

Circuit Court for Baltimore City
Case No. 113170042

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2552

September Term, 2018

EDDIE TARVER

v.

STATE OF MARYLAND

Leahy,
Friedman,
Shaw Geter,

JJ.

Opinion by Friedman, J.

Filed: March 11, 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.

In 2016, Eddie Tarver was convicted of first-degree murder, attempted first-degree murder, conspiracy to commit first-degree murder, and other related charges. Tarver appealed his convictions to this Court and we remanded the case back to the Circuit Court for Baltimore City for a new trial. *Tarver v. State*, Case No. 455, Sept. Term 2016, slip op at 18 (unreported opinion) (filed May 9, 2017) (“*Tarver I*”). Following Tarver’s second trial, a jury convicted him of conspiracy to commit first-degree murder and he was sentenced to life imprisonment.

Before us now, Tarver appeals his conviction and raises four issues for our review, which we have consolidated as follows: (1) whether the circuit court erred in admitting into evidence certain photographs of Tarver and (2) whether there was sufficient evidence to support Tarver’s conviction for conspiracy to commit first-degree murder.¹ For the reasons that follow, we hold, *first*, that any error in the admission of the photographs was harmless and *second*, that there was sufficient evidence to support Tarver’s conviction. Accordingly, we affirm the judgment of the circuit court.

¹ The four issues that Tarver presents for our review are: “(1) whether the circuit court erred by admitting in evidence certain pictures from a cellphone, specifically State Exhibits 40A through 40E; (2) whether the circuit court erred by admitting in evidence certain other photographs, specifically State Exhibits 51A through 51D; (3) whether the circuit court erred by denying Tarver’s Motions for Judgment of Acquittal; and (4) whether the circuit court erred by denying Tarver’s Motion for a New Trial.”

BACKGROUND²

The underlying facts of this appeal center around the shooting of Rashaw Scott and his sixteen-month-old son, Carter Scott. On May 24, 2013, Rashaw was waiting in the driver's seat of his girlfriend's red car in a parking lot of the Cherrydale apartment complex in the Cherry Hill neighborhood of Baltimore City. *Tarver I*, slip op. at 2. Carter was secured in a car seat in the back seat of the car. *Id.* Three or four men wearing latex gloves approached the car and began shooting into it. *Id.* Carter was killed and Rashaw sustained serious injuries. *Id.*

After the shooting, officers from the Baltimore Police Department were alerted that some of the shooters may have left the scene in a Toyota Solara. *Tarver I*, slip op at 5. One officer followed a car matching that description and, after it crashed into a parked car, pursued a man who fled the Toyota Solara. *Id.* at 6. That man, later identified as Tarver, was arrested after fleeing the crash site and hiding in some nearby bushes. *Id.* At the time of his arrest, "Tarver was wearing purple sneakers, a grey hooded sweatshirt, and a latex glove on one hand." *Id.* The Toyota Solara was later determined to belong to Breyon Cason, the girlfriend of one of the alleged shooters. *Id.* Officers seized Cason's cellphone and car and a crime scene technician recovered latex medical gloves and cellphones from inside the vehicle. *Id.* Tarver's fingerprint was also found on the car's exterior. *Id.*

A detective from the Baltimore Police Department interviewed Rashaw in the hospital and showed him a photographic array. *Tarver I*, slip op. at 7-8. During the

² The facts are condensed from our previous unreported opinion, *Tarver v. State*, Case No. 455, Sept. Term 2016 (unreported opinion) (filed May 9, 2017) ("*Tarver I*").

interview, Rashaw was shown a photograph of Tarver and identified him as “Scoop.” *Id.* at 7. Rashaw told the detective that he only saw one shooter, but he could not give a description of that person. *Id.* Two days after the shooting, Rashaw participated in a recorded interview, in which he described the shooter as wearing a “gray hoodie” and “either black or dark blue pants.” Tarver and his other co-defendants were subsequently convicted by a jury in the Circuit Court for Baltimore City of first-degree murder, attempted first-degree murder, conspiracy to commit first-degree murder and related offenses. Tarver appealed his conviction to this Court. We reversed the judgments against him and remanded the case for further proceedings. *Tarver I*, slip op. at 1.

During the second trial, Tarver objected to the admission of State’s Exhibits 40A through 40E, which were digital photographs seized from Cason’s cellphone, because the testifying officer failed to lay a proper foundation. Tarver also objected to the admission of State’s Exhibits 51A through 51D, digital photographs depicting Tarver’s appearance when he was initially apprehended, on similar grounds. The trial court overruled the objections and Tarver was convicted of conspiracy to commit first-degree murder.³ Following his conviction, Tarver filed a motion for a new trial, which the circuit court denied. Tarver now appeals.

³ Tarver was jointly tried with another co-defendant, who was acquitted of all charges. The jury acquitted Tarver of the charges relating to the death of Carter Scott but the jury was hung as to the charges relating to the shooting of Rashaw Scott.

DISCUSSION

I. ADMISSIBILITY OF PHOTOGRAPHS

Tarver challenges the circuit court’s admission of two batches of pictures: (1) State’s Exhibits 40A through 40E, photographs recovered from Cason’s cellphone depicting Tarver and the other co-defendants together and (2) State’s Exhibits 51A through 51D, photographs taken at the police station depicting Tarver’s appearance at the time of his arrest.

Maryland Rule 5-901(a) requires that evidence be properly authenticated as “a condition precedent to admissibility.” The authentication requirement “is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” *Id.* In *Washington v. State*, the Court of Appeals identified two ways to authenticate photographs. 406 Md. 642 (2008). *First*, photographs can be admitted “through the testimony of a witness with personal knowledge” that “the photograph fairly and accurately represents the scene or object it purports to depict.” *Washington*, 406 Md. at 652. This is known as the “pictorial testimony” method of authentication. *Id.* *Second*, photographs can be admitted after “authentication by the presentation of evidence describing a process or system that produces an accurate result,” under which the photograph “speaks with its own probative effect.” *Id.* This is known as the “silent witness” method of authentication. *Id.* (describing this authentication method as sufficient for a photograph so long as the “foundational evidence is presented to show the circumstances under which it taken and the reliability of the reproduction process”); *see also* 2 MCCORMICK ON EVIDENCE § 215 (8th ed. 2020) (discussing how under this theory of

authentication, “photographic evidence is shown to be accurate by proof of the reliability of the photographic process”).

Under either theory, a trial court’s decision on the authentication of photographic evidence is reviewed for abuse of discretion. *State v. Simms*, 420 Md. 705, 724-725 (2011); *see King v. State*, 407 Md. 682, 697 (2009) (explaining that an abuse of discretion occurs when “no reasonable person would take the view adopted by the [trial] court”).

A. State’s Exhibits 40A–40E

Tarver argues that State’s Exhibits 40A through 40E lacked proper authentication and, therefore, the circuit court abused its discretion by admitting the photographs. The State argues that these photographs were presented as accurate depictions of the images found by the police on Cason’s cellphone. In support of this argument, the State references the trial testimony of Detective Jones of the Baltimore Police Department. Detective Jones discussed how the photographs were retrieved from Cason’s cellphone and indicated that the photographs depicted Tarver and several of his co-defendants. This testimony was introduced as circumstantial evidence that Tarver and his alleged co-conspirators knew each other. While this is an inference that the jury could make, and we are obligated to give deference to such inferences, *see Bible v. State*, 411 Md. 138, 156 (2009), the State was nonetheless required to provide foundational evidence to satisfy the authentication requirement before introducing these photographs. MD. RULE 5-901(a). We are not convinced that Detective Jones’ testimony constitutes adequate authentication under either method outlined in *Washington*. *See Washington*, 406 Md. at 652.

Detective Jones, despite recovering the images on the cellphone, had no personal knowledge that these photographs “fairly and accurately represent[] the scene or object [they] purport to depict,” i.e., he wasn’t at the scene with Tarver and the other alleged co-conspirators. *Washington*, 406 Md. at 652. His testimony, therefore, fails to satisfy the “pictorial testimony” method of authentication. *Id.* Additionally, Detective Jones’s testimony was not adequate under the “silent witness” method of authentication because, while he could testify about the process by which he downloaded the pictures, he could not testify about the process by which the pictures were taken. *Id.* *Washington* illustrates the distinction.

In *Washington*, the Court of Appeals held that the trial court erred by admitting the State’s evidence of a video surveillance tape and still photographs of the video as “probative evidence in themselves.” *Washington*, 406 Md. at 655. Proper authentication under the “silent witness” method requires the State to produce testimony regarding “the manner of operation of the cameras, the reliability or authenticity of the images, or the chain of custody of the pictures.” *Id.* Similarly, here, the State failed to produce a foundation as to how the photographs were created. The only evidence presented was that Detective Jones obtained a warrant to search the phone and had downloaded the images from the phone. As such, we hold that the photographs should not have been admitted because the State did not properly authenticate State’s Exhibits 40A through 40E.

Despite this error, the admission of this batch of photographs was harmless. *Dionas v. State*, 436 Md. 97, 108 (2013) (stating that reversal is only appropriate if an appellant in a criminal case establishes the existence of an error that affected the verdict). An error is

harmless when a reviewing court, after an independent view of the record, determines beyond a reasonable doubt that the error “in no way influenced the verdict.” *Rosenberg v. State*, 129 Md. App. 221, 253 (1999). To decide whether an error affected the court’s verdict, a reviewing court should look at: “the importance of the tainted evidence; whether the evidence was cumulative or unique; the presence or absence of corroborating evidence; the extent of the error; and the overall strength of the State’s case.” *Id.* at 254. Given these factors, and in light of the other evidence presented at trial,⁴ we are not persuaded that State’s Exhibits 40A through 40E had any influence on the jury’s verdict in the second trial. We, therefore, hold that the circuit court’s error in admitting State’s Exhibits 40A through 40E was harmless beyond a reasonable doubt.

B. State’s Exhibits 51A–51D

Tarver next argues that State’s Exhibits 51A through 51D were not authenticated by someone with personal knowledge and, as a result, the circuit court’s admission of these photographs was an abuse of discretion. Specifically, Tarver finds fault with the State’s failure to call witnesses who were present while these photographs were being taken to provide a foundation.

There is no requirement that the authentication of a photograph requires testimony from the person who took the photograph; all that is needed is the testimony of someone with personal knowledge. *State v. Broberg*, 342 Md. 544, 553 n.5 (1996) (stating that “[t]he photographer need not testify provided that someone with personal knowledge verifies that

⁴ See *infra* Part II.

the photograph accurately portrays it[s] subject”). The officer who arrested Tarver had personal knowledge of what Tarver looked like at that time and, therefore, could testify that State’s Exhibits 51A through 51D fairly and accurately showed Tarver as he looked at the time he was taken into custody. We are satisfied that this testimony is consistent with the “pictorial testimony” authentication method discussed in *Washington*. We, therefore, hold that State’s Exhibits 51A through 51D were properly authenticated and, as such, the circuit court did not abuse its discretion in admitting these photographs into evidence.

II. SUFFICIENCY OF EVIDENCE

Tarver’s next contention is that there was insufficient evidence presented at his second trial to sustain his conviction for conspiracy to commit first-degree murder and, therefore, the circuit court erred in denying his motion for a new trial. The State argues that there was sufficient evidence for a reasonable jury to infer that Tarver was part of a conspiracy. We agree.

When reviewing a sufficiency of the evidence challenge, we examine “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 crimes beyond a reasonable doubt.” *State v. Smith*, 374 Md. 527, 533 (2003). The purpose of appellate review is not, however, to re-evaluate the evidence, but to “determine whether the verdict was supported by sufficient evidence, direct or circumstantial.” *Id.* at 534 (quoting *White v. State*, 363 Md. 150, 162 (2001)).

A conspiracy is an “agreement between two or more people to achieve some unlawful purpose or to employ unlawful means in achieving a lawful purpose.” *Alston v.*

State, 414 Md. 92, 113 (2010). The heart of the conspiracy is “a meeting of the minds reflecting a unity of purpose and design.” *Id.* at 114. A conspiracy can be proven from circumstantial evidence, “from which a common design may be inferred.” *Mitchell v. State*, 363 Md. 130, 145 (2001). Tarver maintains that, based on the circumstantial evidence presented at trial, no reasonable jury could conclude that he had conspired with anyone.

We hold that the evidence was sufficient to sustain Tarver’s conviction for conspiracy to commit first-degree murder.⁵ Tarver argues that the only evidence the State offered at his second trial was that he was arrested on May 24, 2013 in the neighborhood where the Toyota Solara crashed and that his fingerprints were found outside the passenger door of the Toyota Solara. Tarver fails to acknowledge, however, that the State’s evidence linked him to the other co-defendants charged, thereby demonstrating “a concurrence of actions by the co-conspirators,” sufficient for a jury to “presume ... the existence of a conspiracy.” *Acquah v. State*, 113 Md. App. 29, 50 (1996); *see also Jones v. State*, 132 Md.

⁵ Tarver also raised a sufficiency of the evidence challenge in his first appeal. *Tarver I*, slip op. at 9. Although not relevant to our holding in the earlier case, because we reversed and remanded back to the circuit court for further proceedings, we nonetheless discussed our view that Tarver’s sufficiency challenge was without merit. Specifically, we stated that:

[t]he evidence that the shooters all were wearing latex gloves; that two of the shooters fled the scene in the Toyota; that Tarver bailed out of the Toyota after it crashed; that he was apprehended a short distance away, hiding in the bushes; and that he was wearing a latex glove on one hand when he was apprehended was legally sufficient to sustain his convictions.

Tarver I, slip op. at 14-15. As discussed above, all of this evidence was reintroduced at Tarver’s second trial.

App. 657, 660 (2000) (“If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may ... infer a prior agreement by them to act in such a way.”).

The State presented the following evidence to the jury:

- One witness testified that she saw a group of men, who appeared to be wearing latex gloves on their hands, run toward Rashaw Scott’s car, surround the vehicle, and shoot into the car.
- Another witness described seeing the gunmen collectively flee the scene of the shooting.
- After the shooting, police helicopter video footage showed two men running from a Toyota Solara. The arresting officer testified that he saw a man, who he later identified as Tarver, run away from the Toyota Solara and hide in a nearby wooded area.
- Along with Tarver’s fingerprint on the exterior of the Toyota Solara, investigators also found the fingerprints of two other alleged co-conspirators on the car.
- When Tarver was arrested, he was wearing a “rubber glove on his left hand, purple shoes, a gray Old Navy sweatshirt, and blue jeans.”
- During a pre-trial interview, Rashaw Scott described one of the shooters as wearing a “gray hoodie” and “either black or dark blue pants.”

We are satisfied that, based on this evidence, a reasonable jury could infer the existence of a conspiracy. We, therefore, hold that the evidence was sufficient to convict Tarver of conspiracy to commit first-degree murder and that the circuit court did not err in denying Tarver’s motion for a new trial.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**