

Circuit Court for Baltimore County
Case No.: 03-K-17-000035

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2451

September Term, 2017

WAYNE EDWARD ZEIGLER

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 28, 2018

*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 in the Circuit Court for Baltimore County convicted Wayne Zeigler, appellant, of first-degree murder of Gerrod Greenwood,¹ first-degree assault of Kamron Johnson, conspiracy to commit witness intimidation, and solicitation to commit witness intimidation. The court sentenced him to a total term of life imprisonment plus twelve years. The only issue before us is whether the evidence was sufficient to sustain Mr. Zeigler’s convictions. Because the defense did not preserve the issue for appellate review, we affirm.

BACKGROUND

On September 1, 2016, Mr. Zeigler, Phillip Moore, Anthony Bell, and Brad Brown got in an altercation with another group of males, Gerrod Greenwood, Darrien Greenwood, Kareem Sprately, and Kamron Johnson. Gerrod Greenwood died from knife wounds to the chest and throat. Mr. Johnson, Mr. Moore, and Mr. Sprately all suffered knife wounds to the abdomen.

Mr. Bell testified at trial that he did not know whether Mr. Zeigler had a knife during the fight, that he did not see Mr. Zeigler or anyone else with a knife, and he did not see anyone get stabbed. The State then played Mr. Bell’s recorded interview with police for the jury, where he indicated that Mr. Zeigler “always got a knife” and that he did not know Mr. Moore or Mr. Brown to carry a knife. Mr. Bell testified that he only said those things to take attention away from himself, and because it was what the police wanted to hear. He testified that anyone in the group could have had a knife, but he did not see one.

¹ In the record, there is some discrepancy over the spelling of the victim’s name and among some of the witnesses. We chose the spellings that seemed most likely to be correct.

Steven Russell, an associate of Mr. Zeigler, testified that he was not present for the fight, but that he knew for a fact Mr. Zeigler had nothing to do with the murder, and that he could not remember what he told police in his interview. The State then played his recorded interview with the police for the jury, where Mr. Russell explained to the police that he called Mr. Zeigler after the fight and Mr. Zeigler told him that he had stabbed the man who died. Mr. Russell testified that he did not recall saying that to the police, nor did he recall the phone conversation with Mr. Zeigler.

The State admitted into evidence cell phone records showing calls from Mr. Russell to Mr. Zeigler after the fight, as well as video footage of the fight taken from cell phones of witnesses and security footage from the nearby Dunkin Donuts. In the video footage, Mr. Zeigler can be seen with a knife in his hand.

Mr. Brown testified that he did not have a knife that day and he did not see Mr. Zeigler, Mr. Bell, or Mr. Moore with a knife. He claimed that he rode the bus with Mr. Zeigler after the fight and he did not see Mr. Zeigler with a knife or any blood on his clothes.

Mr. Johnson, who was injured in the fight, testified that he did not have a knife that day and he did not see Darrien or Gerrod Greenwood with a knife. He did not know how he got injured, but saw blood on his hands, and woke up in the hospital. Darrien Greenwood testified that he did not have a knife that day, nor did he see his brother Gerrod or Kareem Sprately with a knife.

Janet Parks testified that Mr. Zeigler mailed to her a copy of the transcript from Mr. Bell's interview with police. Mr. Zeigler asked her to make copies of the transcript and

send them to Don Pablo and other individuals. The State then played jail calls between Ms. Parks and Mr. Zeigler and between Mr. Pablo and Mr. Zeigler. In the jail calls Mr. Zeigler expressed anger about Mr. Bell’s interview with the police. He also related that he talked to his “homie” and the “homie” said he “know where somebody at” and people “want to get their hands on him.”

After the State rested, defense counsel made a motion for judgment of acquittal regarding the attempted first-degree murder, attempted second-degree murder, and first-degree assault of Kareem Sprately; attempted first-degree murder and attempted second-degree murder of Kamron Johnson; conspiracy to commit witness intimidation; solicitation to commit witness intimidation; conspiracy to commit witness retaliation; and solicitation to commit witness retaliation. The court acquitted Mr. Zeigler of attempted first-degree murder of Mr. Johnson and Mr. Sprately and of conspiracy to commit witness retaliation and solicitation to commit witness retaliation, but denied the motion as to the other counts.

The defense then presented one witness, Ryan Sasser, a pizza delivery driver, who saw the fight and pulled his car into the parking lot to provide aid to the victims. Mr. Sasser testified that he saw an African-American male, about 6 feet tall and dark skinned, hit Gerrod Greenwood in the throat, and saw Mr. Greenwood then stumble to the ground. Mr. Sasser’s description of the assailant did not match Mr. Zeigler, who was described as shorter and light skinned.

After the defense rested, counsel again made a motion for judgment of acquittal, specifically as to the attempted second-degree murder of Mr. Johnson and Mr. Sprately and the first-degree assault of Mr. Sprately. The court acquitted Mr. Zeigler of attempted

second-degree murder of Mr. Sprately, but otherwise denied the motion. The jury then found Mr. Zeigler not guilty of first-degree assault of Mr. Sprately, but guilty of first-degree murder of Gerrod Greenwood, first-degree assault of Mr. Johnson, and conspiracy to commit witness intimidation, and solicitation to commit witness intimidation.

DISCUSSION

Mr. Zeigler contends that the evidence was insufficient to sustain his convictions. We will not address the issue because it is not preserved for appellate review.

“Appellate review of the sufficiency of the evidence in a criminal case tried by a jury is predicated on the refusal of the trial court to grant a motion for judgment of acquittal.” *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *Lotharp v. State*, 231 Md. 239, 240 (1963)). Under Rule 4-324(a), a defendant shall state with particularity all reasons why a motion for judgment of acquittal should be granted by arguing “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.” *Id.* at 303 (quoting *Fraidin v. State*, 85 Md. App. 231, 245 (1991)). “The language of Rule 4-324(a) ‘is mandatory, and review of a claim of insufficiency is available only for the reasons given by appellant in his motion for judgment of acquittal.’” *Cagle v. State*, 235 Md. App. 593, 604 (2018) (quoting *Whiting v. State*, 160 Md. App. 285, 308 (2004)).

Defense counsel moved for judgment of acquittal after the State rested their case:

[DEFENSE COUNSEL]: I’ll start with the less ones first. I don’t think the State has met its burden to tell, has met its burden to prove first degree assault against Kareem Sprately, attempted second degree-murder against Kareem Sprately or attempted first-degree murder against Kareem Sprately. At no

point did we hear from Mr. Sprately, at no point did anyone testify on Mr. Sprately’s behalf, at no, at no point did anyone talk about Mr. Sprately’s injuries, if any. Would you like me to go on, Your Honor?

THE COURT: Sure.

[DEFENSE COUNSEL]: Thank you. I don’t think the State has proven its, its attempted first-degree murder against Mr. Johnson, [Kamron] Johnson, or its attempted second-degree murder against [Kamron] Johnson. Mr. Johnson did not testify that Mr. Zeigler in any way assaulted him or cut him. In fact, Mr. Johnson did not know who had cut him. And I don’t believe that the State has proven the, the elements required for the premeditation of an attempted first-degree murder or even the elements for a second-degree, attempted second-degree murder against Mr. Johnson. And finally, Your Honor, I do not believe that the State has proven its case in regards to conspiracy to commit, to commit witness intimidation, solicitation to commit witness intimidation, conspiracy to commit witness retaliation or solicitation to commit witness retaliation.

After defense counsel argued that there were insufficient facts to prove the conspiracy and solicitation charges, the court asked, “Anything else?” and counsel responded, “No, Your Honor.” After argument by the State and some rebuttal by defense, the court granted the motion in part, as noted. At no point during argument of that motion did defense counsel mention the first-degree murder charge of Gerrod Greenwood or the first-degree assault charge of Mr. Johnson.

Then, after the defense presented its evidence, defense counsel again moved for judgment of acquittal, specifically saying:

[DEFENSE COUNSEL]: And, Your Honor, we would, once again, now that we’ve rested, restate that the State has, the motion for a judgment, that the State has not produced any evidence that would allow for second-degree, attempted

second-degree murder for Mr. Kamron Johnson or attempted second-degree murder for Mr. Kareem Sprately or first-degree assault against Mr. Kareem Sprately. Mr. Sprately never testified. We never heard from him at all. The State has not met its burden, I believe at this point in the hearing, to raise enough evidence to tell the jury that they've put forth evidence that shows in some way, an attempted second-degree murder attempt against Mr. Sprately or a first-degree assault attempt against Mr. Sprately or an attempted second-degree murder charge against Mr. Johnson.

THE COURT: Anything else?

[DEFENSE COUNSEL]: No.

Again, at no point did defense counsel mention the first-degree murder charge of Gerrod Greenwood or the first-degree assault charge of Mr. Johnson. Although defense counsel argued with particularity the solicitation and conspiracy to commit witness intimidation charges in his original motion, he abandoned those arguments in his second motion by failing to mention them.

In *Warfield v. State*, the Court of Appeals held that a renewed motion for judgment of acquittal that lacks particularity is nonetheless sufficient when the party “states that the motion is based upon the same reasons given at the time the original motion was made, or when a party ‘renews’ a motion for judgment and thereby implicitly incorporates by reference the reasons previously given.” 315 Md. 474, 487-88 (1989). In that case, the defense counsel, after presenting evidence, stated, “I would renew-renew my Motion for Acquittal on all three Counts.” *Id.* at 486-87. The Court held that was sufficient to preserve the sufficiency of the evidence issue for appeal.

Here, however, at no point did defense counsel indicate that he wished to “renew” his original motion. Rather he “restates” that “the State did not produce any evidence that would allow for second-degree, attempted second-degree murder for Mr. Kamron Johnson or attempted second-degree murder for Mr. Kareem Sprately or first-degree assault against Mr. Kareem Sprately.”

Because defense counsel never argued a motion for judgment of acquittal as to the first-degree murder of Gerrod Greenwood and the first-degree assault of Mr. Johnson, and because he abandoned the motion as to conspiracy and solicitation to commit witness intimidation, we hold that the sufficiency of the evidence issue raised on appeal is unpreserved.

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