

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2447

September Term, 2013

LAQUESHA LEWIS

v.

STATE OF MARYLAND

Zarnoch,
Wright,
Arthur,

JJ.

Opinion by Zarnoch, J.

Filed: June 25, 2015

*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 Laquesha Lewis was convicted in the Circuit Court for Baltimore County of first degree murder, conspiracy to commit first degree murder, and a related firearm charge. Lewis asks this Court to reverse the judgment of the circuit court, arguing that there was insufficient evidence to support her convictions. For the reasons stated below, we disagree and affirm her convictions.

FACTS AND LEGAL PROCEEDINGS¹

The shooting occurred on February 18, 2013 at around 11:45 p.m. Robert Holiday, Levar Young, and Shyteirra Deas were standing at a bus stop near Eastern Avenue in Baltimore County when someone fired shots from behind the bus stop. Young and Deas survived the shooting, but Holiday was killed. The police investigation determined that Mikal Martin and Michael Martin were the shooters.

Earlier in the evening, around 9 p.m., Holiday, Young, and Rabee Boynes visited Lewis at her home. Holiday and Lewis had been in a prior romantic relationship and had one child together. Holiday wanted to take the couple's daughter for the night but Lewis resisted. The two got into a verbal argument, which turned physical when Holiday attempted to choke Lewis. Young and Boynes were able to break up the fight and the three left Lewis' house. As the three men were leaving, Lewis overheard Holiday state that she was "dead to him." In response, she then sent a text message to Holiday that read

¹ The facts provided herein were taken from appellant's brief and the transcripts of the trial proceedings in the record. The State agreed to the appellant's statement of facts, subject to some modifications.

“U dead” and a follow-up text a couple of minutes later asking him to call her when he calmed down.

After leaving Lewis’ residence, Holiday, Young and Boynes went to Holiday’s mother’s home before they met up with Deas and some other women at Benchwarmers, a local bar. After spending part of the night at the bar, the parties met at a Royal Farms to get some food. At the end of the evening around 11 p.m., Deas needed to catch a bus back to Essex. Holiday and Young agreed to go with Deas to a bus stop and wait until she caught the bus. The three missed the bus at the first stop so they moved to a bus stop across from Geresbeck’s Grocery Store. During this time frame, Holiday was on his phone constantly.

Early in the morning on February 19, 2013, detectives spoke with Holiday’s mother, Sherrie Hicks, regarding her interactions with her son the previous day. She corroborated the story about Holiday’s and Lewis’ argument about their child and the two text messages Holiday had received from Lewis. Continuing their investigation, detectives went to see Lewis at her home. She agreed to speak with them and allowed them access to her cell phone. Lewis’ phone was a free phone provided through a government assistance program and had limited storage capacity. Lewis explained to the detectives that the “U Dead” text meant that Holiday was “emotionally dead – not literally dead.” At this time, detectives did not seize Lewis’ phone or record any of the texts messages between Lewis and Michael Martin, whose number was not saved as a contact in her phone.

After receiving the phone records of Lewis, Holiday and Michael Martin, detectives determined that there was a series of phone calls and text messages between Lewis and Holiday throughout the night of February 18, 2013. The telephone records showed that

these conversations started at 9:18 p.m., after Holiday left Lewis' residence. At 11:04 p.m., in response to a text message from Holiday, Lewis called him from her landline. The two had a forty minute conversation. Lewis explained to detectives that she and Holiday argued, but began to cool off by the end of the phone call. During this conversation, Holiday recounted to Lewis his whereabouts and that he had missed the first bus.

At the same time, Lewis also had a text message conversation with Michael Martin. Michael Martin and Lewis had been in a romantic relationship while Holiday had been incarcerated. During an interview with detectives, Lewis recounted an incident between the three of them at a liquor store, where Holiday confronted her about her relationship with Michael Martin. The text messages between Lewis and Michael Martin started at about 10:05 p.m. Lewis initially told the police that these text messages occurred on Sunday February 17, but she changed her story once detectives showed her the phone records. Forty-four text messages were exchanged between the two the night of February 18 and into the morning of February 19. Twenty-eight of these text messages were exchanged after the time that Holiday had been shot, when Lewis claimed she had fallen asleep. Using location data from cell towers, detectives were able to determine that Michael Martin's phone was within 100 yards of the bus stop at the time Holiday was shot.

Further investigation uncovered evidence that tied Mikal Martin and Michael Martin to the shooting. This evidence included testimony from Chad Martinez who observed a Pontiac G6, rented by Langston Hughes and Mikal Martin, leaving the scene of the shooting, testimony about the two handguns that Mikal Martin carried, and the cell-phone records of all involved parties. The police obtained and executed a search warrant

for 2325 Barclay Place and 5 Holcomb Court, properties associated with Mikal Martin and Michael Martin. The search recovered .40 caliber rounds in both residences and ballistic testing matched the bullets to the casings found at the scene of the shooting. After completing the investigation, Lewis, Mikal Martin and Michael Martin were arrested on March 14, 2013. Lewis was charged by way of a nine-count indictment.

On October 22, 2013, Lewis was tried before a jury in the circuit court. At the close of the State's case and at the close of all evidence, Lewis made Motions for Judgment of Acquittal, both of which were denied by the court. On October 30, 2013, Lewis was convicted of first degree murder, use of a firearm in the commission of a crime of violence, and conspiracy to commit first degree murder. The remaining six counts were *nolle prosequed* prior to jury deliberations. On October 31, 2013, Lewis filed a Motion for a New Trial. The State answered on November 7, 2013.

On January 17, 2014, in a hearing before the circuit court, Lewis' motion for a new trial was denied and she was sentenced to two concurrent life sentences for first-degree murder and conspiracy to commit first-degree murder as well as a concurrent twenty-year sentence for the firearm charge. On the same day, Lewis filed her appeal to this Court. Additional facts will be addressed as necessary in our discussion.

QUESTION PRESENTED²

Appellant presents one question for our review, which we rephrased as follows:

Was there sufficient evidence for a jury to convict Lewis of first degree murder, conspiracy to commit first degree murder, and use of a handgun in the commission of a crime of violence?

We agree with the circuit court and affirm.

DISCUSSION

Lewis was convicted of first degree murder, conspiracy to commit first degree murder, and use of a handgun in the commission of a crime of violence under the theory that she aided and abetted Michael Martin and Mikal Martin in the murder of Holiday. Lewis contends that the evidence to convict her of these crimes was insufficient because it “required the jury to engage in impermissible speculation and conjecture in order to reach [a] guilty verdict.” The State responds that the extensive circumstantial evidence presented at trial was sufficient for the jury to make a reasonable inference that Lewis was guilty as an aider and abettor to the murder of Holiday and in a conspiracy with Michael Martin to commit the murder.

For a sufficiency of the evidence claim, we must examine the evidence and the elements of each crime charged to determine if there was sufficient evidence to support a conviction. When reviewing the sufficiency of the evidence, we follow the standard set forth by the Supreme Court in *Jackson v. Virginia*, 443 U.S. 307 (1979). We view “the

² Appellant’s original question to this Court was: “Whether the evidence is insufficient to sustain appellant’s convictions for first degree murder, conspiracy to commit first degree murder, and use of a handgun in the commission of a crime of violence?”

evidence in the light most favorable to the prosecution [and determine if a reasonable jury] could have found the essential elements of the crime beyond a reasonable doubt.” *Hobby v. State*, 436 Md. 526, 537-38 (2014) (citing *Jackson*, 443 U.S. at 319). Under this standard, we do not retry the case:

[B]ecause the finder of fact has 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. We 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 . . .

Id. at 538 (Citations omitted).

On review, “our concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.” *Taylor v. State*, 346 Md. 452, 457 (1997). When a case involves only circumstantial evidence, the inferences made by the fact finder “must rest upon more than mere speculation or conjecture.” *Id.* at 458 (Citations omitted). Circumstantial evidence may support a conviction if it “afford[s] the basis for an inference of guilt beyond a reasonable doubt.” *Id.* Therefore, “[t]o overturn a judgment entered on the verdict of a jury for insufficiency of the evidence, it is necessary to show that there was no legally sufficient evidence, or inferences drawable therefrom, from which the jury could find the accused guilty beyond a reasonable doubt.” *Boddie v. State*, 6 Md. App. 523, 535 (1969).

I. Evidence of Conspiracy to Commit First-Degree Murder

The Court of Appeals has articulated that a criminal conspiracy “consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means.” *Carroll v. State*, 428 Md. 679, 696-97 (2012). The State is not required to prove the existence of a formal agreement, but must prove beyond a reasonable doubt that an agreement was formed between the parties. *Id.* Circumstantial evidence can be used to prove a conspiracy if the evidence creates an inference that a “common design” existed. *Alston v. State*, 177 Md. App. 1, 42 (2007). The “concurrence of actions by the co-conspirators on a material point is sufficient to allow the jury to presume a concurrence of sentiment and, therefore, the existence of a conspiracy.” *Acquah v. State*, 113 Md. App. 29, 50 (1996).

To prove that Lewis was involved in a conspiracy to commit first degree murder with Michael Martin, the State had to prove beyond a reasonable doubt that an agreement was formed. This did not require evidence of an overt act. *See Carroll*, 428 Md. at 697 (Citation omitted). There was significant evidence presented to the jury to show that Michael Martin and Mikal Martin were the triggermen, and Lewis does not challenge this point. Sergeant Ensor, an expert in the field of ballistics testing, firearms, and tool mark identification, testified at trial that he was “able to determine [that the eight fired cartridges] were fired in one particular firearm to the exclusion of all others” and that the loaded cartridge recovered from Mikal Martin’s residence matched the casings found at the crime scene.

Chad Martinez, a witness for the State, testified that after hearing gunshots, he went outside and saw a Pontiac G-6 without its headlights on speeding away from the scene of the crime. The Pontiac G-6 in question was later determined to be the car rented for Mikal Martin by Langston Hughes. Hughes testified that he rented the car for Mikal because Mikal did not have a driver's license. Rebecca Romero corroborated the statements about the Pontiac G-6 and spoke about the two handguns she saw in the black backpack regularly carried by Mikal Martin. This extensive evidence tying Mikal Martin and Michael Martin to the murder could reasonably have led the jury to believe that Michael Martin was involved in Holiday's murder.

Therefore, since the case against Lewis was premised on circumstantial evidence, the jury was asked to infer that Lewis conspired with Michael Martin to murder Holiday by relaying Holiday's whereabouts to Michael Martin to allow him to commit the murder. The State then presented evidence to show that they were acting in concert. Lewis had been angry at Holiday for his behavior earlier in the evening when he attempted to take their daughter. She sent him a text out of anger, which stated "U dead." While the text message may have meant "dead to me" in an emotional sense, it still conveyed her feelings of animosity towards the victim. During her conversation with Holiday that started at 11:01 p.m., Lewis was also in constant contact with Michael Martin while Holiday relayed to Lewis his whereabouts and his movements.

During trial, testimony was presented which showed that Holiday, Deas and Young were not moving along a predictable route. Evidence showed that they missed a bus, went to a liquor store and ultimately ended up at the bus stop in front of Geresbeck's Grocery

Store. The jury could reasonably infer that Michael Martin and Mikal Martin would not have known that Holiday, Deas and Young missed the first bus and were headed to another stop without assistance from Lewis. This evidence was corroborated by the State with evidence of the location and movement of Michael Martin’s cell phone. The records indicated that Michael Martin was initially located at the first bus stop and that he moved to the scene of the murder, while he was texting Lewis.

Cell phone records and location data have been judicially accepted in Maryland as reputable forms of evidence to show an individual’s location at a given time. *See Wilder v. State*, 191 Md. App. 319, 367-68 (2010). Courts require that a party “offer expert testimony to explain the functions of cell phone towers, derivative tracking, and the techniques of locating and/or plotting the origins of cell phone calls using cell phone records.” *Id.* at 365. Here, the State presented evidence from Detective Charles Gruss, who assisted in the investigation and who was accepted at trial as an expert witness in the “technique of locating and/or plotting the origins of cell phone calls using cell phone records and the analysis of cell phone records.” Detective Gruss was able to map together the movement of Michael Martin’s cell phone using PennLink software:

Q And Detective, when investigating the murder of Robert Holiday, what was the significance of these locations on the map?

A There are the contacts of Michael Martin’s phone when in contact with the whereabouts or the location of that device when it was in contact with Laquesha Lewis.

Q And what is the significance of that in reference to the location of the victim?

A The phone traveling, it depicts farther away from the stop, up here at the top it was by the bus stop at Martin Boulevard, and then it's roughly 100 yards from the bus stop on Eastern Boulevard at the time of the murder where Robert Holiday and the two other victims were located.

Q And then were after that?

A And then it goes away from there. It moves away from the scene of the location of the murder.

Lewis gave conflicting details in the three interviews conducted by detectives. In one of the taped interviews, shown to the jury, her story changed when detectives confronted her with its inconsistencies. A reasonable jury could infer that these changes were evidence of Lewis' guilt. Of significant importance was her explanation of her relationship with Michael Martin as well as her activities on the evening of the murder. She was not forthcoming about her previous romantic relationship with Michael Martin, who she first stated was only her drug dealer. Lewis stated that she went to bed after hanging up on Holiday, but her cell phone records indicated that she continued to text Michael Martin throughout the night and into the early morning hours. Detective Anderson testified at trial that

[a]t the same time that she was having this 40-minute conversation with Mr. Holiday leading up to the murder, she was texting this other number. I believe it was 44 times. I believe it was 19 texts prior to the murder and something like 22 texts following the murder so it became very important.

The jury could reasonably infer from these contradicting statements that Lewis was not being truthful about her lack of involvement in Holiday's murder.

Additionally, Michael Martin and Lewis destroyed the strongest piece of evidence that would undermine the inference that Lewis conspired with Michael Martin to murder

Holiday: the content of their text messages. The circuit court provided the jury with a spoliation or missing evidence instruction:

You have heard that the Defendant, Miss Lewis, deleted evidence in this case. Concealment or destruction of evidence is not enough by itself to establish guilt, but may be considered as evidence of guilt. Concealment or destruction of evidence may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether the Defendant, Miss Lewis, deleted evidence in this case. If you find that the Defendant destroyed evidence in this case, then you must decide whether that conduct shows a consciousness of guilt.

Missing evidence instructions are “designed to draw a jury’s attention to a simple, straightforward premise: that one does not ordinarily withhold evidence that is beneficial to one’s case.” *Cost v. State*, 417 Md. 360, 370 (2010) (Quotation omitted) (citing *Anderson v. Litzenberg*, 115 Md. App. 549, 562 (1997)). The significance of the destruction of evidence has been explained as follows:

It has always been understood—the inference, indeed, is one of the simplest in human experience—that a party’s falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause’s lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.

Cost, 417 Md. at 371-72 (citing 2 John Henry Wigmore, *Evidence in Trials at Common Law* § 278 (Chadbourn rev.1979)). When this type of instruction is given, it “does not require that a jury make an adverse inference in situations involving the spoliation of evidence; rather, it merely permits such an inference.” *Id.* Here, this instruction did not create a presumption that Lewis deleted these texts to hide incriminating evidence. The

instruction from the circuit court merely informed the jury of the potential implications that deleting evidence could have in this particular case, but left the fact-finding up to the jury.

As a result, the text messages between Michael Martin and Lewis that were exchanged during the 11:01 p.m. phone call Lewis had with Holiday are not in evidence because the messages had been deleted by both Michael Martin and Lewis. By deleting these messages, the jury could reasonably infer that the contents of the messages were incriminating. It appears to this Court, based on the “concurrence of actions” between Lewis and Michael Martin that the evidence was sufficient for a reasonable jury to make the inference that a conspiracy existed and that Lewis conspired to have Holiday murdered.

II. First Degree Murder and Firearm Convictions

It is generally recognized “that where the existence of a conspiracy is established, the law imposes upon a conspirator full responsibility for the logical and natural consequences of acts committed by his [or her] fellow conspirators if such acts are done in pursuance of the common design or purpose of the conspiracy.” *Grandison v. State*, 305 Md. 685, 703 (1986). This responsibility “attaches even though the conspirator was not physically present when the acts were committed by his fellow conspirators and would extend even to a homicide which is a contingency of a natural execution of the conspiracy, even though such homicide is not specifically contemplated by the parties.” *Id.*

Under Maryland law, “one who encourages, aids, abets, or assists the active perpetrator in the commission of the offense, is a guilty participant, and in the eye of the law is equally culpable with the one who does the act.” *Id.* “[C]riminal accountability extends to the proximate, natural and logical consequences of the conspiracy.” *Id.* at 704

(Citation omitted). Therefore, because the State's evidence was sufficient to sustain Lewis' conviction for conspiracy to commit first degree murder, the law "looks upon such a conspirator as an actual participant in the contemplated offense." *Id.* Here, the contemplated offense was the murder of Holiday, which was carried out by Michael Martin and Mikal Martin. Under this theory of conspiratorial liability, Lewis' other two convictions for first degree murder and the use of a firearm in the commission of a crime of violence would survive as well.

For the foregoing reasons, we agree that there was sufficient evidence to support Lewis' convictions.

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