first degree murder and related counts.

[2] In his opening brief, Milhouse asks:

DISCUSSION

Firearm possession

Milhouse first challenges the sufficiency of the evidence to support the conviction of possession of a firearm after having been convicted of a disqualifying crime.

State's Motion to Dismiss in Part

Initially, we consider the State's "Motion to Dismiss in Part," which asserts that Milhouse did not note a timely appeal following his conviction and sentencing on the firearm possession count, following the second trial.

The jury verdict following the second trial was returned on September 15, 2017, and Milhouse was sentenced on that count on October 17, 2017, to a term of five years. The third trial commenced on March 26, 2018, guilty verdicts were returned on March 29, 2018, and Milhouse was sentenced on those verdicts on July 30, 2018. He noted the instant appeal on August 3, 2018, challenging, as we have noted, the verdicts on all counts rendered in both the second and third trials.

In its Motion to Dismiss, the State asserts that Milhouse's appeal of the firearm possession conviction was not noted within the 30-day period provided by Md. Rule 8-

I. Whether the evidence was sufficient to support the jury's conclusion that Milhouse was in possession of a firearm? [sic]

II. Whether the evidence was sufficient to support the jury's conclusion that Milhouse was the criminal agent responsible for the murder? [sic]

202(a), which began to run on October 17, 2017, the date of his sentencing on that count.[3] In support, the State cites *Moore v. State*, 198 Md. App. 655 (2011), for the rule that a final, appealable judgment is rendered in a criminal case when a "sentence is imposed on a verdict of guilty." 198 Md. App. at 706 (quoting *Chmurny v. State*, 392 Md. 159, 167 (2006)). The State further argues that it neither waived nor forfeited its right to challenge the timeliness of the appeal.

Anticipating the State's challenge to the timeliness of his appeal, Milhouse, in his opening brief, in a footnote, suggests that the verdict and sentencing on the possession count did not amount to a final judgment for the purpose of fixing the commencement of the 30-day appeal period. That is so, he argues, because the pendency of a trial on the counts not decided in the earlier trial precludes a finding of finality of the judgment on all counts of the single indictment. He concedes that Maryland courts "do not appear to have addressed the necessity of filing an interim notice of appeal on one of several related counts when a retrial is contemplated on remaining counts." He cites to *State v. Gregg*, 163 Md. 353, 354 (1932), which, in quoting *State v. Floto*, 81 Md. 600, 602 (1895), stated that "'[a]ppeals in criminal cases are upon the same footing as appeals in civil cases, and in neither case can an appeal be taken until after final judgment.'" *Gregg*, of course, predates the modern Rules of Procedure.

[3] At the October 17, 2017 sentencing, Milhouse was advised by his trial counsel that, if he wished to exercise his right of appeal, he would "have 30 days to file an -- file for an appeal."

Pursuing that argument, first raised in a footnote of his opening brief, in his Reply Brief, appellant analogizes the present question with the provision of Maryland Rule 2-602(a), noting that it's "a civil rule of procedure, provid[ing] that a judgment is not 'final' if it 'adjudicates less than an entire claim.'" However, as the State points out, "[t]here is no analogous rule or statute governing partial verdicts in criminal cases." Nor, do we find, as Milhouse suggests we should, a parallel between the finality of judgments in criminal cases and the finality of judgments in civil cases.

Maryland Code (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings Article (CJP), § 12-301 provides that "a party may appeal from a final judgment entered in a … criminal case by a circuit court." The Code defines a "final judgment" as "a judgment, decree, sentence, order, determination, decision, or other action by a court, … from which an appeal, application for leave to appeal, or petition for certiorari may be taken." CJP § 12-101(f). As this Court has explained:

> "[I]n a criminal case, a final judgment is not rendered until the court has entered a verdict and a sentence." *Christian v. State*, 309 Md. 114, 119 (1987). "In a criminal case, a final judgment consists of a verdict and either the pronouncement of sentence or the suspension of its imposition or execution." *Lewis v. State*, 289 Md. 1, 4 (1980). "'Conviction' and 'sentence' are legally distinct. Conviction is the determination of guilt; sentence is the judgment entered thereon." *Buckner v. State*, 11 Md. App. 55, 59 (1971)….

Johnson v. State, 142 Md. App. 172, 201–02 (2002). *Accord, Campbell v. State*, 373 Md. 637, 665 (2003) (explaining that "a verdict without a sentence in a criminal case is not a final judgment"). In the instant appeal, the jury's guilty verdict on the possession count was entered on September 15, 2017, and became a final judgment on October 17, 2017, when the court imposed a sentence. Despite having been advised of his appeal rights at

sentencing, including the deadline for which to note an appeal, Milhouse failed to timely note an appeal to that final judgment pursuant to Rule 8-202(a).

In *Rosales v. State*, 463 Md. 552 (2019), the Court of Appeals recently clarified the legal bounds of Rule 8-202(a), providing that it "is a claim-processing rule, and not a jurisdictional limitation on [appellate courts]." 463 Md. at 568. The Court further observed that the 30-day time limit "remains a binding rule on appellants[ ]" and will continue to be enforced. *Id*. The Court further explained that "as the Rule is not jurisdictional, a reviewing court must examine whether waiver or forfeiture applies to a belated challenge to an untimely appeal." *Id*.

We hold that the appeal was untimely and that the State has not waived the untimeliness. Therefore, we shall grant the State's motion to dismiss in part. Thus, we need not consider the sufficiency of the evidence generated in the second trial on the possession count, except as it relates to the questions raised by Milhouse in his challenge to the sufficiency of the evidence in respect to the remaining charges. Milhouse stands convicted on the possession count.[4]

[4] In any event, Milhouse's challenge to the possession conviction would be to no avail. As to that challenge, the State asserts a lack of preservation. We agree. When arguing his motion for judgment of acquittal in the second trial, defense counsel said to the court, "As to the bedroom handgun possession count, I'll submit on that." "Under [Rule 4-324(a)], moving for judgment of acquittal on the grounds of insufficiency of the evidence, without argument, does not preserve the issue for appellate review." *Parker v. State*, 72 Md. App. 610, 615 (1987).

Sufficiency of the Evidence – murder and related counts

We review Milhouse's sufficiency challenge by considering, "'after viewing [both direct and circumstantial evidence, and all reasonable inferences drawn therefrom][,] in the light most favorable to the prosecution, [whether] *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Handy v. State*, 201 Md. App. 521, 558 (2011) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Further, the *Jackson* Court stated that "[t]his familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." 443 U.S. at 319.

Although the circumstances of the shooting that resulted in the death of Jamie Christian are clear, the identities of the perpetrators are less so. Milhouse, in his opening brief, relates the evidence in summary form:

> On October 24, 2016, Jamie Christian was shot and killed inside a gas station convenience store.…
>
> * * *
>
> [Surveillance videos] graphically depicted Christian's death. In [the videos], two black men clad in masks and hooded coats (one gray, the other black) walked past the entrance to the convenience store and continued up the street and out of view. Moments later, the two men returned to the store. The man in the black coat opened the door, and the man in the gray coat entered and immediately began firing his handgun. Christian slipped and fell as he ran away, and the shooter then stood over him and fired several more

> shots before leaving. Following the shooting, both the shooter and the man who held the door fled together.[5]

Although we have granted the State's Motion to Dismiss in Part as to the firearm possession, we shall discuss substantially the same evidence, as it was offered in both trials, that is relevant to Milhouse's alleged possession of the firearm because it is a significant link in the circumstantial chain that leads to the answer of the ultimate question: whether the evidence supports a finding of Milhouse's criminal agency in the fatal shooting of Christian.

Milhouse posits that "[i]n light of the State's failure to offer any testimony identifying [him] from the video of the actual shooting, its ability to prove [his] criminal agency depended upon heaping one thinly supported inference upon another." It is true that none of the witnesses to the shooting, or others who might have had knowledge, identified Milhouse and his accomplice.

In the course of the murder investigation, detectives from the Baltimore City Police Department developed Milhouse as a suspect, obtained an arrest warrant for him, and, by using court-approved cell phone tracking techniques, learned of his address. While executing the warrant, after overcoming resistance from occupants of the home, police located Milhouse in an upstairs bedroom, under a bed, from which he was extricated and placed under arrest. That scene was portrayed for the jury in video footage from an officer's body camera recording of the event. From the video footage the jury saw

[5] As to the statement of facts, the State replies: "Excepting Milhouse's argumentative characterizations of the evidence, … the State accepts the Statement of Facts in [his] brief[.]"

Milhouse being located and retrieved from beneath the bed and then heard him give false information as to his identity. The jury also saw photographs and video footage of the bedroom where Milhouse was located, including a laundry hamper, which contained the firearm, and its proximity to the bed where he had been hiding.

Pursuant to a search warrant, supported in part by information provided by the arresting officers, police searched the laundry hamper, located in the bedroom where Milhouse was hiding, in which was located a Ruger SR9 handgun that contained a magazine with 11 9mm cartridges. Milhouse argues that the State failed to offer sufficient evidence to prove that he had a possessory interest in the weapon. Notwithstanding that Milhouse stands convicted of possession of the weapon, we review the same evidence admitted supporting that conviction as was also produced in the third trial and offered to support the circumstantial chain of his criminal agency for the remaining offenses.

Detective Valencia Vaughn testified that she observed that the handgun found in the laundry hamper "looked like" the weapon seen in the security camera recording of the shooting. Moreover, a firearm tool mark and identification expert established, and testified, that bullet fragments and shell casings found at the scene of the shooting were fired from that handgun. Finally, the handgun was subjected to DNA analysis that matched Milhouse's DNA to that obtained in the analysis, albeit together with DNA from three other contributors.

As the State points out, in the second trial, the jury was instructed, pursuant to Maryland Criminal Pattern Jury Instructions 4:35.6, that "… [a] person not in actual possession, who knowingly has both the power and the intention to exercise control over a

firearm, has indirect possession of that firearm[,]" and that "[i]n determining whether [Milhouse] ha[d] indirect possession of the firearm[ ]" the jury should consider "the distance between [Milhouse] and the firearm, and whether [Milhouse] ha[d] some ownership or possessory interest in the location where the firearm was found." (Internal citations and quotations omitted). It was then for the jury to determine whether those conditions existing at the time of Milhouse's arrest amounted to his having a possessory interest in the firearm. Two juries were satisfied that the State's chain of circumstantial proof was sufficient to find him to have been, at least, in indirect possession of the weapon. Thus, the State provided a connection between Milhouse and the gun found in the laundry hamper—the murder weapon.

A further nexus to the gun was offered by evidence of Milhouse's recorded "jail house" telephone calls to friends and associates. The jury heard the jail calls from November 25 and December 27, 2016, in which Milhouse discusses the gun[6] and who might have implicated him. In the November 25 call, Milhouse stated that there could only be two witnesses, identifying "Jordan" and "Sammy" as well as Diggs (his co-defendant). At that point, the jury had been shown security camera video footage of the three males who were loitering outside when the perpetrators walked by and then returned, entered the shop, and shot Christian. Detective Vaughn identified for the jury two of those males in the video as Jordan Kelly and Samuel Greah. This evidence bolsters the State's theory of

[6] In the jail call recordings, Milhouse repeatedly references the "Jimmy Mack", which Detective Vaughn testified "is a street name for a gun."

the case that Milhouse was at the scene with knowledge of who could have witnessed the shooting or could identify him as having been present at the shooting.

During Milhouse's December 27 call, the other person on the line asked, "what [did] they say about the gun[?]" Milhouse replied "they talkin' about … fingerprints, but … you know how it go.… we live in a city full of crime … so a n***a could have bought that … from another … you know [what] I mean." That, the State posits, provides a reasonable inference of Milhouse's awareness of the particular gun.

Taken together, the State argues that Milhouse's proximity to the gun, his hiding beneath the bed, his misinformation about his identity, the jail telephone calls, the DNA, and the tool mark identification of the gun as the murder weapon present a chain of circumstantial evidence from which the jurors could draw reasonable inferences of his criminal agency in the fatal shooting of Christian.

In our review of the record before us, we do not, as the Court of Appeals has stated, "second-guess the jury's determination where there are competing rational inferences available." *Smith v. State*, 415 Md. 174, 183 (2010). This is so "regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Id*. at 185 (citation omitted). As we have recognized, "there is no distinction to be given to the weight of circumstantial, as opposed to direct, evidence. A conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence." *Burlas v. State*, 185 Md. App. 559, 569 (2009). Finally, as Judge Moylan, in writing for this Court, has effectively explained:

> Even in a case resting solely on circumstantial evidence, and resting moreover on a single strand of circumstantial evidence, if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal sufficiency of the evidence. The State is NOT required to negate the inference of innocence. It is enough that the jury must be persuaded to draw the inference of guilt.

Ross v. State, 232 Md. App. 72, 98 (2017).

Accordingly, we cannot disagree with the reasonable inferences drawn by the jury.

STATE'S MOTION TO DISMISS IN PART GRANTED.
JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS ASSESSED TO APPELLANT.