

Circuit Court for Caroline County  
Case No. C-05-CR-16-000056

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2309

September Term, 2016

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THOMAS GARFIELD BARNETT, III

v.

STATE OF MARYLAND

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Woodward C.J.,  
Eyler, Deborah S.,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned)

JJ.

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PER CURIAM

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Filed: February 7, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Thomas Garfield Barnett, III, was convicted after a court trial of two counts of conspiracy to commit first-degree burglary, malicious destruction of property, first-degree burglary, third-degree burglary, two counts of fourth-degree burglary, theft, possession of a controlled dangerous substance, and two counts of possession of drug paraphernalia. The court sentenced appellant to a total term of twenty years of incarceration. He appeals and argues that the evidence was insufficient to support his convictions. We affirm.

### **BACKGROUND**

On July 8, 2016, Melinda Lambert was at work when she received a call from her alarm company. She then left her job and went to her home located at 5201 Smithfield Road in Federalsburg. Once there she discovered that her dining room window screen was no longer in the window, as it was when she left her home, but was leaning up against the house. She also noticed that the storm door on the front of the house had been pried open and broken. Numerous shoeprints were also found on the front door. Additionally, she discovered that a window screen on her porch had been sliced and the lock on her dining room window had been popped. Lambert then called the police who responded to her home. At trial she testified that she did not know appellant.

Sergeant Robert Nepert, of the Caroline County Sheriff's Office responded to Lambert's home and observed the damage to the home's front door and porch window. While on scene, he lifted two latent prints from the window. Alexander Mankevich, a latent print examiner for the Maryland State Police Crime Lab, examined the prints

recovered from the window and discovered that they matched the known prints of appellant.

On the evening of July 9, 2016, Michelle Schreiber returned to her home located at 27035 Iron Gate Road, Federalsburg, and discovered that the gun cabinet in her master bedroom had been emptied and jewelry had been taken from the room. Missing were several long guns, a revolver, a class ring, and a watch. At trial she testified that she did not know appellant.

On July 14, 2016, Detective Brian Peris and Lieutenant Donald Baker, of the Caroline County Sheriff's Department, located appellant and his girlfriend, Tiffany Brumfield, near the Subway sandwich shop in Denton where Brumfield worked. Appellant and Brumfield were wanted by the State of Delaware on an unrelated matter. Detective Peris and Lieutenant Baker followed Brumfield's vehicle a short distance. Located in the vehicle was Brumfield, who was seated in the driver's seat, appellant, who was seated in the front passenger seat, and Brumfield's minor son who was seated in the rear passenger compartment. A backpack was also located in the vehicle, which appellant advised was his. Drug paraphernalia and two small bags containing heroin were inside the backpack.

Brumfield was read her rights under *Miranda*, and thereafter agreed to take the officers to two homes which she had driven appellant to in the previous days. The first home Brumfield directed Detective Peris and Lieutenant Baker to was Lambert's home at 5201 Smithfield Road. Brumfield testified at trial that she believed that appellant was retrieving his belongings from a friend's house, as he was living "from place to place" at that time. She testified that she stayed in the car, and that she did not know if appellant

went to the front of the house first, or the back, as she was not paying attention. She did observe him come around from the back of the home empty-handed, before getting back into her car. She testified that they were at the house for less than five minutes.

Brumfield then directed the officers to Schreiber’s home at 27035 Iron Gate Road. She testified that appellant directed her to go to the address in the evening hours of July 9<sup>th</sup>. Again, she sat in the car while appellant went into the home. She did not see him go to the front of the house, and guessed that he went to the back side of the home. She sat in the car for a little more than five minutes after which she saw appellant come back to the car carrying a long bag. Appellant placed the bag in the back of her car and the two drove away.

### **DISCUSSION**

Appellant argues that the “evidence was insufficient to prove that [he] conspired to commit burglary,” as there “was no evidence of an agreement to commit burglary.”<sup>1</sup> He further argues that the “evidence was insufficient to prove [his] identity as the perpetrator of the offenses committed at the home at Iron Gate Road.” Appellant’s first contention is not preserved for appellate review and the second is without merit.

#### Evidence of a Conspiracy

Md. Rule 4-324(a) requires that a criminal defendant “state with particularity all reasons why” a motion for judgment of acquittal should be granted and is “not entitled to

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<sup>1</sup> Appellant was charged with conspiring with Brumfield to commit burglary.

appellate review of reasons stated for the first time on appeal.” *Starr v. State*, 405 Md. 293, 302 (2008).

At the close of the State’s case, counsel for appellant made a motion for judgment of acquittal, and argued:

[B]ased on the testimony we’ve heard, um, Officer Peris and Officer Baker had no independent knowledge of what, of what in either of those residences were. They testified as to no connection between those residences and the co-defendant or the Defendant. They do not identify what time, I’m sorry, stepping into Ms. Brumfield, she did not identify either residence by anything other than one was big and one had a barn. She did not know their addresses, not even the street. She did not identify what time on either date that they allegedly were at the residence. There is really nothing that was testified to to the addresses noted in the Information that ties Mr. Barnett to either of them, even on the face of it.

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As to the, as to the testimony of Officer Baker and Officer Peris, they stated, they said that they asked Ms. Brumfield where to go and I objected and you sustained the objection and struck that. I don’t believe that their testimony did elicit addresses.

The court denied the motion for judgment of acquittal. Appellant chose not to testify and presented no evidence in his defense. The court then adjourned for the day. The next morning the parties reconvened and counsel for appellant stated the following:

So at the end of yesterday’s proceedings, we were at the stage of my Motion for Judgment of Acquittal. I informed the Court that I was going to listen to the recording. To summarize what I heard, what I argued yesterday was that the testimony as to the addresses was based on hearsay and it had been stricken. That was, that is correct. However, both officers then also testified that they were at those locations. . . . I will stand on my Motion. I’m not going to amend it.

Insomuch as appellant failed to argue below, as he does here on appeal, that the evidence was insufficient as to the conspiracy counts, that claim is not preserved.

Nevertheless, even had he properly preserved the issue for review, the evidence was sufficient to support appellant’s conviction for conspiracy to commit burglary.

To review for sufficiency of evidence, “we review the evidence in the light most favorable to the prosecution and determine whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Perry v. State*, 229 Md. App. 687, 696 (2016) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). “It is not the function of the appellate court to determine the credibility of witnesses or the weight of the evidence.” *Smith v. State*, 138 Md. App. 709, 718 (2001) (citations omitted). It is the fact finder’s, “task to resolve any conflicts in the evidence and assess the credibility of witnesses.” *Id.* A verdict may rest upon the testimony of a single witness. *Hourie v. State*, 53 Md. App. 62, 73 (1982).

“A criminal conspiracy is ‘the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means.’” *Savage v. State*, 212 Md. App. 1, 12 (2013) (quoting *Mason v. State*, 302 Md. 434, 444 (1985)). “The essence or gist of criminal conspiracy is an unlawful agreement,” and “the crime is complete without any overt act.” *Mason, supra*, 302 Md. at 444. “Although the agreement need not be a formal transaction involving meetings and communications, there must nonetheless be a meeting of the minds reflecting a unity of purpose and design.” *Id.* “A criminal conspiracy may be shown by ‘circumstantial evidence from which an inference of common design may be drawn.’” *Armstead v. State*, 195 Md. App. 599, 646 (2010) (quoting *McMillian v. State*, 325 Md. 272, 292 (1992)).

Here, Lieutenant Baker testified that on July 14<sup>th</sup>, after *Mirandizing* Brumfield, he drove her to the Iron Gate community and that once in the neighborhood they slowed down. Baker then asked Brumfield to let him know if she saw anything that looked familiar. They then stopped at 27035 Iron Gate Road, the location of the July 9<sup>th</sup> burglary. They then drove to the Smithfield Road community, which was a short distance away, and Baker again asked Brumfield to let him know if she saw anything that looked familiar. They then stopped at 2501 Smithfield Road, the location of the July 8<sup>th</sup> burglary. At trial, Brumfield testified that during the car ride with the officers, she had “confirmed . . . two houses that were involved in a burglary.” While Brumfield went on to testify that at the time of the burglaries she believed appellant was retrieving his own belongings from the homes, a rational trier of fact could have found that, in light of the other evidence, this testimony was self-serving, and not credible. Therefore, the evidence was sufficient for the jury to infer that Brumfield and appellant had an agreement to burglarize the two homes.

#### The Iron Gate Burglary

Appellant next argues that the “evidence was insufficient to prove [his] identity as the perpetrator of the offenses committed at the home at Iron Gate Road.” We disagree.

Michelle Schrieber, the homeowner of 27035 Iron Gate Road, testified that someone broke into her home in the evening of July 9<sup>th</sup>. Brumfield testified that in the evening of July 9<sup>th</sup> she drove appellant to the home. She testified that she did not see appellant enter the front door, but guessed that he went around to the back. She further testified that when he returned to her car he was carrying a long bag. Schrieber testified that among the items missing from her home that evening were several long guns. In light of the foregoing, a

rational trier of fact could have found that the evidence was sufficient to prove that appellant was the perpetrator of the burglary at 27035 Iron Gate Road.

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