Circuit Court for Charles County
Case No. C-08-CR-17-000054

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2071

September Term, 2018

BRYAN JAVIER AQUICE

v.

STATE OF MARYLAND

Kehoe,
Friedman,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: January 9, 2020

Following a jury trial in the Circuit Court for Charles County, Bryan Javier Aquice was convicted of first-degree murder, first-degree felony murder, two counts of first-degree assault, two counts of second-degree assault, multiple counts of use of a firearm during the commission of a crime of violence, attempted armed robbery, first-degree burglary, four counts of conspiracy, and other related offenses in connection with the home invasion and shooting death of Michael Beers. The circuit court sentenced Aquice to life imprisonment plus fifty years' incarceration.

On appeal, Aquice presents the following questions for our review:

1. Did the circuit court err in denying the motion to suppress Aquice's statements because police engaged in the functional equivalent of interrogation after Aquice invoked his right to counsel?

2. Was the evidence insufficient to sustain Aquice's convictions where the State did not corroborate the testimony of the alleged accomplices?

3. Did the circuit court err in only merging, as opposed to vacating, Aquice's convictions for conspiracy to commit robbery with a dangerous weapon, conspiracy to commit home invasion, and conspiracy to commit first-degree burglary?[1]

[1] Because of our resolution of the first two issues, we need not reach the third. We note in passing, however, in the event the issue recurs after retrial, that a defendant can only be convicted of a single conspiracy arising out of the same criminal transaction. *Jordan v. State*, 323 Md. 151, 161 (1991) ("[A] 'conspiracy remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy'") (quoting *Mason v. State*, 302 Md. 434, 445 (1985)).

Because we agree that the circuit court erred in denying Aquice's motion to suppress his statement to police, we reverse his convictions. Moreover, because we also hold that the State produced sufficient evidence at trial to sustain his convictions, we remand the case for a new trial.

BACKGROUND

I. The Home Invasion and Murder

Michael Beers was shot multiple times and killed in an attempted armed robbery during a home invasion in Waldorf, Maryland on January 12, 2016. Reigel Wamack and Rena Crandell both pled guilty to charges relating to the robbery and murder and testified at Aquice's trial. They testified that they devised the plan to rob Beers and recruited Aquice and Aquice's cousin, Christian Alvarez, to help.

Wamack and Crandell used a burner telephone to communicate about the robbery. Wamack testified that he and Crandell met with Aquice and Alvarez at Crandell's house to discuss their plan. According to Crandell, she did not know Aquice or Alvarez prior to this meeting.

After the meeting, Wamack, who was carrying a handgun, Crandell, Alvarez, and Aquice drove to Charles County, where they dropped Crandell off at Beers' residence. Wamack, Aquice, and Alvarez waited at a restaurant for Crandell's telephone call. After two hours, Crandell texted Wamack on the burner telephone and told him the doors to Beers' home were unlocked for them.

Wamack testified that he and Aquice entered Beers' home wearing gloves and masks, and that Aquice carried the handgun. Upon entering the house, they found Cheryl

Krehling and Eddie Glaze sleeping. Wamack forced them into Beers' room. Wamack demanded money from Beers. When Beers refused to comply, Wamack began to punch him and Beers pulled off Wamack's mask. Wamack and Beers continued to fight and Aquice shot Beers in the "lower body." Then Beers lunged at Aquice and a struggle for the gun ensued. Wamack testified that during the struggle, Aquice was shot in the lower leg before turning the gun on Beers and shooting him in the head, causing his death.

Cellphone records introduced at trial indicated: that Alvarez's cellphone was present at Aquice's residence on January 11, 2016; that Aquice called the burner telephone on January 11, 2016; and that Aquice called two stores, located near Beers' residence, in the early morning hours of January 12, 2016.

II. Aquice's Statement to Police and the Motion to Suppress

On June 27, 2017, Aquice was arrested and interviewed by Detective Christopher Shankster of the Charles County Sheriff's Office. In his pre-trial motion to suppress, Aquice challenged the admissibility of a statement he made during that interview.

At the suppression hearing, the State presented the audio and visual recording of Aquice's interview. The recording indicated that Detective Shankster introduced himself and began advising Aquice of his *Miranda* rights when the following exchange occurred:

> Detective Shankster: Alright, I'm a police officer. You are under arrest. Before I ask you any questions, you must understand what your rights are.
>
> You may remain silent.
>
> You are not required to answer any questions.

	Anything you do or say can be used against you in court. **You may talk to a lawyer for advisement before I question you, and have him with you during questioning.**
Aquice:	**Yes. And that's who I would like here.**[2]
Detective Shankster:	Okay, well hold on. Let me finish reading all that. If you cannot afford a lawyer and want one, a lawyer will be provided for you at no cost. If you want to answer questions without a lawyer present, you will still have a right to stop answering at any time and request a lawyer. Do you understand those rights?
Aquice:	Yes, sir, (inaudible) [.]
	* * *
Detective Shankster:	Alright, are you saying … while I was reading that you said you didn't, you don't want to talk to me right now about this?
Aquice:	I'll listen to you, but I mean, it's not like I have stuff to hide. I would just like feel … feel more comfortable if I had a lawyer, you know what I mean?
Detective Shankster:	Okay, so … just to make it clear, I mean, if you don't want to … you said you want to listen?
Aquice:	Yeah.

[2] According to Aquice's Unopposed Motion to Correct the Record with State's Exhibits, the same DVD recording of Aquice's interview was played at the motions hearing and at trial. Although the phrase "[a]nd that's who I would like here" was transcribed as "inaudible" in the motions transcript, it was audible and accurately transcribed as reported above when the recording was played at trial.

Detective Shankster:	I mean, but you don't want to answer any questions.
Aquice:	Yeah, I want to hear everything they said, I guess, what's (inaudible) against me and stuff like that.
Detective Shankster:	Okay, well … well, I'm less inclined to share the details that I have with you about the facts of the case if you are not willing to engage with me in reference to that. Because you could challenge me on any of that stuff. But if you're telling me that you don't want to speak to me without an attorney, a lot of that, it's your right, okay? But I kind of gave you a summary of the facts.
Aquice:	Okay.
Detective Shankster:	Very (inaudible), but it is your right to not speak to me without an attorney if you don't want to, and I will accept that. But if you do want to talk to me, you've got to make it very clear that you want to talk to me without them. It's not necessarily a one-way path, where I tell you all the facts about our case, and you just sit there and then you go back and deal with it.

Without pausing for a response from Aquice, Detective Shankster proceeded to explain the details of his investigation. He told Aquice that he knew that Wamack had recruited him and Alvarez for the armed robbery and that with Crandell's help, they planned to rob Beers. The plan changed, however, when Aquice was shot and Beers was killed.

After summarizing the investigation, Detective Shankster said, "I don't know that you guys went there to … kill him, but I don't know that without hearing your perspective." Detective Shankster told Aquice that he was giving him an opportunity to tell his side of the story, because he had already heard from Alvarez, Crandell, and Wamack. Detective Shankster continued by discussing the strength of the case against Aquice and told Aquice that Wamack "identified [Aquice] as the guy that did all the shooting, not just some of the shooting." Then, when Detective Shankster mentioned Aquice's cousin, Aquice responded: **"I'll let you know right now, me and Alvarez are probably the most innocent ones in the whole (inaudible)."**

At the motions hearing, defense counsel argued that once Aquice stated that he wanted an attorney, all discussions about the investigation should have ceased. Defense counsel further asserted that Detective Shankster's lengthy narrative of the police investigation constituted the functional equivalent of an interrogation, which elicited an inculpatory response from Aquice in violation of his right to counsel. The circuit court, however, denied Aquice's motion to suppress, ruling:

> Yeah, *Miranda* only applies when there is custodial interrogation. There is no question that he was in custody; however, what I listened to on the video and saw … was Detective Shankster giving him information that he had requested.
>
> And again, there was reference that he clearly wanted an attorney, and Detective Shankster respected that. So, the Court does not find that there was … that *Miranda* even applies, and that … I don't find that Detective Shankster's giving him that lay of the land, if you will, was done to elicit a response from him. So the motion to suppress is denied.

Consequently, at trial, the State introduced the audio and video recording of Aquice's interview into evidence.

DISCUSSION

I. SUPPRESSION OF AQUICE'S STATEMENT

Aquice argues that the trial court erred in denying his motion to suppress the statement made during his interview with Detective Shankster. Aquice challenges the admission of his inculpatory statement ("I'll let you know right now, me and Alvarez are probably the most innocent ones in the whole (inaudible).") because he invoked his right to counsel and Detective Shankster's continued the interrogation in violation of Aquice's *Miranda* rights. We agree.

"Our review of a circuit court's denial of a motion to suppress evidence is limited to the record developed at the suppression hearing," which is assessed in the "light most favorable to the party who prevails on the issue" raised in the motion to suppress. *Pacheco v. State*, 465 Md. 311, 319 (2019). "We accept the trial court's factual findings unless they are clearly erroneous, but we review de novo the court's application of the law to its findings of fact." *Id*. Moreover, when determining the suppression of statements in violation of *Miranda*, this Court makes its "own independent Constitutional appraisal of whether the statements were obtained in violation of law." *Phillips v. State*, 425 Md. 210, 214 (2012).[3]

[3] In Maryland, a confession may be admitted against an accused only when it has been "determined that the confession was '(1) voluntary under Maryland non-constitutional law, (2) voluntary under the Due Process Clause of the Fourteenth

Aquice argues that, under *Miranda v. Arizona*, when he stated that an attorney is "who [he] would like here," it was an unequivocal invocation of his right to counsel. 384 U.S. 436 (1966); *see Edwards v. Arizona*, 451 U.S. 477 (1981). Aquice contends that Detective Shankster violated his *Miranda* rights in failing to respect his invocation of his right to counsel and proceeding to engage in the functional equivalent of an interrogation, which in turn elicited the inculpatory statement.

The State agrees that Aquice invoked his right to counsel when he said that an attorney is "who [he] would like here" but, counters that Aquice was not questioned or interrogated after he invoked. As a result, the State argues, Aquice's statement was not the product of interrogation. Rather, the State argues that Detective Shankster provided Aquice with information about the case—which he had requested—and characterizes Aquice's statement that he and his cousin were "the most innocent ones" as a "blurt" or volunteered statement that was not responsive to the detective's narrative.

Miranda warnings "act as procedural safeguards against compelled self-incrimination. Once an individual is apprised of these warnings, the individual has the right to invoke the constitutional safeguards or waive them and engage with law enforcement." *Reynolds v. State*, 461 Md. 159, 178 (2018). In *Miranda v. Arizona*, the Supreme Court held that "statements obtained from defendants during custodial interrogation or conditions

Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*.'" *Smith v. State*, 220 Md. App. 256, 273 (2014) (quoting *Ball v. State*, 347 Md. 156, 173-74 (1997)). Aquice challenges the admission of his statement pursuant to *Miranda*. *See Malloy v. Hogan*, 378 U.S. 1, 8 (1964) (noting that the Fifth Amendment to the United States Constitution applies to the States through the Fourteenth Amendment).

that created similar circumstances, without the full warning of constitutional rights, and waiver of those rights, were inadmissible as having been obtained in violation of the Fifth Amendment privilege against self-incrimination." *Id*. at 177 (citing *Miranda v. Arizona*, 384 U.S. at 478-79). An accused "having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Edwards*, 451 U.S. at 484-85; *see also Smith v. Illinois*, 469 U.S. 91, 98 (1984) ("*Edwards* set forth a 'bright-line rule' that *all* questioning must cease after an accused requests counsel.").

When a conversation takes place after a suspect has requested counsel, the burden is on the prosecution to show that the suspect waived the right to counsel by reinitiating the conversation. *Oregon v. Bradshaw*, 462 U.S. 1039, 1044 (1983). A waiver, however, cannot be "established by showing only that [a suspect] respond[s] to further police-initiated custodial interrogation." *Edwards,* 451 U.S. at 484. Even if a suspect is released from custody after requesting counsel, police cannot resume questioning unless there has been a sufficient delay from the initial custody "to dissipate its coercive effects." *Maryland v. Shatzer*, 559 U.S. 98, 109 (2010).

For these purposes, a police interrogation includes not only express questioning, but also the "functional equivalent" of an interrogation, consisting of any "words or actions on the part of police that they *should have known* were reasonably likely to elicit an incriminating response" from the suspect. *Rhode Island v. Innis*, 446 U.S. 291, 301-302 (1980). A defendant need not be directly asked a question to be subjected to the functional

equivalent of interrogation. *Prioleau v. State*, 411 Md. 629, 646 (2009); *see Drury v. State*, 368 Md. 331, 337 (2002) (holding that an officer showing evidence to a suspect who is in custody and informing him that it would be fingerprinted is the functional equivalent of interrogation because the officer should have known that his actions were "reasonably likely to evoke an incriminating response from [the suspect]"). Moreover, an officer's use of trickery can be the functional equivalent of interrogation if the trickery results in an inculpatory statement after a suspect has requested counsel. In *Phillips v. State*, for example, the Court of Appeals explained that officers engaged in the functional equivalent of an interrogation when they impermissibly continued their conversation with the suspect to prompt a response from him:

> The message conveyed when the police, having first established a rapport with a suspect who has been arrested and may be facing imminent incarceration, tell the suspect that they want to hear his or her side of the story is that the police are trying to be fair and that dialogue may be helpful to the suspect. That, of course, is rarely the case in fact, but the objective, and sometimes the reality, is that the suspect will believe it to be so and will respond accordingly.

425 Md. at 223.

A custodial statement made after a suspect requests counsel is admissible, however, if the suspect, rather than the police, reinitiates the conversation. *Edwards*, 451 U.S. at 484-85. Such reinitiation of dialogue occurs when a suspect's inquiry or statement represents a desire for a generalized discussion relating directly or indirectly to the investigation. *Bradshaw*, 462 U.S. at 1045 (holding that respondent initiated further conversation by saying, "Well, what is going to happen to me now?"); *Gaynor v. State*, 50 Md. App. 600,

605-607 (1982) (holding that a suspect's robbery confession was admissible because he interrupted the police officers' *Miranda* advisement to ask how the officer had located him, and, after the officer responded, the suspect confessed).

Similarly, volunteered statements or "blurts" that are not made in response to police questioning are also admissible. *Ciriago v. State*, 57 Md. App. 563, 574 (1984) ("There is no privilege against inadvertent self-incrimination or even stupid self-incrimination, but only against compelled self-incrimination."); *see Innis*, 446 U.S. at 302 (holding that police officers who transported respondent to the police station had no reason to know that he would interrupt their conversation and make an incriminating statement); *Rodriguez v. State*, 191 Md. App. 196, 222 (2010) (holding that appellant's inculpatory statement made during his transport to the sheriff's department was a "classic blurt," unrelated to the officer's questions, to which the protections of *Miranda* did not apply).

The line between the "functional equivalent" cases and the cases in which the suspect initiates dialogue can be difficult to draw. We defer to the suppression judge's fact finding but make our own constitutional evaluation by applying the law to the relevant findings of fact. *Pacheco*, 465 Md. at 319. In determining whether a defendant was subjected to the functional equivalent of interrogation, we focus primarily on the defendant's perception of the encounter with police. *Drury*, 368 Md. at 336. Nevertheless, the intent of police is not irrelevant to our analysis, because their intent may have "a bearing on whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response." *Innis*, 446 U.S. at 302 n.7.

There is no dispute that Aquice was in custody and that he had invoked his right to counsel when he made the inculpatory statement. Once Aquice requested counsel, further questioning about the investigation should have stopped completely. Detective Shankster, instead, continued engaging Aquice by listing the evidence against him and the statements of Aquice's alleged co-conspirators who had implicated him, prompting a response from Aquice to give his "perspective" on what had happened. Because Detective Shankster's narrative was "reasonably likely to elicit an incriminating response" from Aquice, it was the functional equivalent of interrogation. *See Innis*, 446 U.S. at 302 n.7. Any statements made by Aquice in response to Detective Shankster's narrative were, therefore, inadmissible. Moreover, we hold that this inculpatory statement, by which Aquice admits that he participated in the robbery was not harmless beyond a reasonable doubt.

II. SUFFICIENCY OF THE EVIDENCE

While we have determined that Aquice's convictions must be reversed, we must now address his challenge to the sufficiency of the evidence "because a retrial may not occur if the evidence was insufficient to sustain the conviction in the first place." *Benton v. State*, 224 Md. App. 612, 629 (2015). Aquice contends that the evidence was insufficient to support his convictions because the testimony of his alleged accomplices, Crandell and Wamack, was not corroborated by independent evidence. We, however, believe there was sufficient evidence to sustain Aquice's convictions, and as such, he may be retried.

"When reviewing the sufficiency of evidence, we view the evidence and any reasonable inferences therefrom in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime

beyond a reasonable doubt." *Sewell v. State*, 239 Md. App. 571, 607 (2018). We, however, do not weigh the evidence to determine if the State proved its case beyond a reasonable doubt. *Lindsey v. State*, 235 Md. App. 299, 311, *cert. denied*, 458 Md. 593 (2018). Rather, we determine whether there is sufficient evidence to sustain a conviction. *Id.*

The long-standing common law rule in Maryland has been that "a person accused of a crime may not be convicted [only] on the uncorroborated testimony of an accomplice." *Turner v. State*, 294 Md. 640, 641-42 (1982). This year, however, in *State v. Jones*, the Court of Appeals abrogated that rule, but only prospectively. 466 Md. 142, 163-65 (2019) (holding that the weight accorded to uncorroborated accomplice testimony is a matter for the jury to decide after the jury is properly instructed about the potential unreliability of accomplice testimony). Because Aquice's trial occurred before *Jones*, the newly-adopted rule does not apply to his case. We, therefore, apply the common law rule requiring "some" independent corroboration of accomplice testimony. *See id.* at 170.

Under the common law rule, "only slight corroboration" of accomplice testimony is required. *McCray v. State*, 122 Md. App. 598, 605 (1998). "On the issue of legal sufficiency, … the evidence of 'slight' corroboration need not be particularly persuasive; it need only be a *prima facie* case arguable enough to let the jury consider the question of corroboration." *Williams v. State*, 131 Md. App. 1, 8 n.1 (2000). This Court determines only whether there is any independent evidence "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." *Jones*, 466 Md. at 151 (quoting *Ayers v. State*, 335 Md. 602, 638 (1994)); *see*

also Turner, 294 Md. at 646 (explaining that "evidence offered as corroboration must be independent of the accomplice's testimony").

Aquice contends that the evidence was insufficient to support his convictions because: the forensic and medical evidence did not implicate him; the witnesses who were in the house with Beers (Krehling and Glaze) did not identify him; Crandell did not identify him in court; there were no cellphone records showing Aquice's cellphone in the vicinity of Waldorf the night before or on the morning of the murder; the calls to the stores in Waldorf from his telephone on the night before the murder did not show that he was with Wamack or Crandell or that he participated in the crime; and medical testimony indicated only that Aquice's leg wounds were caused by a "projectile," not specifically from a gunshot.

As the circuit court noted, "slight corroboration is a low threshold." We conclude that the State presented sufficient evidence to meet that low threshold. The testimony of Dr. Hashemi and medical records of Sentara Northern Virginia Medical Center showed that on the afternoon of Beers' murder, Aquice sought treatment for injuries resulting from two leg wounds caused by a projectile. The jury could reasonably infer from this that Aquice was shot during the attempted armed robbery, corroborating Wamack and Crandell's testimony. Aquice's calls to the burner telephone the night before the murder, as well as to restaurants near Beers' home, also provided "slight" corroboration to Wamack's testimony about the conspiracy—supporting the inference that Aquice had conspired with Crandell and Wamack to perpetrate the armed robbery and murder of Beers. *See Hall v. State*, 233 Md. App. 118, 138 (2017) ("A conspiracy may be shown through

circumstantial evidence, from which a common scheme may be inferred."); *Jones v. State*, 132 Md. App. 657, 660 (2000) ("If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may ... infer a prior agreement by them to act in such a way.").[4]

We are persuaded that the evidence presented, viewed in the light most favorable to the State, was sufficient evidence to sustain Aquice's convictions. As such, he may be retried.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR CHARLES COUNTY FOR NEW TRIAL. COSTS TO BE PAID BY CHARLES COUNTY.

[4] While we hold in Section I that Aquice's statement regarding his innocence should have been suppressed, because it was admitted at trial, we must include the statement in our evaluation of the sufficiency of the evidence. *See Pyon v. State*, 222 Md. App. 412, 441 (2015) ("[A]n appellate court, reviewing the legal sufficiency of evidence at a trial, must weigh sufficiency on the basis of all the evidence that was actually admitted and not simply the evidence that was determined, in hindsight, to have been properly admitted."). We, therefore, include Aquice's statement that he participated in the crimes among the evidence to corroborate his accomplices' statements.