Circuit Court for Howard County
Case No. C-13-CR-20-00418

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2249

September Term, 2022

WINSTON CHRISTOPHER HUGHES

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: March 21, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Winston Christopher Hughes, was convicted in a bench trial in the Circuit Court for Howard County of attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, reckless endangerment, use of a firearm in the commission of a crime of violence, and possession of a firearm by a prohibited person. Appellant presents the following question for our review:

"Is the evidence sufficient to sustain Mr. Hughes' conviction?"

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Howard County of attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, reckless endangerment, use of a firearm in the commission of a crime of violence, and possession of a firearm by a prohibited person. He proceeded to trial in a bench trial, and the trial court found him guilty of all counts. For sentencing purposes, the court merged attempted second-degree murder, first-degree assault, second-degree assault, and reckless endangerment, with attempted first-degree murder. The court sentenced appellant to a term of incarceration of thirty-five years for first-degree murder, a consecutive term of incarceration of five years for use of a firearm in the commission of a crime of violence, and a concurrent term of incarceration of five years for possession of a firearm by a prohibited person.

On June 29, 2020, first responders reported to the scene of a shooting at the Monarch Mills apartment complex. They found Mr. Deondre House in the road between the apartment complex and Guilford Elementary School, suffering from two gunshot wounds: one just below his left clavicle and one in his left gut. Mr. House was transported by medevac to Shock Trauma Center in Baltimore. At trial, the State showed video surveillance of the shooting. The judge described the surveillance footage as showing two men, one of whom was appreciably taller than the other, approaching a third man in the roadway. A few seconds after the men approached one another, the third man fell to the ground. Both of the others ran off, making their way in the direction of a set of parked cars, next to the complex. One of the two men briefly went out of sight behind the cars. A few seconds later what appears to be the same man ran off alongside the apartment building. As soon as this man left the cars, one of the cars pulled out of its parking spot, stopping to let the second man climb in. Other individuals can be seen fleeing the vicinity.

At trial, two eyewitnesses described the event. Vahid Arefi was a service manager for the apartment complex. He testified that he was fixing an air conditioner when he heard two gunshots, stood up, and saw a man holding a gun and another man lying in the road. The man holding the gun was a black male wearing a white shirt. He ran towards the building 7582 of the apartment complex. Shortly thereafter, a car pulled out of the parking area next to building 7582 and drove away. Luis Marius was a resident of the apartment complex. He testified that he was sitting on his porch having a glass of wine with his wife when he heard loud talking. He saw one of the people who was talking loudly reach behind himself. The man was a black male wearing a white shirt. Mr. Marius then heard a shot.

While he was attempting to get inside with his wife, he heard what he thought was another gunshot. Shortly thereafter, he saw a man whom he believed, based on the man's attire, to be the man he had seen reach behind himself run past his apartment. His apartment was in building 7582.

Kayirah Reviearas, appellant's former romantic partner with whom he shares a child, testified that she and appellant had been on a double date with Makia Cobbs and Jerrod Jordan. After dinner, they all went to the Monarch Mills apartment complex. She had never been to the complex before and did not know why they were there.

Ms. Reviearas gave a statement to the police, which the police recorded. In that statement, she said that she and Ms. Cobb stayed in the car where there was air conditioning, and appellant and Mr. Jordan got out of the car. She was on her phone when she heard a commotion, followed by two gunshots. Appellant and Mr. Jordan then returned to the car. Mr. Jordan got into the car. Appellant tried to get back into the car but Mr. Jordan would not let him. Mr. Jordan told appellant, "Get the fuck out," multiple times when appellant opened the car door. He also said, "No, you weren't supposed to do that," "What the fuck, why," and "That wasn't supposed to happen and you weren't supposed to do that" to appellant. Ms. Reviearas said that it was "super weird" and "a complete character change" for Mr. Jordan not to allow appellant back into the car because, up until the moment when they returned to the car, they had been friends. Appellant ran away behind the complex after not being allowed into the car.

Ms. Reviearas testified at trial, and her testimony was inconsistent with her statement to the police. She testified that she got out of the car at the apartment complex

and talked to her sister on the phone. She claimed that the other three stayed in the car the entire time to smoke. She denied hearing Mr. Jordan refuse appellant entry into the car. She denied that her initial statement to the police was accurate. She testified that she had lied to the police because she was upset with appellant.

The State subpoenaed Mr. Jordan. He invoked his constitutional rights under the Fifth Amendment to the United States Constitution but was compelled to testify after the State offered derivative use immunity. He testified that he, Ms. Cobb, appellant, and appellant's girlfriend (whose name he did not recall) drove to the apartment complex. He testified that he got out of the car to smoke, and that he didn't recall if appellant had done so too. Both women stayed in the car. He heard a loud noise and ran back to the car along with many other people who were running away. He and his companions then drove away. He testified that he didn't remember if appellant was among them.

Police witnesses testified to finding the surveillance footage and to interviewing witnesses. They recovered two shell casings from the scene. The police computer system indicated that the shell casings were a possible match for a firearm in the police system. The firearm in question has been recovered as part of another case. But the lead investigator in charge of the Monarch Mills Apartment complex shooting did not follow up on that potential match. He did not explain where or how that gun had been located. He admitted that he never searched appellant's phone, tested appellant for gunshot residue, or ordered any DNA testing.

The trial judge made factual findings at the close of evidence. The court did not credit the testimony of Mr. Jordan or Ms. Reviearas but the court did credit Ms. Reviearas'

statement to the police. The court credited the testimony of Mr. Arefi and Mr. Marius. The court found that appellant and Mr. Jordan got out of the car. The court found that two men had approached Mr. House in the street and that the taller of the two had shot Mr. House. The court found that Mr. Marius saw this taller man reach for the gun. The court concluded that appellant was the taller man who fired the shots in the surveillance footage and who Mr. Arefi saw with the gun. The court found that appellant ran past Mr. Marius when he was not permitted in the car.

The court concluded that Mr. Jordan did not allow appellant in the car because of the shooting:

> "Mr. Jordan was heard to say outside the car but in a loud voice audible to Ms. Riviear[a]s, you weren't supposed to do that. I conclude that Mr. Jordan was referring to the shooting. That doesn't seem, to me, to be a significant leap of faith, the shooting that had just taken place 25 feet from the car Ms. Riviear[a]s was in. Mr. Jordan got into the car after the shooting, again, according to Ms. Riviear[a]s, who I believe. But they denied -- Mr. Jordan denied the defendant entry into the car. Again, although friends, Mr. Jordan and the defendant's relation seemed to change, took a -- a bit of a course change immediately after the shooting when he wouldn't allow the defendant back into the car."

At the close of trial, the court found appellant guilty on all counts. He was sentenced as described above. This timely appeal followed.

II.

Appellant argues that the evidence was insufficient to support his conviction. He argues that no one identified appellant as the shooter. No gun was ever recovered. No

forensic evidence linked appellant to the crime. The victim did not testify at trial. The State produced no evidence of motive or of a relationship between Mr. House and appellant. Furthermore, the surveillance video shows several people fleeing the scene immediately after the shooting, and multiple witnesses described other individuals fleeing from the scene. Appellant argues that these individuals were unaccounted for because several of them were never identified or investigated. Further, there is no evidence as to the physical characteristics of the bystanders. There was no way to determine whether appellant, on the one hand, was one of the bystanders who fled the scene, or, on the other hand, was the shooter.

The State argues that Ms. Reviearas' statement to the police was highly incriminating evidence against appellant. Appellant and Mr. Jordan left the car shortly before the shooting and came running back immediately after the shooting. The State argues that Mr. Jordan's statements when he and appellant returned to the car prove that appellant had just shot someone. This inference is consistent with the security footage which shows two men committing the shooting and then running in the direction of the car.

III.

Rule 8-131(c) provides that "[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence." We review the evidence on the same standard upon which we would review the evidence in a jury trial. *Chisum v. State*, 227 Md. App. 118, 129 (2016). We do not concern ourselves with the precise reasoning used by the trial court, merely the sufficiency of the evidence on its face.

Id. at 127 ("[I]n a jury trial and a court trial alike, we are measuring a verdict against the supporting evidence itself and not looking at what a judge might say in rendering the verdict."). The issue of legal sufficiency of the evidence is not concerned with the adequacy of the court's factfinding to support a verdict. *Id.* at 129. It is concerned only with the objective sufficiency of the evidence itself. *Id.*

We review the sufficiency of the evidence to determine "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Scriber v. State*, 236 Md. App. 332, 344 (2018). This is a review to determine whether the State has met its burden of production, not the burden of persuasion. *Chisum*, 227 Md. App. at 130. Our assessment is "made by measuring the evidence that has been admitted into the trial objectively and then determining whether that body of evidence is legally sufficient to permit a verdict of guilty." *Id.*

As a reviewing court, we do not judge the credibility of witnesses or resolve conflicts in the evidence. *Scriber*, 236 Md. App. at 344. Instead, we assume maximum credibility and assign maximum weight to the evidence favoring the State. *Smiley v. State*, 216 Md. App. 1, 20 (2014). Thus, the question before us is not whether we are persuaded by the evidence. *Id.* Nor is it whether the evidence *should have or probably would have* persuaded the majority of fact finders. *Scriber*, 236 Md. App. at 344. It is only whether the evidence *possibly could have* persuaded *any* rational fact finder. *Id.*

Proof based on circumstantial evidence is held to no higher standard than proof based on direct evidence. *Pinkney v. State*, 151 Md. App. 311, 327 (1998). Circumstantial

evidence is sufficient to support a conviction, provided that the circumstances support rational inferences from which a rational trier of fact could be convinced of the accused guilt beyond a reasonable doubt. *Hall v. State*, 119 Md. App. 377, 393 (1998). Where there are competing rational inferences available to the fact finder based on the evidence presented, we do not second guess which inferences the fact finder chose to draw. *Smith v. State*, 415 Md. 174, 183 (2010). We have held as follows:

> "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 finder] and not that of a court assessing the legal sufficiency of the evidence."

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

In this case, surveillance footage of the incident showed two men approaching the victim, one of whom shot the victim. Surveillance footage, as well as one eyewitness, indicated that the man with the gun, along with his companion ran away from the victim and towards the parked cars. One of the men reached the cars, was momentarily obscured from the view of the surveillance camera, and then ran away alongside building 7582. Mr. Marius saw this man, who he believed to be the shooter based on appearance running alongside the complex seconds later. The second man got into one of the cars that had been parked next to building 7582. That car sped away. The surveillance does not show any other cars pulling away from the complex in the seconds after the shooting.

A fact finder viewing the evidence in the light most favorable to the State could credit Ms. Reviearas' statement to the police and discount her trial testimony. Her

statement indicated that appellant and Mr. Jordan reached the car very shortly after the shooting. It indicated that Ms. Cobbs drove away very soon after appellant and Mr. Jordan reached the car. Mr. Jordan got into the car, but appellant did not and, instead, ran around behind the apartment complex.

Given that there was only one car in the surveillance footage that pulled out of the parking lot after the shooting and Ms. Cobbs' car pulled out of the parking lot after the shooting, a reasonable person could conclude that Ms. Cobbs' car was the one in the footage. Since the footage shows the shooter and his companion running towards that car, one of them getting in, and the other running alongside the building, a reasonable fact finder could conclude that Mr. Jordan, who got into the car, and appellant who ran around the building were the shooter and his companion. Mr. Marius testified that the person who ran behind the building appeared, based on his clothing, to be the man he saw reach behind himself (i.e., the shooter). Thus, a reasonable factfinder could conclude that appellant, the one who ran behind the building, was the shooter. This conclusion would be further bolstered by the fact that appellant and Mr. Jordan matched the descriptions of the shooter and his companion in that appellant is a black male accompanied by a significantly shorter male, Mr. Jordan.

Furthermore, Ms. Reviearas' recorded statement indicated that Mr. Jordan barred appellant from entering the car, despite their previous friendship. This struck Ms. Revieras as unusual and a "complete character change." A reasonable fact finder could conclude that something major had disrupted the relationship between the two men in the short period of time when they were out of the car. Mr. Jordan's commentary on what had just

happened, "No, you weren't supposed to do that," "What the fuck, why," and "That wasn't supposed to happen and you weren't supposed to do that," suggested that the major incident disrupting their relationship was caused by appellant's actions. Given the temporal proximity to the shooting, a reasonable fact finder could conclude, as the trial judge did, that Mr. Jordan was barring appellant from the car because appellant had just shot someone.

We hold that, viewing the evidence in the light most favorable to the State, the evidence is sufficient to establish that appellant was the individual who shot Mr. House. The evidence was sufficient to sustain his convictions.

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