

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2725

September Term, 2016

JAMES SHAW, JR.

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Graeff,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: February 5, 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.

A jury in the Circuit Court for Baltimore City convicted James Shaw, Jr., appellant, of second-degree murder and use of a handgun in the commission of a felony or crime of violence. He was sentenced to prison for twenty-five years for second-degree murder, and to a consecutive twenty-year suspended sentence for the handgun offense, to be followed by five years supervised probation. On appeal, appellant challenges the sufficiency of the evidence to support his convictions. For the reasons set forth below, we affirm the judgments.

FACTUAL BACKGROUND

On the morning of August 9, 2016, Steven Krug visited his father and asked him for \$400, which he said he needed to pay for travel to New York City for cancer treatment. Although his father suspected that he may have been using the money for something other than its intended purpose, such as purchasing drugs, he gave Mr. Krug the money.

Mr. Krug then drove to the 4700 block of Gwynn Oak Avenue in Baltimore City, where he circled the block in his silver Chrysler 300. Surveillance cameras installed on the exterior of the Shop Rite grocery store on Gwynn Oak Avenue show that at approximately 10:35 a.m., a black male wearing a white T-shirt and brown shorts walked past several businesses on Gwynn Oak Avenue toward an alley between two buildings. Mr. Krug, driving from the opposite direction, reached the entrance of the alley at the same time as the man. The man walked past the vehicle on the passenger side and stepped behind the building, out of the view of cameras, as Mr. Krug pulled his car farther into the alley. After a short wait, the man emerged from behind the building and

made a beckoning hand gesture toward Mr. Krug, who then exited his vehicle and followed the man deeper into the alley.

About this same time, Michael Chaplin was walking into the Shop Rite to purchase groceries when he heard two gunshots and saw a man run out of the alley, turn the corner, and run toward the Wells Fargo Bank. Mr. Chaplin described the man as “my height or maybe taller . . . the complexion was my color, my skin, dark skin,” with a small build. The gunman covered his face with his shirt, and Mr. Chaplin said that the incident happened “so fast, I can’t actually see the person’s face,” however, he noticed that the man had sideburns and a goatee. Five or ten seconds after the man fled on foot, Mr. Chaplin saw Mr. Krug exit the alley and fall forward onto the ground.

Calvin Kelly, Jr. was on the sidewalk in front of the Shop Rite when he heard two gunshots and immediately turned around to see a young man running out of the alley, using his shirt to cover his face. He described the man as “about six foot, six-two, my complexion, maybe a little darker, short low cut hair, I didn’t see his face too good, I only see his side of his face.” He also said that the man had a slim build. Mr. Kelly crossed the street, and when he saw that Mr. Krug was bleeding, he ran in the direction that the other man fled, but was unable to see the direction that he went. Later that day, Mr. Chaplin and Mr. Kelly participated in a photo array at police headquarters, where they both identified appellant, based on his height, build, and facial features, as the man they witnessed running away from the scene.

A crowd gathered as Mr. Krug lay on the ground bleeding, and someone used a towel to apply pressure to his wounds as several others called 9-1-1. He was transported

via ambulance to Sinai Hospital, where he was pronounced dead at 11:38 a.m. After an autopsy, the Office of the Chief Medical Examiner declared his death a homicide caused by two gunshot wounds to the torso.

When shift commander Sergeant Steven Evans arrived on the scene, Baltimore City Police officers had secured the area and were speaking with witnesses. Within fifteen to twenty minutes after the shooting occurred, the suspect description was of a black male wearing a white shirt and dark cargo pants. The description changed, however, when Sergeant Evans received a dispatch that the suspect was a black male, six feet tall, slim build, and wearing a yellow shirt. A short time later, appellant approached Sergeant Evans wearing jeans and a yellow polo shirt and asked him “what’s up?” Since appellant was wearing a solid yellow shirt that matched the suspect description he had just received, Sergeant Evans told appellant to sit on the curb and to provide his name and identification. After he noticed that appellant had red stains on his pants that looked like blood, Sergeant Evans asked appellant for his address so that he could send officers to secure his house for a search warrant, however, the four or five addresses appellant provided were false.¹ Later that day, a search warrant was executed on the residence appellant shared with his girlfriend, Brooke Gregory, and one unfired .380 PMC Auto bullet was recovered from the top drawer of the bedroom dresser

Appellant was transported to the police station for an interview, and after being advised of his *Miranda* rights, he agreed to give a recorded statement. He told Detective

¹ Appellant informed Sergeant Evans and Detective Corriveau that he worked in maintenance and that the stains were red paint.

Todd Corriveau that he sometimes stayed with Ms. Gregory at her home located in the 3600 block of Gwynn Oak Avenue. He said that when he woke up that morning, he went outside to smoke a cigarette, and then walked along Gwynn Oak Avenue wearing “dirty brown” colored shorts and a white tank top. He purchased a Heineken and then walked down Gwynn Oak Avenue toward an alley, where “everyone goes to use the bathroom,” when he noticed a silver Chrysler 300 pull into the alley. He told Detective Corriveau that he walked behind the car and was crossing the alley when he heard three or four loud bangs. Appellant said he was unsure whether the bangs were gunshots, however, he ran through the alley when he heard the noise because it took him directly to his girlfriend’s house.

At trial, the State introduced the video of appellant’s custodial interview, surveillance camera footage from the Shop Rite and other surrounding businesses, recordings of his jail telephone calls,² and testimony from Mr. Chaplin and Mr. Kelly, who both identified appellant as the person they saw running from the alley and down Gwynn Oak Avenue. The State also examined Christopher Favre, a firearms expert who concluded that the unfired .380 cartridge recovered from the dresser drawer appellant shared with Ms. Gregory was consistent with the two shell casings recovered in the alley.

² Pertinent excerpts of appellant’s jail telephone calls include an exchange where he responded “[a]ll right” and “I don’t even know how many bullets was in the house” when a friend told him that police recovered a bullet from Ms. Gregory’s house. During another call, appellant informed his friend that he planned to blame Ms. Gregory for the bullet, stating “That shit was hers. I’m just gonna say it’s hers.”

DISCUSSION

Appellant contends that the evidence was insufficient to sustain his convictions because the “weak eyewitness identifications and circumstantial evidence” introduced by the State failed to establish his identity as the gunman. The State responds that there was enough evidence, in addition to the two eyewitness identifications, to convict appellant in the shooting death of Mr. Krug. We agree with the State that there was sufficient evidence to support the guilty verdicts.

The standard of review for determining whether sufficient evidence exists to support a conviction on appeal is “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.” *Hobby v. State*, 436 Md. 526, 538 (2014) (emphasis in original) (citation and internal quotation marks omitted). Our concern is not whether the verdict is in accord with what appears to be the weight of the evidence, “but rather is only with whether the verdicts were supported with sufficient evidence – that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.” *State v. Albrecht*, 336 Md. 475, 479 (1994). In applying this standard, “[w]e recognize that the finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation, and we therefore defer to any possible reasonable inferences the trier of fact could have drawn from the admitted evidence.” *Hobby*, 436 Md. at 538 (quoting *Titus v.*

State, 423 Md. 548, 557-58 (2011)). Circumstantial evidence on its own is sufficient to sustain a conviction if there is enough to support a finding of guilt:

Circumstantial evidence is sufficient to sustain a conviction, but not if that evidence amounts only to strong suspicion or mere probability. Although circumstantial evidence alone is sufficient to sustain a conviction, the inferences made from circumstantial evidence must rest upon more than mere speculation or conjecture.

Corbin v. State, 428 Md. 488, 514 (2012) (citing *Smith v. State*, 415 Md. 174, 185, (2010)).

Here, the State presented eyewitness accounts from Mr. Chaplin and Mr. Kelly, who both described the height, build, complexion, and facial hair of the man they saw running from the alley on Gwynne Oak Avenue after hearing two gunshots. Although both men testified that they could not see the gunman’s entire face, provided that the jury found their identifications credible, then that evidence alone was sufficient to support appellant’s convictions. However, the State also introduced circumstantial evidence from which the jury could reasonably infer that appellant was the individual who shot and killed Mr. Krug. The video recording of appellant’s custodial interview was introduced during the State’s case-in-chief, during which he acknowledged that he was “walking around” on Gwynn Oak Avenue at the approximate time that the shooting occurred, and that he was wearing a white shirt and brown shorts. Although he insisted that he was wearing a tank top rather than a T-shirt, appellant also admitted that he was in the alley when he saw the silver Chrysler 300, and that he ran through the alley when he heard the “three or four loud bangs.” These disclosures are corroborated by surveillance camera footage from several vantage points that show only one person walking on Gwynn Oak

Avenue and into the alley wearing clothing that fits this description at the time Mr. Krug arrived at the scene in his car and was shot moments later.

In addition to introducing evidence that the unfired .380 bullet found in the dresser drawer appellant shared with Ms. Gregory was the same caliber ammunition as the shell casings found in the alley, the State also examined Ms. Gregory at trial. She testified that the bullet found in the dresser drawer she shared with appellant did not belong to her, that she had not previously noticed the bullet in the drawer, and that she had no record of seeing other bullets in the house.

Viewing the evidence in the light most favorable to the prosecution and giving deference to the findings of the jury, we conclude that the evidence provided a sufficient basis for a reasonable jury to conclude that appellant was the gunman. Accordingly, we affirm appellant's convictions for second-degree murder and use of a handgun in the commission of a felony or crime of violence.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**