Circuit Court for Baltimore City
Case Nos. 120036012, -14, -17, and -18

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1246

September Term, 2022

KIRAY WALKER

v.

STATE OF MARYLAND

Leahy,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 2, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Convicted by a jury in the Circuit Court for Baltimore City of two counts of second degree murder, two counts of conspiracy to commit murder, and numerous other offenses, Kiray Walker, appellant, presents for our review two issues: whether he is "entitled to reversal of [all but one] of the . . . convictions and/or sentences for conspiracy," and whether the court erred "in conducting the final day of trial . . . in [his] absence." For the reasons that follow, we shall remand the case with instructions to vacate all but one of the convictions for conspiracy. We shall otherwise affirm the judgments of the circuit court.

At trial, the State produced evidence that on November 14, 2019, Mr. Walker and two accomplices committed the following offenses:

- Second degree murder of, conspiracy to commit murder of, and use of a firearm in the commission of a crime of violence against Aryanna James;
- Second degree murder of, conspiracy to commit murder of, and use of a firearm in the commission of a crime of violence against Courtney Richardson;
- Conspiracy to commit armed carjacking of, conspiracy to commit robbery with a dangerous weapon of, conspiracy to commit first degree assault of, and conspiracy to use a firearm in the commission of a crime of violence against Justin Johnson;
- Conspiracy to commit robbery with a dangerous weapon of, conspiracy to commit first degree assault of, and conspiracy to use a firearm in the commission of a crime of violence against J'Rell Ellis; and
- Conspiracy to commit robbery with a dangerous weapon of, conspiracy to commit first degree assault of, and conspiracy to use a firearm in the commission of a crime of violence against Ivars Balodis.

Following the close of the evidence, the jury convicted Mr. Walker of the offenses.

At sentencing, the court imposed the following terms of imprisonment:

- For the second degree murder of Aryanna James, a term of imprisonment of forty years;
- For the conspiracy to commit murder of Aryanna James, a term of life imprisonment;
- For the use of a firearm in the commission of a crime of violence against Aryanna James, a term of imprisonment of twenty years;

- For the second degree murder of Courtney Richardson, a term of imprisonment of forty years;
- For the conspiracy to commit murder of Courtney Richardson, a term of life imprisonment;
- For the use of a firearm in the commission of a crime of violence against Courtney Richardson, a term of imprisonment of twenty years;
- For the conspiracy to commit armed carjacking of Justin Johnson, a term of imprisonment of thirty years;
- For the conspiracy to commit first degree assault of J'Rell Ellis, a term of imprisonment of 25 years; and
- For the conspiracy to commit first degree assault of Ivars Balodis, a term of imprisonment of 25 years.

The court ordered that all of the sentences "run consecutive to each other," and merged the remaining convictions.

Mr. Walker first contends that "[n]othing in the record suggests multiple conspiratorial agreements," and "[a]ccordingly, all but one [conviction of conspiracy] must be reversed." The State concurs, noting that "the record does not establish, and the jury was not asked to find, that the criminal conduct itself resulted from more than one agreement." We concur as well. *See Savage v. State*, 212 Md. App. 1, 26 (2013) ("[i]f a defendant is convicted of and sentenced for multiple conspiracies when, in fact, only one conspiracy was proven, the Double Jeopardy Clause has been violated"). Accordingly, we remand the case with instructions to vacate all of the convictions of conspiracy except for the conviction of conspiracy to commit murder of Aryanna James. *See McClurkin v. State*, 222 Md. App. 461, 491 (2015) ("we shall leave standing the conviction and sentence for conspiracy to commit the crime with the greatest maximum penalty").

Mr. Walker next contends that the "court erred in conducting the final day of trial, including the reinstruction of the jury and the taking of the verdict, in [his] absence."

Following closing arguments, the jury retired to deliberate. When the court reconvened on the morning of the third day of deliberations, the following colloquy occurred:

> THE COURT: [F]or the record, my understanding from the Corrections is that Mr. Walker refused to come to court this morning. So, he has absented himself from this process. And there's not much, or anything, that I can do about that. But I will put it on the record that we're going to proceed with the process as it is designed to do. There's nothing I can do about getting him here.
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> [DEFENSE COUNSEL]: And, Your Honor, I think I need to object for the record.
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> THE COURT: Yes. I accept. But there's nothing I can do about it.

The prosecutor noted: "Mr. Walker has been at Jessup, having been transported from [Jessup Correctional Institution] and has been brought daily by Jessup and now we're on the second, going into the third week of trial and he has decided not to come." At defense counsel's request, the court attempted to contact "one of the [correctional officers] that's present" or "somebody . . . that witnessed this." While the court made its attempts, it brought the jury out and answered a request to "[d]efine physical and circumstantial evidence," address whether they are "weighed the same amount," and give "the directions for considering circumstantial versus physical evidence."

After the jury retired to continue deliberations, the court stated:

> I will say that there's no reason for the officers not to bring him. They've been bringing him every day since we started this. I can't imagine what the officers, why they would have wanted to prevent him from being here. They've brought him every single day. I know that there are procedures that have to be followed before they can put him on that bus. I don't know what happened.

Later that morning, the court brought the jury back and answered a question as to whether there is "a difference between reading the *Miranda* rights to the [d]efendant and having him fill out the waiver form himself and reading it back to the officers." The court subsequently addressed a request for "the written definition of conspiracy" by providing "a written copy of the oral instructions for conspiracy that the [c]ourt read."

That afternoon, the jury informed the court that it had reached a verdict. The court then read into the record an e-mail sent to the court by Anthony Maiese of the "Department of Public Safety," which stated in pertinent part:

> This morning, Officer Antonio Watson arrived at JCI to pick up Detainee Walker for court in Baltimore City. During the strip search, Walker was not compliant with, due to SCS's policy, that all persons being transported must be strip searched prior to their transport. Walker refused to surrender his shirt, boxers[,] and shorts. This action, combined with his previous statement of possibly attempting escape on Friday if his trial outcome was not in his favor, Walker was not transported to court today.

The court again found that Mr. Walker "absented himself because he . . . failed to comply with the policy of DPSCS." Defense counsel again objected, and the court noted the objection. The court subsequently received the verdicts.

Mr. Walker contends that the court erred in proceeding in Mr. Walker's absence, because the court's investigation, exercise of discretion, and information were "insufficient," and hence, the "record fails to establish a knowing and voluntary waiver of

the right to be present." We disagree. In *Pinkney v. State*, 350 Md. 201 (1998), the Supreme Court of Maryland (formerly known as the Court of Appeals of Maryland)[1] stated:

> In determining whether a defendant's absence is truly voluntary, many trial courts have prudently taken investigatory measures before finding a waiver of the right to be present at trial. That information could come in the form of a direct or indirect statement from the defendant; it could come from a statement by another person, or such information could come from other evidence that the defendant has, in fact, absconded. . . . .
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> . . . . If reasonable inquiry does not suggest that the defendant's absence was involuntary, and if the information before the court implicitly suggests no other reasonable likelihood of involuntary absence, the court may . . . draw the initial inference that the defendant's absence was a knowing one and was sufficiently deliberate so as to constitute an acquiescence to being tried *in absentia*.
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> * * *
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> We do not set forth a litany which the trial court must slavishly follow in order to establish that a defendant's absence is knowing and voluntary. Nonetheless, the record must reflect that adequate inquiry has been made to ensure that a defendant's absence is not in fact involuntary.

Id. at 216-17 (emphasis omitted).

Here, the record reflects that the court initially concluded that Mr. Walker "refused to come to court" not because Mr. Walker was absent, but because the court was so informed by "Corrections." The court noted that correctional officers had "been bringing

[1]At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Rule 1-101.1(a) ("[f]rom and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland").

[Mr. Walker] every day since" the commencement of trial, and considered whether there was any reason that the officers "would have wanted to prevent him from being" present. The court waited to receive the verdict until after reading into the record the e-mail from Mr. Maiese, and explicitly considered, and found credible, his contention that Mr. Walker refused to submit to the mandatory strip search. Finally, there is no evidence that, had the court made an additional effort to obtain a statement directly from Mr. Walker, he would have contended that his absence was involuntary.[2] We conclude that the court's inquiry was adequate to ensure that Mr. Walker's absence was not in fact involuntary, and hence, the court did not err in proceeding *in absentia*.

CASE REMANDED WITH INSTRUCTIONS TO VACATE ALL CONVICTIONS OF CONSPIRACY EXCEPT CONVICTION OF CONSPIRACY TO COMMIT MURDER OF ARYANNA JAMES. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY MAYOR AND CITY COUNCIL OF BALTIMORE.

[2]We note that Mr. Walker did not contend in a post-trial motion, or at sentencing, that his absence was involuntary.