Circuit Court for Harford County
Case No. C-12-CR-22-001100

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1416

September Term, 2023

IESHIA SMILEY

v.

STATE OF MARYLAND

Friedman,
Kehoe, S.
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: October 24, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following a jury trial in the Circuit Court for Harford County, Ieshia Smiley, appellant, was convicted of first-degree assault and conspiracy to commit first-degree assault.[1] The court imposed a sentence of 25 years of incarceration, without parole, for the assault conviction; and a consecutive 25-year term, all suspended, for conspiracy.

Appellant noted this timely appeal. For the reasons to follow, we shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

The State charged appellant in connection with a physical altercation involving appellant and Jessica Murphy that occurred on October 27, 2022. A two-day jury trial was held in April of 2023. The defense theory of the case was that the incident was not an assault, but a "mutual affray," and that Murphy had willingly engaged in a fight.

At trial, Murphy testified that, on the date of the incident, she walked into a convenience store at a gas station near her home. On her way out of the store, she stopped to talk to an acquaintance, Linda Hess.

As Murphy was talking to Hess, she was "bombarded" by appellant and Trish Taylor, appellant's wife. Appellant, whom Murphy knew as a regular customer of a store where she used to work, got "in [her] face" and asked her for ten dollars. Murphy told appellant that she did not have ten dollars to give her, and that there was no reason for her

[1] Appellant was also convicted of second-degree assault, which was merged with the conviction for first-degree assault for sentencing purposes.

to do so. Murphy went "back and forth" with appellant, "trying to figure out what was going on."

Murphy testified: "[appellant] was in my face and she was just saying how she's going to take me out, blow me out." Taylor was "egging it on" by asking appellant, "[W]hat, you're not gonna hit [Murphy]? You're just gonna let her talk to you like that?" Murphy continued:

> So they're in my face. Both of them, they were like in my face. I'm backing up. Put my hands up trying to avoid any confrontation. And then the next thing I know, I'm hit. I got hit by [appellant], and then I got hit by [Taylor]. And that's when I started to defend myself. And that's when [appellant] dragged me into the woods, had my arms behind my back like this, and her body over mine while [Taylor] beat me in the face with brass knuckles and stabbed me in my head.

Appellant threatened that she would "burn" Murphy if she "did anything[,]" and that if she "said anything" to appellant or Taylor again, she "wouldn't be here." The assault ended when the sound of approaching police sirens could be heard.

Murphy received medical treatment at the scene and was told that she needed to go to the hospital. She went home to be with her grandmother first, to "feel safe," and took herself to the hospital later.

Murphy testified that she suffered a concussion and lost three teeth as a result of being hit with brass knuckles. Two stab wounds on her head were "glued shut." Photographs of Murphy's face and mouth, which depicted the injuries she sustained in the assault, were admitted into evidence. Murphy testified that she had scars on her face and a bald spot on her scalp from the stab wounds. She was still missing her teeth because she could not afford to go to the dentist.

Hess testified that she and Murphy were "just standing there talking" when appellant and "another female" walked up to Murphy. Appellant put down two bags that she was carrying and asked Murphy "about [ten dollars] that she owed her." Appellant and Murphy "were going back and forth arguing[.]" Hess said that "the other lady also got into it." Murphy twice said that she "didn't want to do this," and she "tried to walk away a couple of times[.]" According to Hess, Murphy was then struck by either appellant or "the other woman," she was not sure which. Hess continued:

> They began fighting. They were going back and forth. Both of them were hitting [Murphy]. And [Murphy] was hitting back some. And then they started to pull [Murphy] out of the parking lot and like down a little hill where the train tracks are. . . . And they were both beating on her. And then I [saw] [appellant] got behind [Murphy] and like got behind her arms and had [Murphy] like bent over like this with her arms behind her back while the other lady was [- -] it looked like she had maybe brass knuckles on or something, and she was hitting [Murphy] in the mouth. And then the fight kept going. . . . And then I [saw] the other female, when [appellant] was holding her, doing a stabbing motion at [Murphy's] head.

Hess called the police. She testified that the assault continued until police sirens became audible, at which time Murphy came back up the hill. According to Hess, Murphy had "blood rolling down her face" and was spitting out teeth that had been "knocked out." Appellant laughed and said to Murphy, "And I even took it easy on you." Appellant and the other woman then got into the same car. When police arrived, Hess and Murphy pointed to the car.

Officer Quinton Epps, the responding police officer, testified that Murphy had "very significant injuries" and was "bleeding pretty bad." She was treated by paramedics at the scene but "refused" to be transported to the hospital. According to Officer Epps, appellant

and Taylor had no significant injuries and did not receive medical treatment. Three knives were recovered, two from a vehicle and one from the grass "behind where [appellant and Taylor] were sitting on the side of the curb[.]" No brass knuckles were recovered.

Video footage from the gas station's security camera was admitted into evidence. The footage shows the entire encounter between Murphy, appellant, and Taylor, except that they are momentarily out of the view of the camera when the physical altercation begins, and it is not quite clear what is happening between them when they move away from the camera to a nearby stand of trees.

After the State rested its case, defense counsel moved for judgment of acquittal on all charges. The court denied the motion. The defense presented no evidence in its case.

The court instructed the jury that, in order to convict appellant of first-degree assault, the State must prove all of the elements of second-degree assault and also that the assault was committed with intent to cause serious physical injury. On the charge of second-degree assault, the court instructed the jury on the elements of battery:[2]

> Second-degree [assault] is causing offensive physical contact to another person. In order to convict [appellant] of second-degree assault, the State must prove: [1] that [appellant] caused offensive physical contact with [Murphy]; [2] that the contact was the result of an intentional or reckless act of [appellant] and was not accidental; and [3] that the contact was not consented to by [Murphy].

The court provided further instruction on the issue of consent:

> With regard to the third element of second-degree assault, the issue has been raised that [Murphy] consented to the physical fight. In other words,

[2] "The statutory offense of second-degree assault encompasses three modalities: (1) intent to frighten, (2) attempted battery, and (3) battery." *Snyder v. State*, 210 Md. App. 370, 382 (2013).

> the issue has been raised that [Murphy] voluntarily entered into and engaged in the physical fight with [appellant] and/or [Taylor].
>
> In order to convict [appellant] of second-degree assault, the State must prove beyond a reasonable doubt all three of the elements of second-degree assault set forth in these instructions, including that [Murphy] did not consent to the physical contact by voluntarily entering into the physical fight with [appellant] and/or [Taylor].

During deliberations, the jury sent out a note asking for the legal definition of "consent." The court responded, "the definition of consent is to willingly enter or engage in a fight."

As stated previously, the jury found appellant guilty of second-degree assault, first-degree assault, and conspiracy to commit first-degree assault. This timely appeal followed.

Additional facts will be included in the discussion as necessary.

QUESTIONS PRESENTED

Appellant presents two questions for our review, which we have separated into three and rephrased for clarity:[3]

I. Was the evidence legally sufficient to support a finding that Murphy did not consent to the assault?

II. Was the evidence legally sufficient to support a finding that there was an agreement between appellant and Taylor to commit first-degree assault?

[3] The questions in appellant's brief are:

1. Was the evidence legally sufficient to support the convictions?

2. Did the trial court abuse its discretion in overruling appellant's objections to Murphy's exaggerated and inflammatory characterizations of the incident that were not borne out by the evidence?

III. Did the trial court abuse its discretion in overruling appellant's objections to Murphy's testimony that she "almost didn't make it" home after the assault, and that she would not have "made it out of the woods" if police had not been called to the scene.

APPLICABLE STANDARDS OF REVIEW

In reviewing a claim of evidentiary insufficiency, "we assess '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.'" *Mungo v. State*, 258 Md. App. 332, 363 (quoting *State v. McGagh*, 472 Md. 168, 184 (2021)), *cert. denied*, 486 Md. 158 (2023). "'We do not measure the weight of the evidence; rather, 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.'" *Id.* (quoting *Taylor v. State*, 346 Md. 530, 536 (1990)).

A trial court's ruling on the admission of evidence is typically reviewed under an abuse of discretion standard. *State v. Galicia*, 479 Md. 341, 389 (2002). "An abuse of discretion occurs where 'a trial judge exercises discretion in an arbitrary or capricious manner or . . . acts beyond the letter or reason of the law.'" *Id.* (quoting *Cooley v. State*, 385 Md. 165, 175 (2005)).

DISCUSSION

I.

The Evidence Was Sufficient to Prove Lack of Consent

Appellant contends that the State failed to prove the element of second-degree assault that requires that the victim did not consent to the contact. According to appellant, the only conclusion that the jury could have reached was that Murphy willingly engaged in "mutual combat." The State maintains that, although the evidence could have supported the defense theory of the case, it also was sufficient to prove that Murphy did not consent to the assault. We agree with the State.

Viewed in the light most favorable to the State, the evidence demonstrated that Murphy twice told appellant and Taylor that she did not want to fight. As they continued to advance toward her, she backed away and held her hands up in an effort to avoid the confrontation. Appellant and Taylor started to hit Murphy, after which Murphy began to fight back in self-defense. If believed, this evidence was legally sufficient to support a finding that Murphy did not consent to the assault.

The defense theory of the case, as argued to the jury, was that Murphy was a willing participant in a fight, as evidenced by the video, which shows Murphy handing her bag to Hess and kicking off her shoes before the first punch is thrown. That there were other possible inferences to be drawn, however, does not affect the sufficiency of the evidence. *See Cerrato-Molina v. State* 223 Md. App. 329, 337 (2015) ("[c]hoosing between competing inferences is classic grist for the jury mill.")

II.

The Evidence was Sufficient to Prove Conspiracy

Conspiracy, a common law crime, is defined as a "'combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Darling v. State*, 232 Md. App. 430, 466 (2017) (quoting *Mitchell v. State*, 363 Md. 130, 145 (2001)). "'The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design.'" *Id.* (quoting *Mitchell*, 363 Md. at 145).

Appellant asserts that there was no evidence of an agreement between appellant and Taylor to commit first-degree assault, and, therefore, the conviction for conspiracy must be reversed. The State maintains that evidence of the "coordinated action" of appellant and Taylor was sufficient to prove conspiracy to commit first-degree assault. We agree with the State.

"'In conspiracy trials, there is frequently no direct testimony, from either a co-conspirator or other witness, as to an express oral contract or an express agreement to carry out a crime.'" *Id.* (quoting *Jones v. State*, 132 Md. App. 657, 660 (2000)). But a conspiracy "'may be proven through circumstantial evidence, from which an inference of a common design may be shown.'" *Id.* at 467 (quoting *Alston v. State*, 177 Md. App. 1, 42 (2007)).

> If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may, but need not, infer a prior agreement by them to act in such a way. From the concerted nature of the action itself, we may reasonably infer that such a concert of action was jointly intended. Coordinated action is seldom a random occurrence.

Id. at 466-67 (quoting *Jones*, 132 Md. App. at 660)).

The coordinated action of appellant and Taylor, from the beginning of the encounter to the end, permitted a reasonable inference that they jointly intended to commit first-degree assault. They approached Murphy simultaneously and continued to advance on her in unison as she backed away. They began to hit her at the same time and together chased her around the parking lot. Appellant then physically restrained Murphy while Taylor assaulted her with weapons. When the assault ended, appellant and Murphy got into the same car. On this record, the evidence was sufficient to support the conviction for conspiracy.

III.

The Court did not Abuse its Discretion in Ruling on Evidence

During Murphy's direct examination, the court overruled appellant's objection to an unsolicited statement that implied that Murphy "almost" died:

> [PROSECUTOR]: . . . Tell the ladies and gentlemen of the jury what happened next.
>
> [MURPHY]: Okay, so after I . . . had [appellant] and [Taylor] in my face, I tried - - I'm trying to talk, figure out what's going on. I'm trying to back up. Got my hands up. I'm not trying to - - I just wanted to go home to my children, *which I almost didn't make it*.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.

(Emphasis added). A short time later, defense counsel objected to a similar statement:

> [PROSECUTOR]: . . . How did the assault stop? What happened?
>
> [MURPHY]: They heard the police sirens *or I wouldn't have made it out of the woods.*

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

(Emphasis added).

Appellant contends that the probative value of the testimony was substantially outweighed by the danger of unfair prejudice. Specifically, she claims that the testimony was "exaggerated and inflammatory," and inconsistent with the evidence and the charges. The State asserts that Murphy's testimony implied she was "fearful that she was going to die." Therefore, according to the State, the evidence was relevant to the assault charge and was "especially probative" on the issue of consent.

The trial court has discretion to exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.'" *Odum v. State*, 412 Md. 593, 615 (2010) (quoting Md. Rule 5-403). Appellant argues that the court abused its discretion in admitting Murphy's statements because they were unfairly prejudicial.

"The more probative the evidence is of the crime charged, the less likely it is that the evidence will be unfairly prejudicial." *Id.* The "balancing between probative value and unfair prejudice is something that is entrusted to the wide discretion of the trial judge." *Newman v. State*, 236 Md. App. 533, 556 (2018) (quoting *Oesby v. State*, 142 Md. App. 144, 167 (2002)).

Here, the record contains no explanation as to the probative value of this testimony. Appellant offered no grounds for the objection, the State made no proffer, and the court

did not explain its ruling. In her brief, appellant does not discuss the probative value of the evidence, nor does she contend that it had no probative value at all. She argues only that it was substantially more prejudicial than probative. The State's cursory and unsupported contention that evidence that Murphy was "fearful" tended to prove that she did not consent to a fight, or was somehow otherwise relevant to the assault charges, is not compelling. Consequently, we find it difficult to address appellant's claim that the probative value of the evidence was significantly outweighed by a potential for unfair prejudice.

Even assuming, however, that appellant's claim has merit, any error would have been harmless. An error in admitting evidence is harmless if the reviewing court is "'satisfied that there is no reasonable possibility that the evidence complained of -- whether erroneously admitted or excluded -- may have contributed to the rendition of the guilty verdict.'" *Nicholson v. State*, 239 Md. App. 228, 244 (2018) (quoting *Dionas v. State*, 436 Md. 97, 108 (2013)) (additional citation omitted). "'To say that an error did not contribute to the verdict is [ ] to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.'" *Dionas*, 436 Md. at 109 (quoting *Bellamy v. State*, 403 Md. 308, 332 (2008)) (additional citation omitted). By contrast, an error in admitting evidence is not considered harmless where the evidence "provided potentially scale-tipping corroboration" to other evidence before the jury or "added substantial, perhaps even critical, weight to the State's case[.]" Parker *v. State*, 408 Md. 428, 447-48 (2009) (citation omitted).

Even if improperly admitted, the statements at issue were not important compared to the other evidence introduced at trial. Murphy's account of the armed assault was

corroborated by the testimony of an eyewitness, Hess, and, to some degree, by the security camera footage. The jury reviewed photographs of Murphy's injuries and considered her testimony regarding the resulting disfigurement.

It is highly unlikely that the jury's verdict would have been influenced by Murphy's statements that she "almost didn't make it" home that day, and "wouldn't have made it out of the woods" if police had not been called. It was undisputed that, as shown in the security footage, Murphy walked away from appellant and Taylor after the assault, and that she did not go to the hospital right away. Defense counsel drew the jury's attention to this evidence in closing argument:

> We don't have any testimony whatsoever that [Murphy] was on her death bed. She's not found lying in the grass by the police, by the paramedics. We don't have anything, again, no medical records saying any of these injuries are life threatening. . . .
>
> And then we look at the video itself. . . . You look at all three parties just walking out from that woodline and that's it. They're just walking out. At that point [Murphy is] still running her mouth, but she's walking. She's upright. And then she refuses to have EMS take her to the hospital. Clearly she is not at a substantial risk of death.

We are satisfied that there is no reasonable possibility that the statements at issue contributed to the jury's verdict. If, as appellant claims, it was an abuse of discretion to admit the testimony, any error would have been harmless and would not warrant reversal.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.