Circuit Court for Talbot County
Case No. C-20-CR-18-000185

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 519

September Term, 2019

DIONYSUS RODNELL BUTLER, JR.

v.

STATE OF MARYLAND

Fader, C.J.,
Berger,
James A. Kenney III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: July 27, 2020

*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 sitting in the Circuit Court for Talbot County convicted Dionysus Rodnell Butler, Jr., the appellant, of multiple offenses arising from a fatal shooting. Mr. Butler argues that the evidence was legally insufficient to convict him of (1) conspiracy to commit armed robbery, (2) armed robbery, (3) felony murder, and (4) use of a firearm in the commission of a felony. Because Mr. Butler did not state with particularity the grounds for his motion before the trial court, he has failed to preserve his challenges on appeal. Even if Mr. Butler's arguments were properly preserved, we nonetheless would find them without merit. We will therefore affirm the convictions.

BACKGROUND[1]

The State's theory of prosecution was that Mr. Butler and a group of co-conspirators arranged to meet the victim, Jorian Edwards, under the pretense of selling him a gun, but intended to rob him instead. During the ensuing encounter, Mr. Edwards was shot and killed. The State elicited the following evidence at trial during its case-in-chief:

- On the evening of July 23, 2018, Nicholas Goldstein, picked up Mr. Butler, Jawuan Blake, and Terrence Conway at the Walmart in Easton.[2] Mr. Butler was carrying a handgun.
- Messrs. Butler, Blake, and Conway met with Mr. Edwards to buy marijuana. During that interaction, Mr. Edwards "wanted to buy a gun" from the men, but "it didn't happen then."
- After Messrs. Butler, Blake, and Conway returned to Mr. Goldstein's vehicle, Mr. Butler said: "[T]he boy wanted to buy my gun, we can call him and see if

[1] Our recitation of the facts is based on the evidence presented at trial, "including all reasonable inferences to be drawn therefrom," "view[ed] . . . in the light most favorable to the State." *Fuentes v. State*, 454 Md. 296, 307 (2017).

[2] Mr. Goldstein was driving a white Toyota Camry. An asset protection manager for the Easton Walmart testified that a white Toyota Camry was in the store's parking lot on the day in question, and the State played video footage of the lot on that day for the jury.

he still wants to buy it but we're not really going to sell it to him we're just going to take his money."

- Mr. Butler used Mr. Blake's cell phone to call Mr. Edwards twice, both times over speakerphone, to ask if Mr. Edwards still wanted to purchase a gun. The first time, Mr. Edwards declined. The second time, when Mr. Butler offered to sell the gun at a lower price, Mr. Edwards accepted. The agreed price was $300.

- At approximately 8:00 to 8:30 p.m., the men arrived near the entrance of the Rails-to-Trails[3] in Easton, where they had arranged to meet Mr. Edwards.[4]

- Messrs. Butler, Blake, and Conway exited the car and began walking up the trail. Mr. Goldstein did not accompany the other men and could not see them once they walked up the trail, but recalled that they were gone "for a couple minutes" before he heard two gunshots.

- Messrs. Blake and Conway ran back toward the car, followed by Mr. Butler.

- At the time he heard the second gunshot, Mr. Goldstein could see Mr. Blake and observed that he was not carrying a gun.

- All four men entered the car and drove away. As they were leaving, Mr. Butler, who was carrying a gun, told the men that "he's not stashing the gun, he's keeping it on him."

- Residents in the area called police after hearing the gunshots. When the police officers arrived, they found Mr. Edwards lying face down on the trail with a single gunshot wound in his lower back. Paramedics transported Mr. Edwards to the hospital, where he later died.

- Police officers also found at the scene a 9mm Luger shell casing and $300 in cash "[m]aybe five feet" away from Mr. Edwards's body.

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[3] The Easton Rails-to-Trails is a public trail that runs for two-and-a-half miles through downtown Easton. TrailLink, *Easton Rails-to-Trails Description*, https://www.traillink.com/trail/easton-rails-to-trails/ (last accessed July 24, 2020). The trail occupies part of the route of the former Baltimore, Chesapeake and Atlantic Railway, which ran from Baltimore through Easton to Ocean City. *See id.*

[4] Mr. Goldstein provided this information, which was corroborated in part by two area residents. One resident testified that she saw four individuals enter the area "between 8:00 and 8:30," heard two gunshots shortly after 8:30, and then saw two men running away from the trail. The other resident testified that he heard two gunshots coming from the trail, which occurred "three to five seconds apart," at approximately 8:30.

- Approximately two weeks before the shooting, Mr. Butler purchased 9mm ammunition from the Easton Walmart. The State played for the jury security footage showing the purchase.

- During a search of Mr. Butler's home, police officers found a box of 9mm Luger ammunition with 12 rounds missing.

- During an interview of Mr. Butler conducted at the police station, a video recording of which the State played for the jury, Mr. Butler initially stated that Mr. Blake shot Mr. Edwards. Later in the same interview, Mr. Butler stated that he (Mr. Butler) had accidentally shot Mr. Edwards when the gun "just went off" as he was loading a clip into it.

At the close of the State's case, Mr. Butler moved for judgment of acquittal as to all counts. He argued, in full:

> Your Honor, I'm going to make motions for judgement of acquittal as to the counts in this case. Specifically, Your Honor, count one charges murder in the first degree, the willful, deliberate and premeditated variety. I think that even in the light most favorable to the State at this point the State has not produced evidence of premeditation. Any evidence from which a jury could find that there was a premeditated intent to kill. I think even in the statement that has been admitted that it was said by the Defendant in the statement that it was a quote, an accident. That there was no intention to hurt or harm anyone. Based on that, Your Honor, I am moving for judgement of acquittal as to the count of murder in the first degree. As to the felony murder count, Your Honor, I am alleging that there has been insufficient proof of a robbery that would constitute the underlying felony for the felony murder. As to the rest of the counts, Your Honor, I would, I would just say as to the conspiracy counts, Your Honor, there really, don't believe the State has made a prima facie case of any agreement between anyone to accomplish these acts. I'll submit on the other counts, Your Honor.

The trial court denied the motion.[5]

Mr. Butler then testified in his own defense. He testified that he had no prior knowledge of any plan to rob Mr. Edwards; that Mr. Blake shot Mr. Edwards; and that Mr.

[5] The jury found Mr. Butler not guilty of premeditated murder. As a result, that charge is not at issue in this appeal.

Butler "ran off" after the shooting and left in the car. Mr. Butler testified that his contrary statements during the interview at the police station were untrue, and that he had lied to "get [the interview] over with" by "tell[ing] [the detective] what she wanted to hear."

At the close of all the evidence, Mr. Butler's counsel renewed his motion for judgment of acquittal. He did not make any additional argument, but instead relied on the arguments he had made previously. The trial court denied the renewed motion, deeming the evidence "adequate" to submit the case to the jury.

The jury found Mr. Butler guilty of felony murder, armed robbery, conspiracy to commit armed robbery, use of a firearm in the commission of a felony, and other related offenses that are not at issue on appeal. This timely appeal followed.

DISCUSSION

In reviewing a trial court's decision to deny a motion for judgment of acquittal, "appellate review is limited." *State v. Payton*, 461 Md. 540, 557 (2018). "The reviewing court 'merely ascertains whether there is any relevant evidence, properly before the jury, legally sufficient to sustain a conviction.'" *Id.* (quoting *Morgan v. State*, 134 Md. App. 113, 126 (2000)). This Court "review[s] the sufficiency of the evidence, but . . . does not . . . 'measure the weight of the evidence to ascertain whether the State has proved its case beyond a reasonable doubt.'" *Morgan*, 134 Md. App. at 126 (quoting *State v. Devers*, 260 Md. 360, 371 (1971), *overruled on other grounds by In re Petition for Writ of Prohibition*, 312 Md. 280 (1986)).

I. Mr. Butler's Motion for Judgment of Acquittal Failed to Preserve His Challenge to the Legal Sufficiency of the Evidence.

Mr. Butler argues that the trial court erred in denying his motion for judgment of acquittal because the evidence was not sufficient to convict him of (1) conspiracy to commit armed robbery, (2) felony murder, (3) armed robbery, and (4) use of a firearm in the commission of a felony. The State asserts that Mr. Butler's motion failed to preserve his challenges. We agree.

A motion for judgment of acquittal made at the close of all the evidence is a prerequisite to a claim of evidentiary insufficiency on appeal. *Haile v. State*, 431 Md. 448, 464 (2013) (citing Md. Code Ann., Crim. Proc. § 6-104 (2001 Repl.) and Md. Rule 4-324). Rule 4-324(a) provides, in pertinent part, that "[a] defendant may move for judgment of acquittal . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted."

Because "[t]he language of [Rule 4-324(a)] is mandatory," *Wallace v. State*, 237 Md. App. 415, 432 (2018) (quoting *State v. Lyles*, 308 Md. 129, 135 (1986)), "a defendant must 'argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient,'" *Arthur v. State*, 420 Md. 512, 522 (2011) (quoting *Starr v. State*, 405 Md. 293, 303 (2008)). "Rule 4-324(a) is not satisfied by merely reciting a conclusory statement and proclaiming that the State failed to prove its case." *Arthur*, 420 Md. at 524. "Accordingly, a defendant 'is not entitled to

appellate review of reasons stated for the first time on appeal.'" *Id.* at 523 (quoting *Starr*, 405 Md. at 302).

If a defendant moves unsuccessfully for judgment of acquittal at the close of the State's evidence and proceeds to offer evidence on his own behalf, the initial motion is deemed to have been withdrawn. Md. Rule 4-324(c); *Warfield v. State*, 315 Md. 474, 483 (1989). Thereafter, "a defendant is required to renew a motion for judgment of acquittal at the close of all the evidence or to argue anew why the evidence is insufficient to support a particular conviction." *Hobby v. State*, 436 Md. 526, 540 (2014). Unless requested by the court, a renewed motion for judgment of acquittal need not restate the reasons identified in a prior motion that is incorporated by reference, because "the reasons supporting the motion are [already] before the trial judge." *Id.* (quoting *Warfield*, 315 Md. at 487-88).

For purposes of assessing the State's preservation argument, only Mr. Butler's renewed motion for judgment of acquittal is before us. Because that renewed motion merely incorporated by reference the reasons stated in his motion for judgment of acquittal at the close of the State's case, however, we must consider those earlier-stated reasons. Mr. Butler's entire argument as to felony murder and armed robbery was:

> I am alleging that there has been insufficient proof of a robbery that would constitute the underlying felony for the felony murder.

Regarding the conspiracy charge, his entire argument was:

> [T]here really, [I] don't believe the State has made a prima facie case of any agreement between anyone to accomplish these acts.

Mr. Butler did not offer any argument regarding the remaining charges, instead stating only that he "submit[ted] on the other counts." Mr. Butler did not expand upon these statements,

or provide any additional reasons, when he renewed his motion for judgment of acquittal at the conclusion of all the evidence.

Mr. Butler's statement of reasons offered in support of his motion for judgment of acquittal was inadequate to preserve his current challenge to the sufficiency of the evidence. Mr. Butler's reasons were merely conclusory statements that the State had not proved its case, with no discussion of the evidence presented and no explanation of why he believed it to be deficient. This amounted to "a generic motion for acquittal," which "will not suffice" to preserve the issue of evidentiary sufficiency. *See Wallace*, 237 Md. App. at 432; *see also, e.g.*, *Hobby*, 436 Md. at 541-42 (sufficiency challenge not preserved where motion for judgment of acquittal "failed to argue with specificity" how the State's evidence was inadequate); *Arthur*, 420 Md. at 524 (motion for judgment of acquittal "lacked the depth necessary to preserve the issue" for appeal, where trial counsel "did not explain why" the State's case was deficient); *Wallace*, 237 Md. App. at 433-34 (conclusory statement that an acquittal was warranted because of a "large argument over [a] jury instruction" failed to satisfy Rule 4-324(a)'s particularity requirement).

"When ruling on a motion for judgment of acquittal, the trial court is not required to imagine all reasonable offshoots of the argument actually presented." *Starr*, 405 Md. at 304. Here, in arguing that the State had not made a prima facie case of an agreement to rob Mr. Edwards and had not proven a robbery, Mr. Butler's conclusory statements failed even to acknowledge any of the State's evidence, much less to explain why that evidence was insufficient to sustain convictions. For example, he did not confront the State's evidence that he had announced his intent to take Mr. Edwards's money to the others; that

the group subsequently acted in concert in traveling together and meeting Mr. Edwards in the spot where the shooting occurred; that $300 was found on the ground near Mr. Edwards's body; or that Mr. Butler had a gun with him before, during, and after the encounter with Mr. Edwards. Mr. Butler did not mention any of that evidence, let alone "argue precisely" why it would not suffice to prove the offenses with which he was charged. *See id.* at 303 (quoting *McIntyre v. State*, 168 Md. App. 504, 527 (2006)). Mr. Butler therefore failed to preserve the issue of evidentiary sufficiency for appeal.

II. EVEN IF PRESERVED, LEGALLY SUFFICIENT EVIDENCE SUPPORTED MR. BUTLER'S CONVICTIONS.

Even had Mr. Butler preserved his legal sufficiency challenge, we would conclude that the evidence was sufficient to support his convictions. The standard of review for evidentiary sufficiency 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." *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "Where it is reasonable for a trier of fact to make an inference, . . . the question 'is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [the trier of fact] did make was supported by the evidence.'" *State v. Suddith*, 379 Md. 425, 447 (2004) (quoting *State v. Smith*, 374 Md. 527, 557 (2003)). "[W]e do not distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence." *Montgomery v. State*, 206 Md. App. 357, 385 (2012) (quoting

Morris v. State, 192 Md. App. 1, 31 (2010)). Furthermore, "[i]t is not our role to retry the case," to "re-weigh the credibility of witnesses," or to "attempt to resolve any conflicts in the evidence." *Smith v. State*, 415 Md. 174, 185 (2010).

A. The Evidence Was Sufficient for the Jury to Convict Mr. Butler of Conspiracy to Commit Armed Robbery.

Mr. Butler contends that the evidence was insufficient to convict him of conspiracy to commit armed robbery because the State did not adduce any evidence of an agreement between him and any of the other men. We disagree.

Criminal conspiracy, a common law crime, "consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Khalifa v. State*, 382 Md. 400, 436 (2004) (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). "The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Id.* "The gist of conspiracy is the unlawful agreement," and "no overt act in furtherance of the agreement is necessary." *Monoker v. State*, 321 Md. 214, 221 (1990).

"There is frequently no direct testimony, from either a co-conspirator or other witness, as to . . . an express agreement to carry out a crime." *Jones v. State*, 132 Md. App. 657, 660 (2000). Therefore, "we may infer the existence of a conspiracy from circumstantial evidence." *Id.*; *see also Seidman v. State*, 230 Md. 305, 322 (1962) ("A conspiracy may be shown by circumstantial evidence from which an inference of a common design may be drawn and it is not necessary to demonstrate that the conspirators met and agreed in terms to a design . . . ."). "If two or more persons act in what appears to

be a concerted way," then—mindful that "[c]oordinated action is seldom a random occurrence"—"we may reasonably infer that such a concert of action was jointly intended." *Jones*, 132 Md. App. at 660; *see also Carroll v. State*, 202 Md. App. 487, 505 (2011) ("[I]t is sufficient if the parties tacitly come to an understanding regarding the unlawful purpose[.]" (quoting *Armstead v. State*, 195 Md. App. 599, 646 (2010))).

The State, which was "only required to present facts that would allow the jury to infer that the parties entered into an unlawful agreement," *Carroll*, 202 Md. App. at 505 (quoting *Armstead*, 195 Md. App. at 646), adduced sufficient evidence from which a rational juror could conclude beyond a reasonable doubt that Mr. Butler conspired with one or more of Messrs. Blake, Conway, and Goldstein to rob Mr. Edwards. This evidence included: Mr. Butler's statement that "we're not really going to sell it to him we're just going to take his money," to which none of the others raised any objection; the subsequent action in concert of all four men traveling to meet with Mr. Edwards; the subsequent action in concert of Messrs. Butler, Blake, and Conway in exiting the vehicle and proceeding to meet with Mr. Edwards while Mr. Butler was armed; and Mr. Goldstein's conduct in remaining near the vehicle while the other men met, and then driving the others away after the shooting. A juror could reasonably infer from these facts that an agreement existed between Mr. Butler and the other men to rob Mr. Edwards, as manifested by their coordinated action. *See Acquah v. State*, 113 Md. App. 29, 50 (1996) ("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."). We

conclude, therefore, that the evidence was sufficient to convict Mr. Butler of conspiracy to commit armed robbery.

B. The Evidence Was Sufficient for the Jury to Convict Mr. Butler of Felony Murder, Armed Robbery, and Use of a Firearm in the Commission of a Crime.

Mr. Butler also challenges the sufficiency of the evidence to support his convictions for felony murder, armed robbery, and use of a firearm in the commission of a felony. Mr. Butler contends that the State did not present sufficient evidence of an armed robbery—which is a necessary predicate for his felony murder conviction—because of a lack of "direct evidence" and a "gap" in the State's evidence. Based on our review of the record, we disagree.

"[T]o secure a conviction . . . under the felony murder doctrine, the State is required to prove the underlying felony and the death occurring in the perpetration of the felony." *State v. Johnson*, 442 Md. 211, 220 (2015) (quoting *Newton v. State*, 280 Md. 260, 269 (1977)). Section 2-201(a)(4) of the Criminal Law Article (2012 Repl.; 2019 Supp.) defines felony murder as first-degree murder "committed in the perpetration of or an attempt to perpetrate" one of 12 enumerated felonies, including, as relevant here, robbery.[6] "Robbery is defined as 'the felonious taking and carrying away of the personal property of another from his person by the use of violence or by putting in fear.'" *Hall v. State*, 233 Md. App. 118, 138 (2017) (quoting *Metheny v. State*, 359 Md. 576, 605 (2000)); *see* Md. Code Ann.,

[6] The 12 predicate felonies set forth in § 2-201(a)(4) are arson, barn-burning, burglary, carjacking, prison escape, kidnapping, mayhem, rape, robbery, sexual offense, sodomy, or manufacture or possession of a destructive device. *See* Crim. Law § 2-201(a)(4)(i)-(xii).

Crim. Law § 3-402. Robbery with a dangerous weapon, or armed robbery, "is the offense of common law robbery, aggravated by the use of a 'dangerous or deadly weapon.'" *Allen v. State*, 158 Md. App. 194, 240-41 (2004) (quoting *Couplin v. State*, 37 Md. App. 567, 582 (1977), *overruled in part on other grounds by State v. Ferrell*, 313 Md. 291, 299 (1988)); *see* Md. Code Ann., Crim. Law § 3-403(a)(1) ("A person may not commit or attempt to commit robbery . . . with a dangerous weapon.").

Viewing the evidence and all of its reasonable inferences "in the light most favorable to the prosecution," as we must, *Walker v. State*, 234 Md. App. 160, 166 (2017) (quoting *Grimm v. State*, 447 Md. 482, 494 (2016)), we conclude that the evidence was sufficient to convict Mr. Butler of armed robbery and, therefore, felony murder. The State elicited evidence that Mr. Butler had stated his intention to "take [Mr. Edwards's] money" under the pretense of a firearms sale; that Mr. Butler was carrying a firearm before, during, and after the encounter; that Mr. Edwards was shot during the encounter; that Mr. Butler was present at the time of the shooting; and that $300—the same sum Mr. Edwards had agreed to pay for the firearm and that Mr. Butler had stated an intention to "take" instead—was found on the ground near Mr. Edwards's body. The State also elicited evidence that two weeks earlier, Mr. Butler had purchased the same type of ammunition that was found at the scene, and that some of that ammunition was missing when police later searched his home. From this and other evidence, we are persuaded that a rational juror could conclude beyond a reasonable doubt that Mr. Butler committed armed robbery.

"The only additional circumstance necessary to secure [a felony murder] conviction, which is not necessary to secure a conviction for the underlying felony, is proof of the

death." *Johnson*, 442 Md. at 222. Therefore, "once the State proves a predicate felony and the death of the victim as a result of that felony, the crime of felony murder is complete." *Id.* Here, the jury heard evidence from which it could conclude that Mr. Edwards died from a gunshot wound sustained during the encounter. Indeed, the jury heard Mr. Butler's statement to the police in which he admitted to having shot Mr. Edwards himself, although he also made contrary statements. The State's evidence, therefore, was sufficient to sustain Mr. Butler's conviction for felony murder.[7]

In arguing that a "gap in evidence" and a lack of direct evidence "left several inferences equally plausible," Mr. Butler painstakingly details several "scenarios" that he claims could also have been supported by the evidence. To the extent Mr. Butler implies that direct, rather than circumstantial evidence, was required to support his convictions, he is incorrect. "[C]ircumstantial evidence alone is sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Ware v. State*, 170 Md. App. 1, 29 (2006) (internal quotation marks omitted) (quoting *Painter v. State*, 157 Md. App. 1, 11 (2004)). "[T]here is no difference in weight of direct or circumstantial evidence." *Ware*, 170 Md. App. at 29.

[7] Mr. Butler's brief does not contain specific arguments to support his contention that the evidence was insufficient to support his conviction for use of a firearm in the commission of a felony. We therefore decline to address it. *See* Md. Rule 8-504(a)(6). To the extent that Mr. Butler predicates that contention on his argument that there was insufficient evidence to convict him for armed robbery—and therefore to convict him of the use of a firearm during that crime—it fails for the same reasons already stated.

Otherwise, Mr. Butler's complaint essentially amounts to a claim that the jury reached the "wrong" conclusion from the evidence before it. For the reasons already discussed, the evidence was sufficient to support the conclusions the jury reached beyond a reasonable doubt. That the evidence also could have supported a different conclusion is irrelevant to our appellate determination. "It is not necessary . . . that the circumstantial evidence be such that no possible theory other than guilt can stand." *Morgan*, 134 Md. App. at 124-25. "Contradictions in testimony go to the weight of the testimony and credibility of the evidence, rather than its sufficiency," *Smiley v. State*, 138 Md. App. 709, 719 (2001), and "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact-finder," *Bryant v. State*, 142 Md. App. 604, 623 (2002). It is not our role to second-guess credibility determinations or otherwise "undertake a review of the record that would amount to . . . a retrial of the case." *White v. State*, 363 Md. 150, 162 (2001) (quoting *McDonald v. State*, 347 Md. 452, 474 (1997)). Viewing the evidence in the light most favorable to the State, the evidence was sufficient to sustain Mr. Butler's convictions.

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