Circuit Court for Prince George's County
Case Nos. CT180417A, CT180417C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2322, September Term, 2018

SHAWN MCQUEEN

v.

STATE OF MARYLAND

No. 2819, September Term, 2018

JEREMY ODELL GRAVES

v.

STATE OF MARYLAND

Graeff,
Reed,
Moylan, Charles E. Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: February 19, 2020

Appellants, Shawn McQueen and Jeremy Graves, were tried together, with a third defendant, in the Circuit Court for Prince George's County with respect to several robberies that took place in early 2018. McQueen was charged with respect to the robberies of three places: a CVS on January 29, 2018; a Dollar General on January 30, 2018; and a Subway on February 1, 2018. Graves was charged in the CVS and Dollar General robberies.[1]

The jury found McQueen guilty of armed robbery of CVS and Dollar General and robbery of Subway, as well as related offenses. The court sentenced McQueen to 20 years for the armed robbery of CVS, all but 15 years suspended, and 20 years, consecutive, for the armed robbery of Dollar General, all but 15 years suspended.[2]

The jury found Graves guilty of armed robbery of CVS and Dollar General, as well as related offenses. The court sentenced him to 20 years, all but ten suspended for the CVS robbery; 20 years, consecutive, all but ten suspended for the Dollar General robbery; and

[1] Carlos Flood, the third co-defendant, was charged in the Dollar General and Subway robberies.

[2] The court imposed concurrent sentences for the following convictions: 20 years for conspiracy to commit armed robbery of the CVS, all but 15 years suspended; 20 years for use of a firearm in a crime of violence, all but ten years suspended; 20 years for conspiracy to commit armed robbery of the Dollar General, all but 15 years suspended; 15 years for robbery of the Subway, all but ten years suspended; 15 years for conspiracy to rob the Subway, all but 10 years suspended. The court merged for sentencing purposes the conviction of first-degree assault into the conviction for armed robbery of the CVS.

20 years, consecutive, all but five suspended, for the use of a firearm conviction in the Dollar General robbery.[3]

On appeal,[4] the parties present multiple questions for this Court's review, which we have rephrased slightly, as follows:

McQueen

1. Did the circuit court abuse its discretion in denying McQueen's motion to sever the trials of the defendants and joining the defendants for trial?

2. Did the circuit court abuse its discretion in denying the defendants' motion to sever counts in the indictment and to sever the trials of the defendants?

3. Was the evidence sufficient to convict McQueen of the Dollar General and Subway robberies?

Graves

1. Did the circuit court abuse its discretion in denying Graves' motion in opposition to joinder and joining the defendants for trial?

2. Did the circuit court abuse its discretion when it overruled Graves' objections to detectives' testimony about their observations?

3. Was the evidence presented sufficient to convict Graves of the CVS robbery?

[3] The court imposed concurrent sentences for the following convictions: 20 years for conspiracy to commit armed robbery of the CVS, all but ten years suspended; and 20 years for conspiracy to commit armed robbery of the Dollar General, all but ten years suspended. The court merged for sentencing purposes the conviction for first-degree assault into the conviction for armed robbery of the Dollar General.

[4] On March 15, 2019, the Court granted, in part, appellants' motion to consolidate the cases and schedule the cases to be argued on the same date.

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

The Three Robberies

The first robbery occurred on January 29, 2018, at a CVS located at 6200 Central Avenue, Capitol Heights, Maryland. At approximately 9:00 p.m., Yoly Jones, an employee of CVS, was the only cashier at the front of the store. Two men came into the store and approached Ms. Jones while she was waiting on a customer. One man was wearing a quilted, black jacket, and the second man was wearing a peacoat-style jacket. The men were both wearing black ski masks, and one of the men was holding a gun. One man stated: "[T]his is a robbery," and he told her to open the cash register. Ms. Jones opened the cash register, which contained approximately $180, gave the men the money, and ran. Ms. Jones testified that she could not recognize either man. The security footage from CVS, however, showed the man in the quilted jacket put his bare hand on the glass door of the CVS, and, as discussed in more detail, *infra*, fingerprints later recovered were identified as McQueen's prints.

The second robbery occurred on January 30, 2018, at a Dollar General located at 4851 Marlboro Pike, Capitol Heights, Maryland. At approximately 9:45 a.m., twelve hours after the robbery at CVS, three men came into the Dollar General. Tanajiah Seagle was working at a register, and the men approached her from behind and put a gun to her back. One man told her to move, and the three men walked her down the aisle and took the entire

cash register. One man was wearing a black, quilted jacket, one man was wearing a black peacoat, and one man was wearing a black jacket with white stripes "across the chest."

Ms. Seagle testified that, although the men were all wearing ski masks, she could see part of the face of the man holding the gun, the man in the peacoat. He had green eyes and a dollar sign tattoo under his eye, as well as dreadlocks. Ms. Seagle recognized him as Graves.[5] She previously had seen him in the store, and he had given her his phone number and invited her to come over to his apartment on Bennington Road, which she did.

The third robbery occurred on February 1, 2018, at the Subway located at 4825 Marlboro Pike, Capitol Heights, Maryland. At approximately 10:00 p.m., Suliman Mia was working behind the counter, fixing a toaster with his back to the door, when two men wearing masks came into the store.[6] One man was wearing a quilted, black jacket, and the other was wearing an MTV hoodie. One of the men said: "[G]ive us everything," and he then jumped over the counter. The men took the entire register, which contained between $300 and $400. Mr. Mia testified that, in addition to money, Subway kept important documents in the cash register.

[5] In her statement to police the night of the robbery, Mr. Seagle said that she knew the man who robbed her as "Jay." At trial, she identified the man who robbed her as Graves, pointing him out in the courtroom.

[6] In his initial testimony at trial, Mr. Mia stated there were three men who robbed him, but he corrected himself later, stating that there were only two men.

The police obtained a search warrant for Apartment 203, 1226 Benning Road,[7] which was within walking distance of the Dollar General and Subway. During an initial search of the apartment on February 2, 2018, the police found Graves and apprehended him. They returned to the apartment on February 6, 2018, looking for Flood, who they found and apprehended. During the searches, the police found, among other things, unused ammunition, cell phones, multiple black ski masks, a black jacket with white horizontal stripes, a black peacoat, gloves, an MTV sweatshirt, six cash register drawers, unopened coin rolls in a garbage bag, Suliman Mia's food manager permit, and the food services facility permit for the Subway on Marlboro Pike. They found cash in various denominations, totaling more than $350. They also found Graves' identification, social security card, and birth certificate.

The police also obtained a search warrant for Apartment 100 in the same apartment complex. During the search, they found a training program document with McQueen's name on it, photo identification for McQueen, and $130 in cash. McQueen was apprehended before the search of the apartment. He was wearing a black, puffy coat, and the police found a ski mask and gloves on his person.

II.

Pre-Trial Proceedings

On March 13, 2018, the Grand Jury simultaneously indicted McQueen, Graves, and Flood on multiple counts relating to the robberies. Each defendant was assigned the same

[7] Ms. Seagle testified at trial that Graves lived at Apartment 203.

case number, CT180417, with a corresponding letter at the end. McQueen was CT180417A, Flood was CT180417B, and Graves was CT180417C.

McQueen's indictment included twelve counts relating to the CVS, Dollar General, and Subway robberies. Graves' indictment included eight counts relating to the CVS and Dollar General Robberies. Flood was indicted on nine counts related to the Dollar General and Subway Robberies. Trial for all three defendants was scheduled to start on July 9, 2018.

As discussed in more detail, *infra*, motions were filed regarding the propriety of a joint trial.

III.

Trial and Sentencing

At trial, Ms. Jones and Sergeant Michael Ebaugh, a member of the Prince George's County Police Department, testified regarding the January 29, 2018, robbery at CVS. Sergeant Ebaugh testified that he took Ms. Jones' statement and obtained security footage from the CVS. The security footage showed two men entering the CVS, and it showed the man in the quilted, black jacket place his bare hand on the glass door of the CVS. Sergeant Ebaugh called an evidence technician to recover any prints left on the door.

Zachary Weadock, a member of the Crime Scene Investigation Division of the Prince George's County Police Department, testified that he was called to the CVS the night of the robbery to process the scene. He looked at the surveillance footage to determine where to swab the door, and he was able to recover several prints from that area.

Mertina Davis, a member of the Prince George's County Police Department Forensic Science Division who was accepted as an expert witness in latent fingerprint examinations, testified that two of the impressions submitted to her lab were suitable for evaluation. An impression of a left ring finger and an impression of a left middle finger matched McQueen's fingerprints.[8]

Detective Layden testified that, when McQueen was apprehended, he was wearing a puffy, quilted, black jacket, and he had gloves and a ski mask on his person. McQueen was then interviewed about his involvement in the robberies. He initially denied all involvement, but after the interviewers told him about the prints they recovered from the CVS robbery, he admitted that he was a part of the CVS robbery. McQueen did not write a statement after this interview, and the interview was not recorded.

Several witnesses testified about the Dollar General robbery. Detective William Ledward testified that he reviewed the surveillance footage, and the black jacket with white stripes worn by one of the men was consistent with the jacket police found in Apartment 203. The other suspects were wearing black jackets, one went past the suspect's waist, and the other stopped at the suspect's waist. Each suspect was wearing a ski mask.

Detective Jonathan Sanders testified that he interviewed the victim, Ms. Seagle, both at the scene and at the police station. After speaking with her, he developed Graves

[8] McQueen and the State stipulated that the fingerprints the police department had on file, that were used as comparisons by Ms. Davis, were McQueen's fingerprints.

as a suspect in the case. Detective Jay Hamilton testified that Ms. Seagle selected Graves' photo from a photo array.[9]

Mr. Mia testified about the Subway robbery. He identified State's Exhibit 13, part of a register found in Apartment 203, as the register stolen from Subway. He also identified documents found in the apartment as documents that had been in Subway.

The State also entered into evidence security footage from all three robberies. It introduced photos of the items, or the actual items, found during the searches of Apartment 203 and Apartment 100.

Detective Brian Layden testified regarding the location of the robberies and the apartments. The apartment complex on Benning Road, where both Apartment 203 and Apartment 100 are located, is a five-minute walk to the Dollar General, a five-minute walk to Subway, and a 10-15 minute walk to the CVS.

Detective Layden also testified about the clothing that the three men were wearing in the three robberies, which he observed from watching the surveillance footage. Specifically, (1) the first suspect at the CVS robbery was wearing a quilted, black jacket and the second suspect was wearing a black peacoat; (2) the first suspect at the Dollar General robbery was wearing a quilted, black jacket, the second suspect was wearing a black peacoat, and the third suspect was wearing a black coat with white, horizontal stripes;

[9] Detective Sanders prepared the photo array, and employing the "double blind" method, had Detective Hamilton, who did not know which photo was the suspect, show Ms. Seagle the photos.

and (3) the first suspect at the Subway robbery was wearing a quilted, black coat, and the other suspect was wearing an MTV sweatshirt.

After the State presented all its evidence, McQueen moved for judgement of acquittal on all counts. Graves requested a mistrial based on improper joinder, as well as testimony from Detective Layden, which he believed to be improper. He also moved for a judgement of acquittal. McQueen then joined the motion for mistrial based on the severance issue. The court denied the motions.

As indicated, the jury found McQueen guilty of multiple offenses related to the CVS, Dollar General, and Subway robberies. It found Graves guilty of multiple offenses regarding the CVS and Dollar General robberies.

This appeal followed.

DISCUSSION

I.

Severance and Joinder

Both appellants contend that the circuit court erred in allowing a joint trial of the three defendants. Their specific contentions, however, vary.

McQueen contends that the circuit court erred in denying his motions to sever his trial from the trials of the other two defendants. He also asserts that the court improperly denied his motion to sever the counts relating to each separate robbery.

Graves contends that the court abused is discretion in denying his "Opposition to Joinder and Motion to Continue," which he filed the morning of trial. He notes that,

pursuant to Rule 4-203, which provides that a "charging document may not contain charges against more than one defendant," the three defendants were charged in three separate charging documents.[10] He argues that, pursuant to Md. Rule 4-253(a), a court "may order a joint trial for two or more defendants charged in separate charging documents" only "[o]n motion of a party." Graves asserts that, because the State never moved to join the defendants' cases, the court abused its discretion in denying his motion and permitting him to be tried with the other two co-defendants.

"Joinder and severance in criminal cases is governed by Maryland Rule 4-253." *Hines v. State*, 450 Md. 366, 368 (2016). Rule 4-253 provides for joinder, as follows:

> (a) **Joint trial of defendants.** On motion of a party, the court may order a joint trial for two or more defendants charged in separate charging documents if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.
> (b) **Joint trial of offenses.** If a defendant has been charged in two or more charging documents, either party may move for a joint trial of the charges. In ruling on the motion, the court may inquire into the ability of either party to proceed at a joint trial.

The Court of Appeals has explained that the rule permitting defendant joinder and/or offense joinder "is based on a policy favoring judicial economy and its purpose is 'to save the time and expense of separate trials under the circumstances named in the Rule, if the

[10] Prior to January 1, 2016, Rule 4-203 provided that two or more defendants "may be charged in the same charging document if they [were] alleged to have participated in the same . . . series of acts or transactions constituting an offense or offenses." Md. Rule 4-203(b) (2014 Repl. Vol.). The rule was changed because "MDEC cannot accommodate charging documents containing charges against multiple defendants." 188th Report Standing Committee on Rules of Practice and Procedure (October 6, 2015).

trial court, in the exercise of its sound discretion deems a joint trial . . . proper.'" *Hines*, 450 Md. at 368–69 (quoting *Lewis v. State*, 235 Md. 588, 590 (1964)). *Accord Day v. State*, 196 Md. 384, 395 (1950) ("Under ordinary circumstances, where two parties are accused of the same crime, it is in the interest of both justice and economy that they should be tried together.").

Nevertheless, the Rule gives discretion to the court in making a joinder/severance determination. In that regard, the court employs a balancing analysis between "the likely prejudice caused by the joinder . . . [and] the considerations of economy and efficiency in judicial administration." *Hines*, 450 Md. at 369 (quoting *Frazier v. State*, 318 Md. 597, 608 (1990)). Rule 4-253(c) provides:

> If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.

The Court of Appeals explained the standard of review for a circuit court's joinder/severance decision as follows:

> Ordinarily, such decisions are reviewed only for abuse of discretion. *See Erman v. State*, 49 Md. App. 605, 612 (1981). In *McKnight*, 280 Md. [640, 612 (1977)], we limited the discretion afforded to a trial judge under Rule 4-253(c) and held that severance is mandated where a single defendant is jointly tried by a jury for separate offenses and evidence as to the offenses is non-mutually admissible. We explain, as discussed below, that the *McKnight* analysis applies in the limited context of joinder/severance of offenses. The proper standard of review when reviewing a severance determination in cases of codefendant joinder remains whether the trial court abused its discretion.

Hines, 450 Md. at 366.

With this background in mind, we address the parties' contentions. After setting forth what occurred below, we will address the specific contentions relating to each appellant.

A.

Proceedings Below

On March 27, 2018, 14 days after McQueen and Graves were indicted, Graves's counsel filed an entry of appearance and an omnibus motion. The motion stated, among other things, that Graves "[m]oves to sever the trial of his case from that of his co-defendants and/or to sever counts." On June 1, 2018, however, Graves filed a line withdrawing his motions.

On April 18, 2018, McQueen's counsel filed an entry of appearance and an omnibus motion. The motion requested, among other things, that the "[c]ourt sever the trial of these charges" and "sever his/her trial from that of any Co-Defendant(s)."

On June 29, 2018, eleven days before the scheduled trial date of July 9, 2018, McQueen filed a "Supplemental Motion to Sever **Counts** in the Indictment." (Emphasis added.) The motion stated that, when McQueen's counsel first entered his appearance, he filed an omnibus motion asking for a severance of the charges in the indictment, which he asserted complied with the requirements of Md. Rule 4-252(b) mandating that a motion for a separate trial be made within 30 days of the appearance of counsel**.** He additionally asserted that, even if the omnibus motion did not satisfy Rule 4-252(b), the court still had discretion to hear his motion. He argued that he was "unfairly prejudiced by the joinder of

the three unrelated crimes" in the indictment, and that the court had the power "on its own initiative or on the motion of any party" to "order separate trials counts… or grant any other relief as justice requires."

At the motions hearing scheduled that day for McQueen's request for a continuance, McQueen asked for a one-week continuance to litigate the motion to sever the counts in the indictment. Flood, who also was present for the hearing, joined this motion.[11] The following exchange occurred at the hearing:

> [COUNSEL FOR MQUEEN]: . . . I did file a supplemental motion this morning laying out my position as to why we are requesting a continuance and basis for that continuance.
>
> Essentially, I'm asking the Court to allow us to argue to a trial judge or a motions judge on the 6th why we believe that the indictment should be severed. I filed a copy this morning with the clerk. I have a courtesy copy for Your Honor if you want to look at it now.
>
> THE COURT: A motion to sever? You want me to rule on that?
>
> [COUNSEL FOR MCQUEEN]: No, I don't want you to rule on it, Your Honor. I just want you to allow me to make the argument to another judge next week as to severance; and I believe the State's position is that the rule hasn't been complied with . . . respect to the severance. We take the position that it has been as laid out in the motion. And even if the [c]ourt found it was not, we still believe that we have a right to argue it prior to the trial date of next week, July 9th.

McQueen's attorney stated that he was asking only for a severance of counts, not defendants.

[11] Graves and his lawyer were not present at the hearing. Graves' counsel subsequently stated that, prior to the time of this hearing, he "withdrew without prejudice" because he was "hoping to resolve the case without a trial."

The State argued that the time to file a motion for severance of counts had passed, stating:

> [THE STATE]: . . . a motion for severance of counts or of defendants is a mandatory motion that must be filed 30 days after the entrance of appearance. The indictment in this case was in March of 2018; and the appearance was shortly after . . . both counsel and substantial time has passed. We're now on the cusp of July and the trial is July 9th. So, we're way past the mandatory filing.
>
> Not only are they saying they're not ready today, but they want a further continuance. This is the fourth defense continuance of motions.
>
> At this point, I am going to object. . . . I haven't heard a good basis. . . . it's not even fair to say 11th hour on the morning of motions, handing a copy to the [c]ourt and asking for the continuance, there's no good cause . . . . There's a reason why mandatory motions are required to be filed at a certain time, so that the State can prepare for something like a severance.

Counsel for McQueen responded that the court "always has discretion as to motion for severance." When the court asked why counsel waited until that point to file the motion, counsel stated that he believed that the case was going to be resolved by plea agreement, and once he "realized that that was not possible," he notified the prosecutors of his intent "to seek severance of the counts in the indictment. And I believe that I have complied with the rule in my initial filing, which was on April 18th."

The State advised that it was prepared to argue the motion that day. She argued, however, that the motion should not be argued because the case was past the point of severance.

The court advised the prosecution that it was "going to put this in [the State's] realm of control." It stated that it knew "nothing about the case. I don't know the severance

issue. I don't know how viable it is. I don't know if it is really with prejudice. There[] are too many unknown factors." It stated its belief that the case "would stand up on appeal," but maybe not on a claim of ineffective assistance of counsel. It concluded: "if you want to stand strong on your grounds that he should not go forward and you want to have the possibility of a post-conviction issue like that because you will probably be long gone from this issue by the time that comes around, that is up to you." The prosecutor advised that she was "confident in the State's position. There is a reason for the mandatory rule," and she was "confident that there's no merit to the motion itself." The court denied McQueen's motion for a continuance, and it denied McQueen's request to have a hearing on the severance issue that day.

On Friday, July 6, 2018, Graves filed a motion to continue the trial to allow the defendants to consider a group plea offer, which the State had offered the day before, and which was contingent on acceptance by all three defendants. The motion stated that, in the alternative, Graves and his codefendants, with whom he had conferred, requested that the July 9 trial date be converted to a status hearing to discuss meaningful plea bargaining and "to renew and argue for severance."

The State objected to the motion to continue the case, stating that a jury panel of more than 150 persons had been ordered for trial on Monday, July 9, 2018, and the State had subpoenaed more than 20 witnesses to appear on that date. The State objected to the filing of the "last minute" motion.

On Monday, July 9, 2018, the day set for trial, Graves filed Defendant's Opposition to Joinder and Motion to Continue. He argued, for the first time, that because there were separate charging documents for each defendant, the State was required to move for joinder under Md. Rule 4-253, which the State had not done.[12] He asserted that the State had the burden to show that the defendants would not be prejudiced by the joinder, and the court needed to analyze the mutual admissibility of the evidence. Graves argued that the State's failure to file a motion to join the defendants in one trial deprived the court of the information it needed to make a fully informed decision.

That same day, McQueen filed a "Supplemental Motion to Sever Defendants." He argued that he had filed an omnibus motion asking for severance of "counts and/or defendants," and he relied on Md. Rule 4-253 to argue that the State never moved for joinder. McQueen opposed joinder because the charges were not identical and all of the evidence was not mutually admissible. Counsel stated that McQueen was at a disadvantage because he was the only defendant charged in all three robberies, and therefore, it was more likely that the other two defendants would try to use an "antagonistic defense" against him. He asked that, if the court would not sever the defendants, it at least sever the counts, as he had asked in his previous motion.

[12] As indicated, Md. Rule 4-253(a) provides, in pertinent part, as follows:

> On motion of a party, the court may order a joint trial for two or more defendants charged in separate charging documents if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

The court held a hearing on the motions. Counsel for McQueen stated that he filed that morning a motion to sever defendants. He had filed a motion on June 29 to sever the counts of the indictment, but the administrative judge would not allow him to argue the merits of the motion. Although the court at the June hearing did not make a specific finding, counsel asserted that it appeared that the court agreed with the State that the motion was not timely filed. When the court asked why the motion would be timely now, on the date set for trial, counsel noted that he was asking to sever the trials of the defendants, whereas his June motion sought to sever the counts of the indictments.

Counsel then stated that his argument to sever might be premature because there had "been no formal motion to join these cases," although he acknowledged that the indictments had the same case numbers. The court asked why this was being raised on the trial date and "was never thought of before today." Counsel stated that he did file a motion to sever, which the trial court stated was denied and then asked, "why would we still be at it today?" Counsel noted that the court may, on its own initiative, sever the cases. The court stated that it was not severing the cases, noting that it was "[n]ot timely, and there is no basis for it." Counsel argued that the basis for the motion was mutual admissibility of the evidence, and the issue was raised prior to trial. He stated that, at the prior hearing, the merits of the motion were not addressed, but only the timeliness, and even if the motion was untimely, the court could consider the motion. He asserted prejudice from a joint trial with the other defendants and argued that these were three unrelated crimes that should be tried separately.

The State argued that mandatory motions, including a motion to sever, are required to be filed 30 days after the line of appearance, and this requirement exists to make defense counsel address these issues sooner so the court can make a ruling by the trial date. McQueen waited to file for severance, thinking he would get a plea agreement, and that was a strategy decision that did not work out for him. The State argued that the court at the earlier hearing ruled that McQueen failed to file a timely mandatory motion, and there was not good cause to excuse it.

Counsel for Graves then argued that the State was required to file a motion for joinder, but it failed to do so. He stated that he was not making a motion to sever, but rather, he was raising "an opposition to a motion to join[,] should such a motion be made."

Counsel for Flood argued that the State was required to file a motion for a joint trial, and because a lot of the evidence would not be mutually admissible, the court did not have discretion, but the cases "have to be severed." The court again asked why counsel waited until the date of trial to make this argument.

The State argued, with respect to a joint trial of the defendants: "As far as a motion for joinder, State doesn't need to ask the Court to join what's already joined. . . . They were indicted together, they had the same trial date, and there is no reason to ask to join." The prosecutor stated:

> Motion for joinder exists when the defendants are separated in different indictments, they have different trial dates. Then the State—and sometimes that occurs. Sometimes we pick up one defendant and over time we pick up another, and we indict them on different dates, and we ask you to join them when it's appropriate.

> That's not this case here. They were indicted together, they had the same trial date, and there is no reason to ask to join.
>
> In this situation, [it] would not be the State's onus to ask the Court to join if they're already joined. It would be the defense's to ask to sever it. They tried it already on July—June 29th . It didn't work and shouldn't work.

The prosecutor asserted that "[n]obody has ever complained about being on the docket together" and the motions were "a delay tactic" and "without merit." The court denied the defense motions.

The next morning, Graves renewed his motion for opposition to joinder. The court denied the request, stating: "Your motion is denied for many reasons. Number one, it was joined when it was indicted as one case, the A, B, and C section, with no need for a formal joinder by the State."[13]

B.

McQueen

The State contends that McQueen waived his severance arguments because he "did not file, or otherwise pursue, a severance motion that complied with Rule 4-252." It asserts that McQueen's omnibus motion requesting severance the day counsel entered his appearance did not satisfy the content requirements of Rule 4-252(e). And it argues that McQueen's subsequent motions to sever, one 42 days after the deadline to file mandatory

[13] Although the court said the motion was denied for many reasons, it listed only the one reason.

motions, and one on the trial date, ten days later, were properly denied because they were not timely filed.[14]

Md. Rule 4-252 addresses mandatory motions in the circuit court. It states, in pertinent part, as follows:

> (a) **Mandatory motions.** In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise . . .
>
> * * *
>
> (5) A request for joint or separate trial of defendants or offenses.

The motions identified in Rule 4-252 "are considered mandatory in nature, and if not raised in conformance with the Rule are waived unless the court, for good cause, finds otherwise." *Jones v. State*, 395 Md. 97, 113 (2006). The defendant has the burden to show good cause. *Pugh v. State*, 103 Md. App. 624, 655, *cert. denied*, 339 Md. 355 (1995). And the trial court's determination regarding whether the defendant met that burden will not be reversed absent a clear abuse of discretion. *Id*. at 656.

Rule 4-252 sets forth the timing and content requirements of these mandatory motions:

> (b) **Time for filing mandatory motions.** A motion under section (a) of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

[14] As explained, on June 29, 2018, McQueen asked the court to sever the **counts** relating to the different robberies, and on July 9, 2018, he asked the court to sever the trials of the defendants or "at least" the counts.

* * *

> (e) **Content.** A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.

The Rule provides that, generally, mandatory "[m]otions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the day of trial." Rule 4-252(g)(1). The purpose of the Rule is "to alert both the court and the prosecutor to the precise nature of the complaint, in order that the prosecutor have a fair opportunity to defend against it and that the court understand the issue before it." *Sinclair v. State*, 444 Md. 16, 29 (2015).

McQueen alleges that he satisfied the time requirements with his omnibus motion. With respect to severance, this motion stated:

> That Defendant *may be charged* with unrelated crimes. That a joint trial on this charge and any such other would prejudice Defendant's rights to a fair and impartial trial.
>
> WHEREFORE, Defendant respectfully prays that this Honorable Court sever the trial of these charges
>
> That Defendant *may be jointly charged* with other defendant(s). That facts involved in the trial of the Defendant are at variance with those involved in the trial of any other defendant(s). That a joint trial of the Defendant with any Co-Defendant(s) would prejudice his/her right and deny him/her an[] impartial trial.
>
> WHEREFORE, Defendant respectfully prays that this Honorable Court sever his/her trial from that of any Co-Defendant(s).

(Emphasis added.)

The Court of Appeals has made clear that a conclusory omnibus motion does not satisfy the content requirements of Md. Rule 4-252. In *Phillips v. State*, 425 Md. 210, 216 n.4 (2012), the Court said:

> In *Denicolis v. State*, 378 Md. 646, 660–61, (2003), we called attention to the fact that Md. Rule 4-252(e) requires motions filed under that Rule, which includes motions to suppress unlawfully obtained statements, to state the grounds for the motion and contain or be accompanied by a statement of points and citation of authorities. We noted the practice that seemed to have developed of defense counsel filing omnibus motions "seeking a panoply of relief based on bald, conclusory allegations devoid of any articulated factual or legal underpinning, presumably in the belief that if the motion complies with the time requirement of Rule 4-252(b), compliance with Rule 4-252(e) is unnecessary." We made clear, however, that that was not the case, and that a motion that fails to provide either a factual or legal basis for granting the requested relief should not be granted.

Accord Edmund v. State, 398 Md. 562, 569 (2007) ("It is clear that [defendant's] omnibus motion, insofar as it purported to challenge the indictment, was not in compliance with Rule 4-252(e)."). Although trial courts have discretion to allow defendants to later supplement their motions, and the appellate courts are hesitant to disturb this discretion, that "should not be taken as a license to ignore the requirements of the rule." *Phillips*, 425 Md. at 216 n.4.

Here, we agree with the State that, although the omnibus motion was timely filed, it did not comply with the content requirements of the Rule. The motion was a conclusory, conditional request stating that McQueen "may be" charged with unrelated crimes or "may be jointly charged with other defendants." And it did not, as required by the Rule, contain a statement of points and authorities. There was no error or abuse of discretion by the

circuit court in declining to consider the omnibus motion as a sufficient motion pursuant to Rule 4-252.

McQueen argues, however, that even if the omnibus motion was not sufficient, he filed a substantive motion to sever the counts on June 29, 2018, and another motion to sever defendants filed on July 9, 2018. As the State notes, and McQueen does not dispute, these motions were filed after the 30-day deadline.

Rule 4-252(a) specifically provides that the failure to comply with its requirements waives an issue, absent good cause. Accordingly, the appellate courts have held that a defendant can be held to have waived an issue based on the failure to timely file a mandatory motion. *See Tracy v. State*, 319 Md. 452, 457 (1990) ("A defendant can lose his rights under joinder and severance law by failing to assert them in a timely fashion. This is true even in the instances of misjoinder.") (quoting 2 W. LaFave & J. Israel, Criminal Procedure § 17.3(d), at 378 (1984)); *Carroll v. State*, 202 Md. App. 487, 510 (2011) (failure to comply with timing requirements for filing motion to suppress waives the issue, absent good cause), *aff'd on other grounds*, 428 Md. 679 (2012).

In *Pulley v. State*, 43 Md. App. 89, 97 (1979), *aff'd*, 287 Md. 406 (1980), involving a motion to dismiss on the ground of former jeopardy, this Court held that "[t]he failure to make this mandatory motion within the prescribed time limits, absent good cause to forgive the dereliction, bars the claim where the claim arguably is pregnant with constitutional merit just as surely as where the claim is utterly bereft of merit." We noted that "[t]o rule otherwise would strip [the Rule] of its intended salutary effect." *Id.*

To be sure, a court can permit an untimely motion if there is a finding of good cause. *Pugh*, 103 Md. App. at 656. As indicated, however, that is a matter left to the discretion of the circuit court. *Id. Accord Sinclair*, 444 Md. App. at 30.

In *Pugh*, Pugh's counsel stated that the reason his motion was not timely filed was because counsel had "a very hectic schedule," which made it difficult for counsel to meet with defendant and make the motion within 30 days. 103 Md. App. at 656. The circuit court determined that this did not constitute good cause for the late filing, and this Court found no abuse of discretion in this ruling. *Id*. at 656–57.

Here, at the hearing on June 29, 2018, the court asked McQueen why his motion to sever counts was past the deadline. Counsel for McQueen explained that he thought the case was going to resolve with a plea agreement, and when he realized that was not going to happen, he filed his supplemental motion. The State argued that this motion was not timely under Rule 4-252, and the court denied the motion. In so ruling, the court implicitly found that counsel had not shown good cause to excuse the untimely motion.

Similarly, on July 9, 2018, the date set for trial, the court asked why the motion to sever defendants was being raised on the trial date. After hearing from counsel regarding the history of the proceedings, and noting that the request for severance was not timely, the court denied the motion, implicitly finding that good cause had not been shown.

Under the circumstances here, we perceive no abuse of discretion in the court's findings that good cause had not been shown to excuse the failure to comply with Rule 4-252. Accordingly, McQueen waived his right to argue for a severance of counts or

defendants, and the circuit court did not err or abuse its discretion in denying McQueen's motions.

C.

Graves

The State contends that Graves waived the "Opposition to Joinder" he filed on the morning of trial. It asserts that this claim was, in effect, an untimely severance motion, with "no finding of – or request to find – good cause" for the delayed request. Moreover, it asserts that the State was not required to file a motion to join the cases against the defendants under the circumstances here, where the defendants were indicted together for the same course of events, assigned the same case number, and "scheduled in tandem for motions and trial."

Graves disagrees that his motion was "in effect" a motion for severance**.** He asserts:

> Instead, as defense counsel repeatedly articulated at the hearing, it was a motion to force the State to comply with Rule 4-253 by filing a motion to join if it wanted the three defendants to be tried jointly and to preclude a joint trial if the State did not do so. Although the time requirements of Rule 4-252 were not complied with, it is the State – the party who <u>never</u> filed a motion to join – who did not comply with the Rule.

We agree with Graves that the motion he filed on the day of trial, the ruling on which is the subject of this appeal, was not a motion to sever the trials of individual defendants. Counsel specifically stated that he was not making a motion to sever.

We next address the State's argument that "Rule 4-253(a) does not preclude a court from joining co-defendant cases in the absence of a party's motion." Graves disagrees, asserting that, pursuant to the "clear and unambiguous" language of Rule 4-253, a court

may order a joint trial of defendants charged in separate charging documents only "[o]n motion of a party," whereas it may order a separate trial, i.e., a severance, "on its own initiative."

As indicated, Rule 4-253(a) provides: "*On motion of a party*, the court may order a joint trial for two or more defendants charged in separate charging documents . . . ." (Emphasis added.) This language is in contrast to that in Rule 4-253(c), which provides that, if it appears that a party will be prejudiced by the joinder of defendants for trial, "the court may, *on its own initiative or on motion of any party*, order separate trials . . . ." (Emphasis added.) Pursuant to the plain language of the Rule, as a whole, we conclude that a court may order a joint trial of defendants only "[o]n motion of a party." *See Williams v. State*, 457 Md. 551, 568 (2018) (quoting *State v. Taylor*, 431 Md. 615, 630–31 (2013)) (In "interpret[ing] the Maryland Rules, we first examine the plain language," and we "give effect to the entire rule."). Accordingly, if the State wants to try two or more defendants in a joint trial, it should file a written motion to do so. *See, e.g.*, *Molina v. State*, __ Md. App. __, Nos. 2380 & 2537, Sept. Term, 2017, slip op. at 4–5 (filed December 23, 2019) (The State indicted defendants separately, on the same day, and then later moved to have the cases consolidated.).

Here, however, the court did not issue an order of joinder. Rather, the case was presented to the court as a joint trial of all three defendants. The State argued that, although the three defendants were charged in three separate indictments for the series of robberies in which they were implicated, the cases were joined by virtue of the fact that all three

defendants were indicted on the same date, they were given the same case number, and the cases against the three defendants were set for trial the same day, in front of the same judge.[15]

It is clear from the record that the State intended that there be a joint trial, and all parties proceeded under this assumption. Indeed, Graves, similar to McQueen, filed two motions, an omnibus motion, and the motion filed July 6, 2019, referencing a request to sever his trial from that of his co-defendants.[16]

The Maryland appellate courts previously have addressed situations where a case involving separate indictments proceeds as a joint trial without a motion to join filed by the State. In *Fisher v. State*, 128 Md. App. 79, 132 (1999), *aff'd in part, and vacated in part, on other grounds*, 367 Md. 218 (2001), upon which the State relies, three defendants were indicted separately and set for trial the same day. The State filed a timely motion to join the trial for two of the three defendants, but it did not file such a motion for the third defendant. *Id*. The defendants filed motions for severance, arguing that "the State failed to file a timely written motion for joinder as is required . . . by Md. Rule 4-252." *Id.* at 131. At the hearing on the motions, the State orally made clear that it desired a joint trial, and the trial court denied the motion for severance. *Id.* at 132. This Court held that any

[15] McQueen's indictment number was CT180417A, Flood's indictment number was CT180417B, and Graves' indictment number was CT180417C.

[16] Moreover, at least one motions hearing for all cases was scheduled for the same day, and the record reflects that the State's plea offer was a group plea, which required that it be accepted by all three defendants.

failure by the State to comply with Rule 4-252(a) was not waived because the circuit court, after consideration of the merits ("for good cause shown"), ordered that the cases be tried together. *Id.* at 132–33. The State, nevertheless, subsequently filed a formal written request for joinder. *Id.* at 132. This Court deemed that action unnecessary, noting that the status quo at the time of the hearing was a joint trial, and it was the party not content with the status quo that needed to file a motion, i.e., a motion to sever the cases. *Id.* at 134–35.[17]

In *Taylor v. State*, 226 Md. App. 317, 322, 373 (2016), the defendant was charged in seven different indictments based on charges of sexually abusing seven minors. The court scheduled a consolidated trial with the consent of both parties, and at a subsequent scheduling conference, the State indicated that it anticipated trying all seven cases "together for judicial economy purposes." *Id.* at 374. Under these circumstances, this Court found no error or abuse of discretion in the court's scheduling decision. *Id.* at 374–75.

Four weeks before the scheduled trial date, the defense filed a motion for severance, and at the hearing on the motion, counsel argued, for the first time, that the State waived any request to try the cases jointly because the State had not filed a timely motion for joinder. *Id.* at 375. The circuit court, finding that the parties had agreed that the cases

[17] Graves contends that *Fisher* is distinguishable because the State filed a written motion for joinder, and in this case, "the State never moved for joinder, either in writing or orally." We agree this is a distinguishing fact. But relevant to the analysis here, the Court stated that, when the case proceeds as a joint trial, it is the defendants' burden to file a motion to change the status quo, i.e., file a motion sever the cases.

would be tried together, denied the request for severance, finding that the request untimely. *Id.* at 375–76. The court nevertheless addressed the merits and found that severance was not required. *Id*. at 376. This Court found no error or abuse of discretion in the trial court's ruling. *Id.*

In *Tracy*, 319 Md. at 454–55, 457, the defendant was charged in a four-count information for murder and related charges, and several months later, he was charged with six additional charges related to the killing, which were labeled "counts 5 through 10." The additional counts "were filed in the same criminal jacket" as the original information. *Id.* at 455. Several days prior to the scheduled trial date for all counts, Tracy moved to dismiss the six new counts. *Id.* He argued that counts five through ten of the indictment were improperly joined with counts one through four because, "absent a motion for joint trial by either party, the trial court lacked authority to order a joint trial." *Id.* at 459. The Court of Appeals rejected that claim, stating that, even if Tracy was correct that the counts were improperly joined, "the proper remedy for improper joinder is a severance." *Id.* Because Tracy never asked for a severance, he waived any right to a severance. *Id.* The Court stated: "By failing to specifically request a severance of counts 5 through 10, Tracy waived any right to a severance. 'A defendant can lose his rights under joinder and severance law by failing to assert them in a timely fashion. This is true even in the instances of misjoinder[.]'" *Id.* (quoting 2 W. LaFave & J. Israel, Criminal Procedure § 17.3(d), at 378 (1984)).

Based on the above cases and the language of Rule 4-253(a), we conclude that, if the State desires to try more than one defendant in a joint trial, the preferred course is for the State to file a motion for joint trial, but if the State fails to do so, and the case nevertheless proceeds as a joint trial, the defendant must file a timely motion for severance. As the Court of Appeals held in *Tracy*, 319 Md. at 457, "the proper remedy for an improper joinder is severance."

Here, the record reflects that the parties all proceeded with the case as a joint trial. Indeed, Graves filed a motion for continuance three days before trial, stating that counsel wanted "to renew and argue for severance." It was not until the date scheduled for trial that counsel argued, for the first time, that a joint trial was impermissible because the State had not filed a motion to join the defendants for trial. By failing to timely request a severance, Graves waived any right he may have had to a severance.[18] The circuit court properly denied Graves' motion.

II.

Observational Testimony of Detectives

Graves contends that the circuit court abused its discretion in allowing testimony from Detective Ledward and Detective Layden regarding what they saw on the surveillance videos. Specifically, he asserts that the detectives improperly testified about what they saw

[18] As indicated, Graves may not have made a motion to sever due to a belief that such a motion was untimely. Our conclusion, *supra*, with respect to McQueen, confirms such a belief. And Graves had the additional problem that he had filed a line withdrawing all motions approximately one month before trial, so he could not argue that the omnibus motion was a timely motion to sever.

on the surveillance videos and opined that jackets and masks shown on the videos were consistent with the jackets and masks recovered from Apartment 203. Graves argues that this testimony violates Maryland Rule 5-701, which states:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

He contends that the detectives did not have personal knowledge of what was on the video because they were not at the stores during the robberies, that it was up to the jury alone to determine what the videos and evidence showed, and the detectives' testimony invaded the province of the jury.

The State contends that Graves waived his claim that the detectives' testimony invaded the province of the jury and violated Md. Rule 5-701 because these arguments were not made below. In any event, even if the argument is preserved, the State contends that the circuit court properly allowed the testimony.

A.

Detectives' Testimony

Detective Ledward testified, while watching the video from the Dollar General, that the first suspect was wearing "a black jacket with white stripes." The Detective then stated, without objection, that State's Exhibit 35, a photograph of a black jacket with white stripes that was taken during the search of Apartment 203, was consistent with what the Detective saw in the video. During cross-examination, Detective Ledward admitted there was no

way to know for sure that the jacket with white stripes in evidence was the same as the jacket in the video. The Detective additionally testified that the second suspect was wearing an all-black jacket that went past the waist, and the third suspect was wearing a black jacket that came to his waist.

Counsel for Graves objected at several points on the ground that the prosecutor was asking leading questions. At one point after the State asked additional questions about what the suspects were wearing, counsel again argued that the prosecutor should not ask leading questions and continued:

> And, in addition, I object. These items are in evidence, so to have the witness point out what is already in evidence, the jury can look at these images and decide what kind of a mask it is and what kind of a jacket it is. So, frankly, to have a witness look at photographs simultaneously with the jury and tell the jury what is being viewed on the screen, I believe, is inappropriate and in itself is leading in the sense that it's telling the jury what they themselves have to decide. These items are in evidence and they speak for themselves.
>
> * * *
>
> The purpose of — no point in having witnesses. The witnesses in this case have introduced these matters into evidence. That was their purpose. They weren't there. They secured the video; the video is new in evidence. It is, in fact, the best evidence that the prosecution has, and, in fact, very strong evidence. So, to have the witness reiterate over and over again what we can see on the video is, I believe, objectionable. I think it's leading. I think it's cumulative.

The court agreed that "[l]eading questions were objectionable" and that defense counsel could "object to how she asks it."

Detective Layden testified that he had watched the surveillance videos for all three robberies. The State asked him if he noticed any similarities between what the suspects in the three videos were wearing. Detective Layden testified, without objection, that the

clothing of two of the suspects in the CVS and Dollar Store robberies was the same. One suspect was wearing a peacoat jacket consistent with State's Exhibit 39 (identified on the State's exhibit list as a black Calvin Klein jacket) found in Apartment 203, and the suspects were wearing ski masks similar to that shown in State's Exhibit 17 (identified on the State's exhibit list as a black mask).[19] Detective Layden testified, without objection, that one suspect in the Subway video was wearing a quilted black jacket and a ski mask, which was similar to the jacket a suspect was wearing in the other videos.

After that testimony, counsel for Graves objected stating, "My objection, Your Honor, is that this evidence is cumulative. All of this evidence had been presented before. It's been testified to before by the witnesses, and here what we have is simply a rehashing." Counsel subsequently stated that Detective Layden's testimony was "entirely based on hearsay," there was "no 602 foundation," it was "cumulative," and the way the case was investigated was not relevant. The judge overruled his objections.

Detective Layden went on to testify that the other suspect in the Subway video was wearing "the black hoodie with the mask and the MTV – with the MTV logo on the front," and that State's Exhibit 37, an MTV hoodie found in Apartment 203, "was the same shirt that was used in [the] Subway robbery." He testified that he noticed similarities in the videos of the three robberies, i.e., that they were stealing money and cash registers.

[19] Sergeant Ebaugh earlier testified that Exhibits 17 and 39 were found in Apartment 203.

Counsel for Graves again objected on "what he noticed or didn't notice and how he developed his investigation."

B.

Preservation

We address first the State's argument that appellant's claim is not preserved for appellate review. This Court ordinarily "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a). Moreover, when particular grounds for an objection are given at trial, "that party will be limited on appeal to a review of those grounds and will be deemed to have waived any ground not stated." *Jones v. State*, 138 Md. App. 178, 218 (2001) (quoting *Leuschner v. State*, 41 Md. App. 423, 436 (1979)), *aff'd*, 379 Md. 704 (2004). *Accord Washington v. State*, 191 Md. App. 48, 91 ("Since appellant raised specific contentions as to why the testimony was inadmissible, which did not include the issue of a possible lapse in time with the trial court, he is foreclosed from raising that issue for the first time on appeal."), *cert. denied*, 415 Md. 43 (2010).

Here, Graves contends the detectives' testimony should have been excluded because it violated Md. Rule 5-701 and invaded the province of the jury. Although counsel for Graves made numerous objections to the detectives' testimony, he never explicitly mentioned the argument asserted on appeal. Instead, he argued that the questions and answers were leading, cumulative, hearsay, or irrelevant. He did say that he was objecting to testimony about what Detective Layden "noticed or didn't notice," from watching the

video, and that the testimony was "telling the jury what they themselves have to decide. These items are in evidence and they speak for themselves." He never specifically stated, however, that the testimony was improper lay opinion testimony that violated Md. Rule-5-701. Appellant's arguments did not sufficiently raise the argument he asserts on appeal, and therefore, the issue is not preserved for appellate review.

Moreover, the Court of Appeals has held that a defendant waives an objection to evidence alleged to be inadmissible where "evidence on the same point was admitted without objection" at other points in the trial. *DeLeon v. State*, 407 Md. 16, 30–31 (2008). Here, although counsel objected at some points to the testimony of the detectives, he did not seek a continuing objection, and the evidence about which he complained was admitted at other points, without objection. For this reason, as well, the issue is not preserved for review. Accordingly, we will not address it.

III.

Sufficiency of the Evidence

Both McQueen and Graves contend that there was insufficient evidence to convict them of crimes relating to one or more of the robberies. We will first address the analysis involved in assessing an insufficiency of the evidence claim, and then we will apply it to the evidence involving each appellant.

A.

Overview

The Court of Appeals has explained the appropriate approach when addressing a challenge to the sufficiency of the evidence to support a criminal conviction:

> In determining whether the evidence is legally sufficient, we examine the record solely to determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McKenzie v. State*, 407 Md. 120, 136 . . . (2008) (citing *Jackson v. Virginia*, 443 U.S. 307, 315–16 . . . (1979)). In examining the record, we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State. *State v. Rendelman*, 404 Md. 500, 513–14 . . . (2008) (citing *Harrison v. State*, 382 Md. 477, 487–88 . . . (2004)); *State v. Suddith*, 379 Md. 425, 429–31 . . . (2004) (citing *State v. Smith*, 374 Md. 527, 533–34 . . . (2003)). In so doing, "[i]t is not our role to retry the case." *Smith v. State*, 415 Md. 174, 185 (2010). Rather, "[b]ecause the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Id*. (citing *Tarray v. State*, 410 Md. 594, 608 . . . (2009)). We defer to any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence. *Smith*, 374 Md. at 557, 823 . . .; *see also State v. Albrecht*, 336 Md. 475, 478 . . . (1994) ("[I]t is not the function or duty of the appellate court to undertake a review of the record that would amount to, in essence, a retrial of the case.").

Fuentes v. State, 454 Md. 296, 307–08 (2017). Circumstantial evidence alone is sufficient to support a conviction as long as it is based on inferences that could convince the trier of fact beyond a reasonable doubt. *Handy v. State*, 175 Md. App. 538, 562 (2007).

B.

McQueen

McQueen contends that there was insufficient evidence to identify him as one of the robbers involved in the Dollar General or Subway robberies. He notes that, with respect to the Dollar General robbery, Ms. Seagle was able to identify only Graves, and no one was identified at the Subway robbery. McQueen asserts there was no evidence of his attachment to Apartment 203, and no evidence of the crime was found at his apartment.[20]

The State contends that the evidence was sufficient to support McQueen's convictions. It notes that McQueen was shown in surveillance footage of the CVS robbery, in which he confessed his involvement, wearing a black quilted puffy coat and ski mask. This coat was similar to the attire worn by one of the robbers in the Dollar General and Subway robberies and to the jacket McQueen was wearing when he was arrested. The robberies were "within walking distance" from McQueen's apartment, and the fruits of the crimes were found in an apartment one floor above his apartment.

We agree with the State. The similar jacket at all three robberies, a short, quilted, black jacket, as well as the fact that McQueen was arrested with this type of jacket and a ski mask on his person, permitted a jury to conclude that McQueen, who admitted to participating in the CVS robbery, was involved in the other robberies, which occurred close to his apartment building and within a short time period. Viewing the evidence in the light

[20] McQueen does not challenge the sufficiency of the evidence to support his convictions relating to the CVS robbery, in which he confessed to participating after he was told that his fingerprint was found at the scene.

most favorable to the State, the evidence was sufficient to support a finding that McQueen committed all three robberies.

C.

Graves

Graves contends that the evidence was insufficient to find him guilty of robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon with respect to the CVS robbery.[21] He asserts that the State did not prove that he was one of the men who robbed the CVS.

The State disagrees. It contends that the evidence was sufficient to support Graves' convictions.

We again agree with the State. An eye-witness to the Dollar General robbery identified Graves as the robber wearing a black peacoat and ski mask. The witness identified Apartment 203 as Graves' apartment, where police found a black peacoat, two ski masks, and cash register drawers. The CVS robbery occurred just twelve hours prior to the Dollar Store robbery, in a nearby neighborhood, and the surveillance video showed a man wearing a similar black peacoat participated in that robbery.[22] Given this evidence, a jury reasonably could infer that Graves was one of the participants in the CVS robbery.

[21] Graves does not challenge the sufficiency of the evidence with respect to the Dollar General robbery.

[22] The surveillance videos are not included in the record, but the parties agree that they show the facts stated herein, which coincides with the detectives' testimony.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.