Circuit Court for Cecil County
Case No. C-07-CR-23-000159

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1525

September Term, 2023

TRAVIS M. WASSIN

v.

STATE OF MARYLAND

Arthur,
Reed,
Zarnoch,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: October 1, 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).

In the instant appeal, the Appellant, Travis M. Wassin, was charged by criminal indictment in the Circuit Court for Cecil County with first-degree assault, second-degree assault, conspiracy to commit first-degree assault, conspiracy to commit second-degree assault, and reckless endangerment. Following a jury trial on July 18 and 19, 2023, the jury found Appellant guilty of conspiracy to commit first- and second-degree assault and reckless endangerment. Following sentencing,[1] Appellant exercised his right to appeal his case.

In bringing his appeal, Appellant presents two questions for appellate review:

> I. Was the evidence presented to the jury sufficient to sustain the convictions for conspiracy to commit first-degree assault, conspiracy to commit second-degree assault, and reckless endangerment?
>
> II. Should Appellant's conviction for conspiracy to commit second-degree assault be vacated?[2]

For the following reasons, we affirm the trial court's decision regarding the sufficiency of the evidence on all three counts and vacate the conviction for conspiracy to commit second-degree assault.

---

[1] The court sentenced Appellant to eight years in prison for conspiracy to commit first-degree assault, merged with the other convictions, which was suspended except for an eighteen-month sentence followed by three years of probation.

[2] The questions presented as written by Appellant are:

1. Was the evidence presented by the jury insufficient to sustain the convictions for conspiracy to commit first-degree assault, conspiracy to commit second-degree assault and reckless endangerment?
2. Did the trial court err in failing to vacate the conviction for conspiracy to commit second degree assault where, at most, the State presented evidence of one unlawful agreement?

FACTUAL & PROCEDURAL BACKGROUND

On December 31, 2022, Cole Dixon was driving home in Rising Sun, Cecil County when he saw a car he recognized as belonging to the Appellant. Mr. Dixon and the Appellant had been friends for about a "year or two," but their friendship ended three or four months prior. In the Appellant's car, Mr. Dixon saw Wesley Hindman in the back passenger seat. Mr. Dixon described how Mr. Hindman was waving him over and "antagonizing" him. Mr. Dixon could not see the driver or any other passengers at that point.

A few minutes later, Mr. Dixon returned to his home and backed his car into his driveway. Mr. Dixon's home is located on a dead-end road ending in a cul-de-sac. Mr. Dixon then saw Appellant's car again, driving quickly through the neighborhood before parking and blocking the end of Dixon's driveway. Mr. Dixon watched as Mr. Hindman stepped out of Appellant's car and walked down the driveway towards Mr. Dixon. Mr. Dixon admitted to approaching Mr. Hindman and they met in middle of the driveway. Mr. Dixon said that he believed Mr. Hindman came to his home to fight him but on cross-examination admitted that he was unsure who initiated physical contact.

Mr. Dixon claims that he saw three individuals get out of the car during the altercation: Mr. Hindman, Xavier Sexton, and the Appellant. Mr. Hindman and Mr. Dixon were engaged in a physical altercation. Mr. Dixon said he then saw Xavier Sexton, another friend of the group, get out of the passenger door of Appellant's car. Mr. Dixon then said he was struck in the back of the head while fighting with Mr. Hindman and fell to the ground, believing Mr. Sexton hit him. While on the ground, Mr. Dixon stated that he saw

the driver's side door of Appellant's car open and a foot step down before he fell unconscious.

After regaining consciousness, Mr. Dixon said he saw all three men returning to Appellant's car and closing their doors. He also woke up with Mr. Sexton's phone underneath his chest, which he later turned over to the police. Mr. Dixon went inside his home but continued to fall in and out of consciousness. Mr. Dixon's mother arrived home and took him to the hospital. [3] Mr. Dixon then spent four or five days in the hospital, receiving surgery to put a titanium plate and sixteen screws in his jaw, getting his teeth redone, and receiving treatment for a head injury.

A neighbor of Mr. Dixon, William Cook, witnessed this altercation. Mr. Cook described seeing "two individuals" beating up a third person in the middle of the driveway.[4] Mr. Cook and his friend yelled over at the individuals and watched the two individuals run from Mr. Dixon to Appellant's car. Mr. Cook described how the two individuals got into the front and back passenger seats before the car turned around in the cul-de-sac and sped away.

The police analyzed Mr. Sexton's phone and at trial a series of text messages were entered into evidence. The exhibit contained seven text messages from December 23, 2022,

[3] There are conflicting reports regarding a potential harassment incident on the way to the hospital. Mr. Dixon claims he saw Appellant, Mr. Sexton, and Mr. Hindman driving erratically around his neighborhood while he was driven to the hospital. However, as Appellant pointed out with Detective Carson White on cross-examination, Detective White never recorded this interaction in his police report.

[4] Mr. Dixon describes the incident as happening in the "middle of the road." Later on cross-examination Appellant clarifies that the fight was occurring "between the two cars" which would have been on the driveway, but he said the fight was "at the edge of the driveway."

eight days prior to the assault. The text messages were between the phone's owner and a contact "travis." The text messages are as follows:

> 12/23/2022 1:10:55AM (UTC-5): From travis to owner:
> That N***a Westley texted me
>
> 12/23/2022 1:11:17 AM (UTC-5): From owner to travis:
> ik i told em be ready if i hadda come scoop him
>
> 12/23/2022 8:47:51 AM (UTC-5): From travis to owner:
> N***a cole is texting me
>
> 12/23/2022 8:49:26 AM (UTC-5): From owner to travis:
> tell em s**c said dont worry his ones coming soon
>
> 12/23/2022 8:50:44 AM (UTC-5): From travis to owner:
> He said he want it now bro
>
> 12/23/2022 8:50:57 AM (UTC-5): From travis to owner:
> Bro said meet where we wanna
>
> 12/23/2022 8:51:38 AM (UTC-5): From travis to owner:
> It's cool bro we bring the whole gang

Appellant's counsel established at trial that these text messages were from a group chat and there were messages not entered into evidence between these messages.

Additionally, at trial there was a portion of video played from an interview between the Appellant and Detective Carson White. In this interview, the Appellant compares himself to a getaway driver in a bank robbery.[5] Appellant also claimed that the reason he

---

[5] This is the portion of the interview being referenced between Detective Carson White and Appellant. This is an unofficial transcription starting at 16:30 in the IPCam video from Exhibit 14:

> **Detective Carson White (DCW):** So… understand that my job for you, right now, is to make sure you're telling me the complete truth. Ok. Because for lack of a better term, my man, y'know, going to check on his y'know house or check on a car and

was at Mr. Dixon's house was to see if Mr. Dixon parked his Mustang in the garage. However, it is unclear how much of the interview was admitted into evidence at trial, as the transcript did not record what part of the interview played before the jury.[6] Having no

---

> see if he knows a little bitch who stuck his fucking mustang in there, whatever. You still drove my suspect, suspects...
>
> **Travis Wassim (TW):** I understand.
>
> **DCW:** …to the crime scene where they committed an assault, you know what I mean? You understand why I'm talking to you.
>
> **TW:** Yeah, I understand because its like, its like, umm I didn't go in the bank to rob it, but I was the getaway driver.
>
> **DCW:** Damn right.
>
> **TW:** I understand I completely understand.
>
> **DCW:** That's why we're here. That's why we are talking. Because you can either be 100% involved in this or you can be 100% not involved in this. Ok?
>
> **TW:** Mhm.

[6] Appellee's brief referred to the possibility of dismissing this case for having an insufficient record on appeal. The issue is that the transcript produced for the trial is missing a transcription of the specific portion of a video recording played for the jury. The video was Detective Carson White's interview with the Appellant. However, in the transcript, the record merely states "(Video played at 3:24 p.m.)." The jury later requested to watch the video during deliberations, but the record is again silent as to what portion of the video was played. ("(Audio played at 11:35 am)").

Under Maryland Rule 8-411, the appellant is required to order a transcript with testimony necessary for the appeal and, under Rule 8-411(3), "if relevant to the appeal and in the absence of a written stipulation by all parties to the contents of the recording, a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial." Rule 8-413 then requires the record on appeal to include "the transcript required by Rule 8-411." Rule 8-413(a)(2). Under Rule 8-602 the court has discretion to dismiss the appeal if "the contents of the record do not comply with Rule 8-413." Rule 8-602(c)(4). However, to appeal under Rule 8-602(c)(4), the motion to dismiss must be filed

specific guidance from the record we hold that the general description provided indicates to this court that the portions referenced by counsel were played.

On February 15, 2023, Appellant was indicted in the Circuit Court for Cecil County for first- and second-degree assault, conspiracy to commit first- and second-degree assault, and reckless endangerment related to the incident with Mr. Dixon. A jury trial took place on July 18 and July 19, 2023. At the close of the State's case, Appellant made a motion for judgment of acquittal, pursuant to Maryland Rule 4-324. The trial court denied the motion and denied it again after Appellant re-raised the motion at the close of the Defense case.

The jury acquitted Appellant on the first- and second-degree assault charges, and

---

ten days after the record should have been filed. Rule 8-603(a)(1). Here, the State did not file a specific motion, instead referencing this issue in a footnote in their brief. The Rules do not include this kind of dismissal as one that can appear in Appellee's brief. Rule 8-603(c). As a result, the State did not properly assert this as a motion to dismiss. Despite that, the following shows that even if it was properly asserted, this Court would not have used its discretionary authority to dismiss the appeal.

Here, the record on appeal is incomplete, as the trial transcript does not show what portion of the evidence was admitted into evidence or shown to the members of the jury. That material would have been relevant to the jury's determination of Appellant's guilt or innocence. As the state conceded, the prosecutor did make arguments based on specific parts of the video, which would have been played before the jury prior to closing argument. This included when the Appellant made a comparison to his actions on the day of the incident to being a getaway driver in a bank robbery. *See* ("And in his statement, Mr. Wassin even compared himself to the getaway driver in a bank robbery."). Appellant's closing argument told the jury to watch the video to determine for themselves whether Appellant was acting uncooperative.

Given that the video was made available to the Court on appeal, and the necessary information for this decision did not go beyond what was argued by the attorneys in their closing arguments, the Court will not dismiss this case. The rule gives the Court discretion for an incomplete record, and this case does not rise to the level of requiring a dismissal to correct the problem, especially as the State relies on the information gained in this interview to support their case.

convicted Appellant for conspiracy to commit first-degree assault, conspiracy to commit second-degree assault, and reckless endangerment. On September 28, 2023, Appellant was sentenced to eight years of incarceration for conspiracy to commit first-degree assault, which was all suspended except for an eighteen-month sentence followed by three years of probation. All three convictions were merged into the sentence. Appellant then filed a timely appeal on October 5, 2023.

DISCUSSION

I. Sufficiency of the Evidence on the Convictions

A. Parties' Contentions

Appellant contends that there was insufficient evidence for all three counts. He argues that the evidence about how the fight began was "murky at best." He claims Appellant never had contact with Mr. Dixon since the jury acquitted Appellant of both assault charges and the neighbor eyewitness only saw two individuals returning to the car. Therefore, Appellant contends that this could have just been a fight initiated by Mr. Hindman that did not involve Appellant.

As to the conspiracy charges, Appellant argues that the State did not prove that Appellant had the specific intent needed for the assault, which would be needed to prove a conspiracy. Without evidence of specific intent or knowledge, Appellant's presence at the scene of the incident should be insufficient to support a conviction for conspiracy. Therefore, the jury's verdict, he argues, is only based on "speculation and conjecture."

As to the reckless endangerment charge, Appellant argues that the trial court failed to articulate its findings on that charge before letting the jury decide the case. Additionally,

there was insufficient evidence for the charge because the evidence did not show gross negligence related to the incident.

The State argues that the evidence presented was legally sufficient. For the conspiracy charges, the State presented evidence that the Appellant acted as a self-described "getaway driver" and sent messages to one of the other assailants prior to the assault that suggest a plan for the assault. They argue that based on Appellant's actions before and on the day of the incident a jury could rationally infer that Appellant agreed with Mr. Sexton and Mr. Hindman to commit an assault or cause serious physical injury to Mr. Dixon.

For the reckless endangerment charge, the State argues that the trial court properly determined that there was legally sufficient evidence and did not need to recite additional facts. Additionally, the State argues that the jury had sufficient evidence for the jury to have concluded Appellant consciously disregarded the risk of serious bodily harm to Mr. Dixon and acted recklessly in driving Mr. Sexton and Mr. Hindman to the scene of the incident.

B. Standard of Review

"When reviewing the sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the State and assess whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Krikstan*, 483 Md. 43, 63 (2023) (quoting *Walker v. State*, 432 Md. 587, 614 (2013)). This Court's role is not to retry the case, since the fact-finder was in the "unique position" to view the evidence firsthand, hear from witnesses, and assess credibility.

Walker, 432 Md. at 614. As such, we will not "re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Id.* at 614 (quotations removed). We will determine "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." *Id.* (quoting *Rivers v. State*, 393 Md. 569, 580 (2006)). If there are conflicting possible inferences, they will be resolved in the State's favor because "[w]e do not second-guess the jury's determination where there are competing rational inferences available." *Krikstan*, 483 Md. at 64 (quoting *Smith v. State*, 415 Md. 174, 183 (2010)).

C. Analysis

1. Conspiracy to Commit First-Degree Assault, Second-Degree Assault

A conspiracy is an "agreement between two or more people to achieve some unlawful purpose." *State v. Payne*, 440 Md. 680, 712 (2014). The State must prove that there was a meeting of the minds that reflected a unity of purpose and design. *Id.* at 713 (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). To prove a conspiracy, the defendant must have specific intent to commit the underlying offense that is the object of the conspiracy, along with the specific intent required for the agreement. *Alston v. State*, 414 Md. 92, 115 (2010) (quoting *Mitchell v. State*, 363 Md. 130, 146 (2001)). A conspiracy may also be shown through "circumstantial evidence from which an inference of common design may be drawn." *Armstead v. State*, 195 Md. App. 599, 646 (2010) (quoting *McMillian v. State*, 325 Md. 272, 292 (1992)). Circumstantial evidence can be sufficient to sustain a conviction unless the evidence only amounts "to strong suspicion or mere probability." *Smith*, 415 Md. at 185 ("[T]he inferences made from circumstantial evidence

must rest upon more than mere speculation or conjecture."). The punishment for conspiracy cannot "exceed the maximum punishment of the crime that the person conspired to commit." Md. Code, Crim. Law § 1-202.

There were two alleged conspiracies in this case: conspiracy to commit first-degree assault and conspiracy to commit second-degree assault. First-degree assault is when a person intentionally causes or attempts to cause serious physical injury to another. Md. Code, Crim. Law § 1-202(b).[7] Second-degree assault is defined as assault, Md. Code, Crim. Law § 3-203(a), which means "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." Md. Code, Crim. Law § 3-201(b). It includes battery, attempted battery, and placing the victim in "reasonable apprehension of an imminent battery." *Lamb v. State*, 93 Md. App. 422, 428 (1992).[8]

Appellant first argues that there was insufficient evidence of Appellant's specific intent to commit these two crimes of conspiracy. The specific intent needed for these two crimes would be the specific intent to "cause serious physical injury to another" or commit an assault or battery. Here, there was sufficient evidence to support the jury's finding that Appellant was guilty of both conspiracies.

First, the State showed the text messages between Appellant and Mr. Sexton,

[7] First-degree assault is a felony that can have a maximum penalty of twenty-five years. Md. Code, Crim. Law § 3-202(c). Serious physical injury is an injury that creates a substantial risk of death or causes permanent or protracted serious disfigurement or loss or impairment of the function of any bodily member or organ. Md. Code, Crim. Law § 1-201(d).

[8] Second-degree assault is a felony with a maximum conviction of ten years or a fine of $5,000 or both. Md. Code, Crim. Law § 3-203(c)(3).

Appellant's friend and one of the individuals in Appellant's car that day. These text messages reference Mr. Cole Dixon, the victim, when Appellant wrote that "cole is texting me[.]" Mr. Sexton wrote back that "his ones coming soon" and Appellant then wrote "He said he want it now bro"; "Bro said meet where we wanna"; and "It's cool bro we bring the whole gang[.]" [9] Appellant argued that "[t]here was no evidence that any words or threats were ever made by Appellant . . . prior to the incident." (citing *Sequiera v. State*, 250 Md. App. 161, 205–206 (2021) (finding sufficient evidence to show a conspiracy when prior to the altercation with a security guard the defendant said "I don't' fight, I shoot")). While not the most explicit threat, a jury could rationally infer that these series of texts referred to a plan in the future to assault Mr. Dixon when Appellant brings "the whole gang[.]" Appellant argued that these text messages were "the only evidence presented by the State in relation to the conspiracy charges." However, the State did present additional evidence through the testimony elicited at trial, shown by the coordinated action of Appellant and the co-occupants of his car on the day of the incident.

Appellant acted in a coordinated manner with Mr. Hindman and Mr. Sexton. "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. . . . Coordinated action

[9] Appellant argues that these text messages were "cherry picked," "sent a full eight days prior to the incident" and "sent over the course of eight hours." It is unclear how many texts are between any of these messages or whether other individuals were involved in the group chat. However, given the standard of review it must be presumed that they were not relevant to this proceeding. As to the last point about the time span between the texts, these final five texts quoted above were all sent within a five-minute span, not across the entirety of the eight hours.

is rarely a seldom occurrence." *Jones v. State*, 132 Md. App. 657, 660 (2000) (finding there was coordinated action in a homicide where the appellant and the gunman were observed travelling to an alley together); *see also Jordan v. State*, 246 Md. App. 561, 600 (2020) (where circumstantial evidence included the defendant and another driving to the building together where a murder would occur and then drove away together).

The coordination in the alleged conspiracy is first informed by the relationship of the four men involved in this incident. Appellant, Mr. Hindman, and Mr. Sexton were all friends with Mr. Dixon until three or four months before this incident. The other three remained friends, and as the text messages showed, at least Appellant and Mr. Sexton communicated about Mr. Dixon. Appellant was driving in his car with Mr. Hindman, and Mr. Sexton, when they saw Mr. Dixon driving back to his home. The three then drove together to Mr. Dixon's home and parked at the end of his driveway.

Appellant claimed in his interview with Detective White that the reason he went to Mr. Dixon's house was to see if Mr. Dixon's Mustang was parked in the garage, which Appellant's counsel described as "[t]eenage stupidity, nonsense." Another explanation would be that after seeing Mr. Dixon, Appellant and his friends went to Mr. Dixon's house to follow through with the plan set out in their texts days prior. These conflicting interpretations are not for this Court to resolve, and instead we must defer to the fact-finder and resolve conflicting inferences in the State's favor. *Krikstan*, 483 Md. at 63. Even with these disputes over the motivations of *why* they went to Mr. Dixon's home, there was coordinated action through the group arriving together and leaving together. Appellant himself said in his interview with Detective White that he was like a getaway driver at a

bank robbery. On the day of the incident, there was coordinated action that was suggestive of a prior agreement because Appellant drove with Mr. Hindman and Mr. Sexton to Mr. Dixon's house immediately after seeing him that day.

Maryland law does state that someone's mere presence is not enough to sustain a criminal conviction. *Todd v. State*, 26 Md. App. 583, 585 (1975) (citing *Williams v. State*, 3 Md. App. 58, 61 (1968)). However, when presence at the scene of a crime is paired with direct assistance or encouragement, then they are also accountable for the crime. *Id.* Here, the Appellant was not merely present in driving the car to and from the scene of the assault.[10] The jury could have interpreted the conduct and text messages in the case as showing knowledge of what would happen when the group arrived at Mr. Dixon's house and that Appellant's driving to Mr. Dixon's home constituted direct assistance or encouragement.

The Appellant also points to case law stating that "[m]ere cognizance of the commission of a crime . . . does not make the person having such knowledge, a co-conspirator of the criminal." *Jones v. State*, 8 Md. App. 370, 379 (1969) (citation omitted). In *Jones*, the evidence presented was insufficient to sustain a conspiracy to have or possess

[10] Additionally, Appellant may have been involved in the assault itself. Once at the house, it is disputed evidence whether Appellant got out of the car, with Mr. Dixon alleging he saw a foot exiting the driver's side of the car, while the neighbor only saw two individuals returning to the car. As the prosecutor argued in closing argument, Mr. Cook did not see the beginning of the argument, which would mean that Appellant could have left his car and returned to it before Mr. Cook looked over at the assault. While Appellant's specific involvement in the assault would have been more relevant for the jury when deciding the assault charges of which they acquitted Appellant, the purpose for the conspiracy charge is to allow a reasonable jury to find there was coordinated action and involvement in the assault itself would support the conspiracy.

a hypodermic syringe or needle to administer habit forming drugs. *Id*. at 379–80. The evidence did show knowledge by the defendant of the possession and use of the needle, but the State failed to show a conspiracy to possess the needle before the conspirator had actual possession as defined by the statute at issue in that case. *Id.* at 380–81. The State in this case went further than *Jones* and showed actual agreement, not just "mere cognizance" through the prior text messages. Those messages would allow a reasonable juror to conclude that Appellant did not just happen to drive his friends to a location where an assault occurred but instead knew after seeing Mr. Dixon driving home that driving to his house would result in a confrontation or violent action. A rational jury could have concluded that Appellant did not just happen to bring his friends to where an assault took place, but instead directly assisted in the assault and agreed to assist prior to the assault taking place.

The evidence in its totality was sufficient for the jury to infer that there was a prior agreement to commit this assault. The State did not need to show direct evidence of this agreement, as the circumstantial evidence they presented went beyond mere speculation as to the existence of an agreement. *Smith*, 415 Md. 185. The text messages hinting at bringing "the whole gang," Appellant's self-identification as a getaway driver, the coordinated transport to and from Mr. Dixon's house, and the attack itself put together were sufficient to show that there was coordinated action and specific intent to commit these assaults. To examine the facts further and try to overturn the jury's verdict would "involve pure speculation or necessitate an inquiry into the jury's deliberations" which would be improper for this Court to do. *Williams v. State*, 478 Md. 99, 119 (2022).

These facts were sufficient for convictions on both conspiracy to commit first- and second-degree assault. For first-degree assault, Appellant's participation in this incident was conduct that created a substantial risk of death or serious bodily injury. A jury may infer that one intends the natural and probable consequences of their acts. In re *Levar D.*, 189 Md. App. 526, 590 (2009) (quoting *Ford v. State*, 330 Md. 682, 704 (1993)). But for Appellant's transportation of Mr. Hindman and Mr. Sexton to Mr. Dixon's house, the two would not have inflicted the injuries that placed Mr. Dixon in the hospital for multiple days requiring multiple surgeries and a jury could infer that Appellant intended these injuries as the natural and probable consequences of his and his friends' actions. Based on the discussions that Appellant had with Mr. Sexton he was aware of the risk that "bring[ing] the whole gang" to Mr. Dixon's house could create. Similarly, these facts would sustain a conviction on conspiracy to commit second-degree assault where it would be sufficient to show that Appellant was aware of the risk that Mr. Dixon could suffer from a battery and disregarded that risk, since Mr. Dixon was battered as a result of the agreement between the three individuals. The evidence presented by the State was sufficient to sustain the convictions for conspiracy to commit first- and second-degree assault.

2. Reckless Endangerment

The evidence presented was also sufficient to convict Appellant of reckless endangerment. Maryland code defines reckless endangerment as a person recklessly "engag[ing] in conduct that creates a substantial risk of death or serious physical injury to another." Md. Code, Crim. Law § 3-204(a)(1). To prove reckless endangerment, the State must show "1) that the defendant engaged in conduct that created a substantial risk of death

or serious physical injury to another, 2) that a reasonable person would not have engaged in that conduct, and 3) that the defendant acted recklessly." *Jones v. State*, 357 Md. 408, 427 (2000); *see also* Md. Pattern Jury Instructions Crim. 4:26B (3d ed. 2024).

Reckless endangerment contains both a subjective and an objection portion. *Williams v. State*, 100 Md. App. 468, 503 (1994). The subjective portion, from the *mens rea* of recklessness from the statute, requires showing the defendant was aware of a risk and then consciously disregarded that risk. *Perry v. State*, 229 Md. App. 687, 698 (2016) (citing *Williams*, 100 Md. App. at 503). However, the State need not show that the individual intended to have caused the result. *Id.* (citing *Minor v. State*, 85 Md. App. 305, 316 (1991)). Then, the conduct that created a substantial risk is viewed objectively. *Minor v. State*, 326 Md. 436, 443 (1992) ("The test is whether the appellant's misconduct, viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk that the statute was designed to punish.").

Appellant's first argument is that the trial court abused its discretion by failing to articulate the specific evidence the State presented that supported the reckless endangerment charge. When the trial court was making its ruling on the motion for judgment of acquittal, after articulating its findings on the assault and conspiracy charges, the court ruled on the reckless endangerment clause, stating:

> In connection with reckless endangerment, the Court likewise will submit that matter to go to the jury. The Court believes that the fact finder needs to make determination in these matters with regard to whether or not Mr. Wassin did participate. The Court believes that the evidence is sufficient in the light most favorable to the State at this juncture. So I'll deny the motion

as to all counts.

Appellant argues that there was an abuse of discretion because the trial judge did not specifically articulate the reasoning for sending the charge to the jury.

There is a "strong presumption that judges properly perform their duties" and "trial judges are not obligated to spell out in words every thought and step of logic." *Beales v. State*, 329 Md. 263, 273 (1993) (citing *Schowgurow v. State*, 240 Md. 121, 126 (1965)). Additionally, "trial courts are presumed to know the law and apply it correctly." *Jones v. State*, 138 Md. App. 12, 21 (2001); *see also Samie v. State*, 181 Md. App. 59, 66–67 (2008) (applying this presumption but finding it did not apply when there the record indicated the trial judge did not know the law related to in camera review of a document). Absent evidence to the contrary here, the judge was presumed to know the law of reckless endangerment and apply it correctly, finding sufficient evidence for the case to go to the jury. Therefore, there was no abuse of discretion in the judge's decision to let the jury decide the count.

Turning to the argument that the record had insufficient evidence to support a conviction for reckless endangerment, we hold that the record did have enough evidence for a rational jury to find Appellant guilty. Appellant argued that Appellant was not involved in physical contact and therefore "did not partake in any reckless actions." As to the first part for not being involved in physical contact, the jury made no specific finding that Appellant had no physical contact. While the jury did acquit Appellant for first- and

second-degree assault the reasoning for that decision was not given. As discussed above,[11] there were conflicting facts about whether Appellant could have exited the car and therefore whether he participated in the assault. These conflicts have to be resolved in favor of the state in support of the idea that Appellant did participate in the assault. It is not proper for this Court to inquire into the specific reasons that the jury reached its decision, or to try to "intrude upon the province of the jury" to resolve "factual inconsistencies." *Williams*, 478 Md. at 123; *see also id.* at 118–19 ("[T]here may be various explanations for factually inconsistent verdicts, including lenity, mistake, or compromise.") (citing *McNeal v. State*, 426 Md. 455, 472–73 (2012)). Here, there were not factual inconsistencies, as the jury could have decided that the Appellant participated in the assault, but that his conduct did not rise to the level of conduct needed to convict him for first- or second-degree assault, or alternatively that Appellant's conduct in driving his friends to the scene of the incident constituted reckless endangerment, which is described in more detail below.

Appellant argues that the conduct alleged by the State does not rise to the level of "gross negligence" required to show reckless endangerment. S*ee State v. Morrison*, 470 Md. 86, 126 (2020) (discussing how gross negligence sets a higher evidentiary bar and requires conduct that is "so reckless that it amounts to a conscious disregard for the rights of others"). The case Appellant cites in support of the proposition is *State v. Morrison*, a tragic case where a four-month-old infant died from asphyxia when the mother co-slept with the child after having a few drinks. 470 Md. at 96–97. The court found that there was

[11] *See supra* note 10.

insufficient evidence that the mother's conduct was grossly negligent because there was no excessive drinking, and the State did not show a reasonable person would have appreciated the risks. *Id.* at 126–27. The conduct in this case goes well beyond *Morrison*. A reasonable person could have appreciated the risks of driving two friends to a former friend's house when days prior they had threatened to bring "the whole gang" to that former friend. A reasonable person could have appreciated the risks of parking at the end of the driveway, blocking the exit, and allowing his friend to exit the car when he saw Mr. Dixon present in the driveway. This case is unlike *Morrison* where only mere negligence may have been at play and here the Appellant acted in a manner that consciously disregarded the rights of Mr. Dixon.

Appellant also cites to cases in which the conduct did not rise to the level needed to create a substantial or appreciable risk of spreading harm. The first, In re *David P.*, involved a child placing burning matches onto the victim's porch, but that conduct was insufficient because the matches were placed on a nonflammable surface and had no appreciable risk of spreading harm. 234 Md. App. 127, 144 (2017). The second, *Moulden v. State*, involving a fake and inoperable firearm, did not constitute reckless endangerment because the risk of a loaded firearm discharging was not present and there was no risk the gun would be used as a bludgeoning instrument. 212 Md. App. 331, 358 (2013). Both of these cases did not find reckless endangerment because in neither scenario could an appreciable risk be created, since the matches could not light the home on fire and the gun could not fire. Here, the difference is Appellant's friends being brought to Mr. Dixon's home did create an appreciable risk to spreading harm to Mr. Dixon. Appellant drove his friends there after

they saw Mr. Dixon driving home. A jury could reasonably conclude the group went there to then confront Mr. Dixon while he was at his home. Appellant's cases would be more comparable to driving to Mr. Dixon's house when he was not home or if Appellant was not sure he was home. But by essentially following Mr. Dixon back to his home, it created an appreciable risk of spreading harm to Mr. Dixon.[12] Even without Appellant participating in the assault itself, there was sufficient evidence to support the jury's verdict. As discussed above, there were the text messages sent to Mr. Sexton which a reasonable jury could have interpreted as showing a plan or threat of future harm to Mr. Dixon. The messages stating that they would "bring the whole gang" support the shared purpose that was discussed for

[12] Similarly, Appellant argues that this case does not rise to the level of cases using known, loaded firearms. *See Perry v. State*, 229 Md. App. 687, 706 (2016) (finding that firing a gun at nearby police officers while in flight was sufficient for reckless conduct); *Thompson v. State*, 229 Md. App. 385, 416 (2016) (holding that the facts supported a jury finding that a shotgun held to the victims head was loaded and operable, which constituted reckless conduct). While this case does not involve the use of a loaded gun, the issue in those cases was that the firearm as used created a risk of harm to others, whether it was officers in a "close enough proximity . . . to be considered endangered" in *Perry*, 229 Md. App. at 706, or an allegedly loaded shotgun pointed at someone's head, *Thompson*, 229 Md. App. at 415–16.

Following the same analysis as before, the difference between a loaded and unloaded gun is like the difference between Appellant driving to Mr. Dixon's house knowing he would likely be there with his friends versus Appellant just driving to Mr. Dixon's house at a random time or when he doesn't know Mr. Dixon was there. The circumstances in the minutes prior to the incident aided a jury in finding Appellant acted in a reckless manner because the drive to Mr. Dixon's house created an appreciable risk under the circumstances of the prior text messages and history of their friendship.

Additionally, the reckless endangerment statute does not *require* a loaded firearm to find that reckless endangerment was present, only that the person cannot "engage in conduct that creates a substantial risk of death or serious physical injury to another." Md. Code, Crim. Law § 3-204(a)(1); *see, e.g.*, *Holbrook v. State*, 133 Md. App. 245, 258 (2000), *aff'd*, 364 Md. 354 (2001) (affirming a conviction for reckless endangerment where the defendant placed a burning pillow on a porch with occupants inside the house).

the conspiracy charge above and show a conscious disregard of future harm to Mr. Dixon, specifically that Mr. Dixon would be facing an assault by the group, which Appellant would have been aware of and disregarded when he drove the group to Mr. Dixon's home.

In addition to the text exchange, Appellant's actions on the day of the incident show that Appellant engaged in conduct that created a substantial risk of serious bodily harm. Appellant drove Mr. Hindman and Mr. Sexton to Mr. Dixon's house after seeing Mr. Dixon driving home, parked at the end of the driveaway to block the driveway, potentially joined them by getting out of the car during the assault, and then drove both passengers away from the scene of the incident. At least Mr. Hindman and Mr. Sexton then assaulted Mr. Dixon in a manner creating a substantial risk of serious bodily harm, sending Mr. Dixon to the hospital for multiple days where he had surgeries on his jaw. By driving the car to the house either knowing that the other two passengers would be engaging in a fight or consciously disregarding that risk, Appellant recklessly endangered the life and safety of Mr. Dixon. A jury could have found that a reasonable person would not have engaged in Appellant's actions in driving the individuals to Mr. Dixon's house or participating in the assault. The jury therefore had sufficient evidence to reach their decision as to reckless endangerment.

Therefore, we hold that there was sufficient evidence to uphold Appellant's convictions.

II. Vacation of Conspiracy to Commit Second-Degree Assault

The second issue presented is whether the trial court erred in failing to vacate Appellant's conviction for conspiracy to commit second-degree assault. Both parties agree that the trial court did err. Appellant discussed how the State never argued or presented

evidence of more than one unlawful agreement. The State agreed it never indicated its intention to prove multiple conspiracies and as a result one of the conspiracy convictions should be vacated. We agree and will reverse Appellant's conviction for conspiracy to commit second-degree assault.

Under Rule 4-345, a court is permitted to correct an illegal sentence at any time and has power over a sentence in case of mistake or irregularity. Md. Rule 4-345(a), (b).

Appellant was convicted of conspiracy to commit both first-degree assault and second-degree assault. A conspiracy sentence is based on the number of agreements, not the number of criminal objectives. *See Mason v. State*, 302 Md. 434, 445 (stating a "conspiracy remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy"). "The unit of prosecution is the agreement or combination rather than each of its criminal objectives." *Tracy v. State*, 319 Md. 452, 459 (1990). To convict someone of multiple conspiracies requires proving that more than one unlawful agreement existed. *Savage v. State*, 212 Md. App. 1, 13 (2013).

In *Savage v. State*, the court reviewed the record to determine if the State could prove that there were multiple conspiracies. *Id.* at 26–31. The court examined the jury instructions, the arguments by the State, and the jury's findings to come to its conclusion. *Id.* at 31. It found that the jury instructions did not mention that to find the Appellant guilty of multiple counts of conspiracy, the jury needed to be convinced that multiple agreements were made to violate the law. *Id.* at 27 (quoting *United States v. Frierson*, 698 F.3d 1267, 1270 (10th Cir. 2012)). Next, the court found that the State's opening and closing made no suggestion that there were multiple conspiracies, referring to a "conspiracy" and "the

agreement" and "[t]he conspiracy count." *Id.* at 28 (emphasis removed). Lastly, the verdict form was not amended to reflect separate conspiracies until after the jury asked a question. *Id.* at 29. As a result, the State failed to prove multiple conspiracies and one of the conspiracy convictions was vacated. *Id.* at 31.

In this case, the jury instructions did not contain any language that the jury needed to find separate agreements to convict Appellant of multiple conspiracies. Next, nowhere in the State's opening or closing argument did the prosecutor indicate that the State intended to prove multiple conspiracies.[13] Lastly, the verdict form did nothing to reflect that there were multiple separate agreements. Like in *Savage*, the State did not try to prove multiple conspiracies. As a result, since only a single unlawful agreement was proven, one of Appellant's convictions must be vacated.

The punishment of a person convicted of conspiracy cannot exceed the maximum punishment of the crime the person conspired to commit. Md. Code, Crim. Law § 1-202. Applying this statute, courts have held that the conviction to preserve is the one with the greatest maximum penalty. *See Jordan v. State*, 323 Md. 151, 162 (1991) (vacating a conspiracy to commit robbery conviction instead of a conspiracy to murder conviction that had the greater punishment); *see also McClurkin v. State*, 222 Md. App. 461, 491 (2015) (vacating two conspiracy convictions related to handgun offenses instead of a conspiracy to murder conviction).

Here, the conspiracy to commit second-degree assault has a maximum penalty of

[13] In closing argument, the prosecution said "Wassin is . . . guilty of being involved in *a conspiracy* to commit assault on Mr. Dixon." (emphasis added).

ten years compared to the conspiracy to commit first-degree assault having a maximum penalty of twenty-five years. Md. Code, Crim. Law § 3-203, § 3-202. As a result, the conspiracy to commit second-degree assault should be vacated while preserving the conspiracy to commit first-degree assault.

CONCLUSION

Accordingly, we vacate the Circuit Court of Cecil County as to Appellant's conviction for conspiracy to commit second-degree assault. All other judgments of the circuit court are affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED IN PART, VACATED IN PART; COSTS TO BE PAID 75% BY APPELLANT AND 25% BY CECIL COUNTY.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1525s23cn.pdf