

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1057

September Term, 2024

TIMOTHY DIGGS

v.

STATE OF MARYLAND

Friedman,
Albright,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: April 23, 2026

*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).

Appellant, Timothy Diggs, was convicted by a jury in the Circuit Court for Baltimore City of attempted armed carjacking, conspiracy to commit armed carjacking, attempted carjacking, conspiracy to commit carjacking, robbery with a dangerous weapon,¹ conspiracy to commit robbery with a dangerous weapon, robbery, conspiracy to commit robbery, second-degree assault, attempted motor vehicle theft, and theft of an amount between \$100 and \$1,500 in connection with an incident which occurred on April 16, 2023, in the Station North neighborhood of Baltimore City.

For sentencing purposes, Diggs’s convictions for attempted carjacking and attempted motor vehicle theft were merged with the attempted armed carjacking conviction; his conviction for conspiracy to commit carjacking merged with conspiracy to commit armed carjacking; his conviction for conspiracy to commit robbery merged with conspiracy to commit robbery with a dangerous weapon; and his convictions for robbery, second-degree assault, and theft of an amount between \$100 and \$1,500 all merged with the robbery with a dangerous weapon conviction. The Circuit Court sentenced Diggs to thirty years’ imprisonment for attempted armed carjacking, thirty years’ imprisonment for conspiracy to commit armed carjacking, twenty years’ imprisonment for robbery with a dangerous weapon, and twenty years’ imprisonment for conspiracy to commit robbery with a dangerous weapon; the sentences for attempted armed carjacking and robbery with a dangerous weapon were to run consecutively, while the sentences for the other two

¹ “Robbery with a dangerous weapon” is also commonly referred to as “armed robbery.” The two terms are used interchangeably throughout this opinion.

convictions for conspiracy were to run concurrently with the two consecutive sentences, for a total of fifty years.

Diggs presents the following questions for our review, which we have reordered and rephrased:²

1. Should all but one of Diggs's convictions for conspiracy be vacated?
2. Was there sufficient evidence presented to the trial court to support the imposition of a mandatory minimum sentence for robbery with a dangerous weapon?
3. Did the trial judge plainly err by accepting the jury's verdicts when Diggs failed to raise an objection before the jury was discharged?
4. Was there sufficient evidence presented to support the jury's finding that Diggs was guilty of attempted armed carjacking and conspiracy?

The State concedes that all but one of Diggs's conspiracy convictions should be vacated. As such, we shall remand this case to the Circuit Court to vacate Diggs's convictions for conspiracy to commit robbery with a dangerous weapon, conspiracy to commit robbery, and conspiracy to commit carjacking. We shall affirm on all other issues.

² Diggs's questions as presented are:

1. Is the mandatory portion of Appellant's sentence for armed robbery an illegal sentence?
2. Must Appellant's multiple convictions for conspiracy be vacated?
3. Did the trial judge plainly err by accepting an impermissibly inconsistent verdict?
4. Is the evidence legally insufficient to sustain Appellant's convictions for attempted armed robbery and conspiracy?

Although Diggs's fourth question presented references his conviction for "attempted armed robbery," the substance of his argument challenges the sufficiency of the evidence presented to support his attempted armed carjacking conviction.

BACKGROUND

According to the evidence adduced at trial, on April 16, 2023, Gregory Rogers was sitting in his car in the 2100 block of Maryland Avenue in Baltimore City, when two men entered his vehicle. He stated that one of the men climbed into the back seat, while the other, who he later identified as Diggs, climbed into the front passenger seat. Mr. Rogers testified that Diggs brandished a black handgun, took \$500 in cash from him, and demanded the keys to his vehicle. When he refused to relinquish his keys, Rogers testified that Diggs struck him in the face with the handgun and fled from the vehicle on foot.

Diggs was indicted in August of 2023,³ and trial began on May 8, 2024. At trial, the jury heard testimony from Mr. Rogers, as well as a crime laboratory technician, a latent fingerprint examiner, and several officers and detectives from the Baltimore City Police Department. After three days of trial, the jury found Diggs guilty of the aforementioned charges, after which the court requested a pre-sentence report. A sentencing hearing was set for July 8, 2024.

On May 14, 2024, the State filed a Notice of Intent to Seek Mandatory Sentence alleging that, because Diggs had a prior conviction for robbery with a dangerous weapon,

³ In a sixteen-count indictment, Diggs was charged with the following counts: (1) attempted armed carjacking; (2) conspiracy to commit armed carjacking; (3) attempted carjacking; (4) conspiracy to commit carjacking; (5) robbery with a dangerous weapon; (6) conspiracy to commit robbery with a dangerous weapon; (7) robbery; (8) conspiracy to commit robbery; (9) assault in the first degree; (10) conspiracy to commit assault in the first degree; (11) assault in the second degree; (12) conspiracy to commit assault in the second degree; (13) attempted motor vehicle theft; (14) conspiracy to commit motor vehicle theft; (15) theft; and (16) conspiracy to commit theft. The State entered nolle prosequi on counts fourteen and sixteen. Diggs was acquitted of counts nine, ten, and twelve.

the mandatory minimum sentence of ten years’ imprisonment without the possibility of suspension or parole was warranted pursuant to Section 14-101(d) of the Criminal Law Article (“CR”) of the Maryland Code (1957, 2021 Repl. Vol., 2024 Supp.). Diggs opposed, arguing that “the sentencing structure associated with the application of the enhanced mandatory sentence is unconstitutional.”

Diggs filed a Motion for New Trial on May 20, 2024, arguing that the jury’s verdicts for robbery and assault were inconsistent.⁴ On July 7, Diggs filed a Sentencing Memorandum requesting that the court sentence him “within the Maryland Sentencing Guidelines for a period not to exceed twelve (12) years of imprisonment[.]”

On July 8, the parties reconvened for a sentencing hearing. The judge reviewed the presentence report and, based on that report, concluded that Diggs qualified for the mandatory minimum sentence pursuant to Section 14-101(d). Accordingly, the judge ordered that the first ten years of Diggs’s sentence for robbery with a dangerous weapon were to be without the possibility of parole. Diggs filed a Motion for Modification of Sentence on July 14, 2024, which was denied. He noted his appeal that same day.

DIGGS’S MULTIPLE CONSPIRACY CONVICTIONS SHOULD BE VACATED

Before reaching the merits of Diggs’s appeal, we observe that there is one issue about which the parties agree: that all but one of Diggs’s conspiracy convictions should be vacated. We agree.

⁴ The Motion for New trial was not resolved prior to the filing of Diggs’s appeal. On February 26, 2026, we stayed this matter and remanded the case to the Circuit Court to rule on the motion, which was denied on March 4, 2026.

During trial, the jury found Diggs guilty of four conspiracy counts: count two, conspiracy to commit armed carjacking; count four, conspiracy to commit carjacking; count six, conspiracy to commit robbery with a dangerous weapon; and count eight, conspiracy to commit robbery. Two of those counts merged: count four merged with count two; and count eight merged with count six. Diggs was then sentenced for counts two and six: conspiracy to commit armed carjacking and conspiracy to commit robbery with a dangerous weapon. He presently argues that, “[a]ll but one of the conspiracy convictions must be vacated, along with the sentence for conspiracy to commit armed robbery, because the evidence established, at most, a single conspiracy.” The State agrees. The State concedes that the evidence presented at trial here supported only one conspiracy.

“A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means.” *Jordan v. State*, 246 Md. App. 561, 599 (2020) (quoting *Khalifa v. State*, 382 Md. 400, 436 (2004)). “It is well settled in Maryland that only one sentence can be imposed for a single common law conspiracy no matter how many criminal acts the conspirators have agreed to commit. The unit of prosecution is the agreement or combination rather than each of its criminal objectives.” *Tracy v. State*, 319 Md. 452, 459 (1990); *Henry v. State*, 324 Md. 204, 240 (1991); *see also Mason v. State*, 302 Md. 434, 445 (1985) (“A conspiracy remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy.”). Therefore, to sustain convictions for multiple conspiracies, there must be multiple agreements. *See Savage v. State*, 212 Md. App. 1, 13 (2013) (“In

other words, the conviction of a defendant for more than one conspiracy turns on whether there exists more than one unlawful agreement.”) (internal quotations omitted).

Here, the evidence showed that two men worked in concert with one another to enter Mr. Rogers’s vehicle simultaneously, wherein they demanded Mr. Rogers’s money and the keys to his vehicle. Even if Diggs and his counterpart agreed to both rob and carjack Mr. Rogers, that still presents only one agreement, and therefore only one conspiracy.

For purposes of sentencing for conspiracy, if there is any doubt as to which substantive count a conspiracy count relates, the presumption will be that it relates to the most serious count. *See Rudder v. State*, 181 Md. App. 426, 453 (2008) (“The presumption would be in a case such as this that ‘the crime’ conspired at would be the maximum crime charged in a multi-count indictment.”). Therefore, the sole conspiracy conviction that should remain is count two, conspiracy to commit armed carjacking, as that is the most serious conspiracy charge for which Diggs was convicted. The remaining conspiracy convictions for counts four, six, and eight should be vacated on remand.

We now turn to the remaining issues Diggs presents on appeal.

STANDARD OF REVIEW

“We review a challenge to the sufficiency of the evidence *de novo*.” *Fidelity First Home Mortg. Co. v. Williams*, 208 Md. App. 180, 197 (2012) (citing *Polk v. State*, 378 Md. 1, 7–8 (2003)). Whether a jury verdict is inconsistent is similarly reviewed *de novo*. *Williams v. State*, 251 Md. App. 523, 540 (2021) (“Whether a jury verdict is legally inconsistent is a question of law that we review without deference.”).

DISCUSSION

MANDATORY SENTENCE

Diggs first contends that the mandatory portion of his sentence—that the first ten years be served without the possibility of parole—was an illegal sentence because the State “failed to offer legally sufficient proof” that Diggs had a prior conviction for a crime of violence and served the requisite term of confinement to qualify for a mandatory sentence under Section 14-101(d)(2) of the Criminal Law Article (1957, 2021 Repl. Vol., 2024 Supp.), which provides:

(i) On conviction for a second time of a crime of violence committed on or after October 1, 2018, a person shall be sentenced to imprisonment for the term allowed by law, but not less than 10 years, if the person:

1. has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 2018; and
2. served a term of confinement in a correctional facility for that conviction.

(ii) The court may not suspend all or part of the mandatory 10-year sentence required under this paragraph.

(iii) A person sentenced under this paragraph is not eligible for parole except in accordance with the provisions of § 4-305 of the Correctional Services Article.

The State responds that the evidence was sufficient to show that Diggs met the statutory requisites for the mandatory sentence. In its Notice of Intent to Seek Mandatory Sentence, the State alleged that Diggs had previously been convicted of robbery with a dangerous weapon on September 18, 2014, stemming from an incident which occurred on

August 22, 2013. Robbery is considered a “crime of violence” within the meaning of the Criminal Law Article. *See* CR § 14-101(a)(9) (1957, 2021 Repl. Vol., 2024 Supp.).

Notably, Diggs did not present his argument before us to the trial court. Rather, Diggs’s counsel argued, both in his opposition to the State’s Notice to Seek Mandatory Sentence and at the sentencing hearing itself, that the mandatory sentence created by Section 14-101(d) was unconstitutional. Counsel did not otherwise argue that the State did not meet its burden of proof.

“Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). This rule “serves to prevent the unfairness that could arise when a party raises an issue for the first time on appeal, thus depriving the opposing party from admitting evidence relating to that issue at trial.” *Wilkerson v. State*, 420 Md. 573, 597 (2011). Despite his failure to raise an objection in the court below, Diggs relies on Maryland Rule 4-345(a), which provides: “The court may correct an illegal sentence at any time.” This exception, however, is a limited one and only applies to sentences that are “inherently” illegal. *Bryant v. State*, 436 Md. 653, 662 (2014).

“[W]here the sentence imposed is not inherently illegal, and where the matter complained of is a procedural error, the complaint does not concern an illegal sentence for purposes of Rule 4-345(a).” *Tshiwala v. State*, 424 Md. 612, 619 (2012). Our Supreme Court has explained that:

The distinction between those sentences that are “illegal” in the commonly understood sense, subject to ordinary review and procedural limitations, and those that are “inherently” illegal, subject to correction “at any time” under

Rule 4-345(a), has been described as the difference between a substantive error in the sentence itself, and a procedural error in the sentencing proceedings.

Bryant, 436 Md. at 663. The lack of evidentiary support for a sentence is a procedural flaw, “which does not fall within the category of sentences reviewable under Rule 4-345(a).” *Id.* at 665. As was the case in *Bryant*, *Diggs* does not challenge the sentence itself, but the sufficiency of the evidence to support the sentence and is therefore subject to normal preservation rules. *Id.* at 665–66.

We, though, “in the exercise of [our] discretion under Rule 8-131(a) may review an unpreserved issue[.]” *id.* at 670, and will exercise our discretion to apply settled law to determine that the State did offer sufficient proof of *Diggs*’s underlying conviction for armed robbery to support the imposition of the mandatory sentence.

“When the State seeks an enhanced penalty, the State must prove each element of the enhanced penalty statute beyond a reasonable doubt[.]” *Id.* at 670–71 (quoting *Dove v. State*, 415 Md. 727, 746 (2010)). “This is proven by competent evidence of all the statutory elements.” *Id.* at 671 (citing *Jones v. State*, 324 Md. 32, 37 (1991)). It should be noted, however, that “[t]he strict rules of evidence do not apply at a sentencing proceeding[.]” *Id.* (quoting *Smith v. State*, 308 Md. 162, 166 (1986)).

At the sentencing hearing in the instant case, the State presented the court with a Charge Summary, a Statement of Charges, and a Statement of Probable Cause with the appropriate Circuit Court case number for *Diggs*’s prior conviction. *Diggs* asserts that this evidence was insufficient, but neglects to acknowledge that the court also reviewed the

presentence report that had been prepared by the Department of Corrections in anticipation of Diggs’s sentencing hearing, which provided the facts supporting the earlier conviction.

We have held that “a presentence investigation report given to the defendant’s attorney at the hearing is ‘competent evidence’ sufficient to prove the ‘factual predicate in order to impose enhanced punishment,’ provided counsel does not object to the accuracy of the record.” *Sutton v. State*, 128 Md. App. 308, 328–29 (1999). In *Sutton*, the defendant’s counsel was presented with a presentence investigation report ordered by the court and did not object to its accuracy or its contents. *Id.* at 329–30. This Court then found that “the unchallenged presentence investigation report was sufficient in itself to sustain the State’s burden of proving appellant’s prior conviction beyond a reasonable doubt.” *Id.* at 330.

Two years later, in *Southern v. State*, 140 Md. App. 495 (2001), this Court reached the same conclusion. In *Southern*, the appellant received a mandatory ten-year sentence for a second conviction for a crime of violence. 140 Md. App. at 517, *rev’d on other grounds* 371 Md. 93 (2002). During sentencing, the court reviewed a presentence investigation report which indicated that the appellant had committed a crime and served a period of confinement necessary to invoke the enhanced penalty. *Id.* at 518. The appellant did not object to the report’s contents, but he admitted that the report was accurate. *Id.* at 519. He argued, however, that the trial court could not rely on the presentence investigation report, saying “[t]he State never offered, and the court never received into evidence, the record of the prior conviction on which it was relying to establish the predicate offense; and no records from the Division of Correction were offered to prove that the [a]ppellant had served a term of confinement in a correctional institution as required under the statute.” *Id.*

at 518. Citing *Sutton*, we affirmed the appellant’s sentence and held that the trial court was entitled to rely on the presentence investigation report. *Id.*

The facts here are similar to those in *Sutton* and *Southern*. At the conclusion of trial on May 10, when determining if sentencing should be done immediately or if a separate sentencing hearing should be scheduled at a later date, the judge stated to the parties, “You know what? To tell you the truth, I would really like to get a presentence evaluation. . . . I’m concerned about that prior record of his . . . and I want to know what the accurate record is.”

Then, at the sentencing hearing on July 8, the judge confirmed that counsel had received the investigation report and reviewed it with Diggs:

THE COURT: Yes. Have you gone over the presentence report with your client?

[DEFENSE COUNSEL]: Yes, Your Honor. He has a copy of it. I didn’t have [the Maryland Sentencing Guidelines Worksheet].

THE COURT: Pardon?

[DEFENSE COUNSEL]: Yes. I went over the presentence report with my client.

In the discussion that followed, defense counsel made repeated references to a Sentencing Memorandum that he had filed the day prior, which expressly incorporated the presentence investigation report. The Memorandum in the record reads: “That the Defendant has received the Pre-Sentence investigation conducted by the Department of Corrections at this time and incorporates the biographical and historical [information] pertaining to the Defendant herein.”

Diggs’s counsel’s only mention of the contents of the presentence report was when he sought to clarify a prior conviction. Regarding the prior robbery conviction that was included in the report, counsel stated:

So, in reviewing the P.G. County case, the defendant [], had gone over the PSI with him and reviewed it, and he’s adamant – the PSI does have numerous charges, most of which have been nol-prossed or were not pursued, but the P.G. County case, we believe, you know, the defendant believes and I concur, did not involve a firearm, or a weapon. That’s not what he entered a – well, not a firearm. Excuse me. That’s not what he agreed to. That’s not what he was convicted of, Your Honor.

I believe that the Court should now limit its consideration and sentencing to the exact charges that the defendant has been convicted of. *He asserts that in the P.G. County case, the only thing he was found guilty of was armed robbery.* That’s all I have.

(Emphasis added). The State’s Notice of Intent to Seek Mandatory Sentence described the prior conviction as “robbery with dangerous weapon,” and, in response to defense counsel’s assertion at the hearing, counsel for the State reiterated “it was a guilty plea to robbery [with a] dangerous weapon.” To the extent that there was any misnomer in the presentence report, the court immediately adopted the description of the prior conviction given by defense counsel, saying: “All right. Guilty, armed robbery.”

As was the case in *Sutton* and *Southern*, the presentence report here was “competent evidence” to prove the factual predicate for the mandatory portion of Diggs’s sentence. *See Sutton*, 128 Md. App. at 328.

INCONSISTENT VERDICTS

Diggs then argues that the jury’s verdicts were impermissibly inconsistent because he was convicted of robbery with a dangerous weapon and attempted armed carjacking

despite having been acquitted of first-degree assault. He claims that the trial court's acceptance of these verdicts was plain error because he failed to object. The State responds that Diggs has waived this argument by failing to object before the verdicts were finalized and the jury was excused. We agree.

“[A] guilty verdict and a not-guilty verdict can be inconsistent in one, or both, of two ways: factually and legally.” *State v. Stewart*, 464 Md. 296, 308 (2019) (Watts, J., writing separately). Verdicts are factually inconsistent where the two crimes have common facts but distinct elements, whereas verdicts are legally inconsistent where the crime of which the jury finds the defendant not guilty is an element of the crime of which the jury finds the defendant guilty. *Id.* Factually inconsistent verdicts are permitted in criminal jury trials as the jury is the sole fact-finder. *McNeal v. State*, 426 Md. 455, 462 (2012). Legally inconsistent verdicts, however, “are impermissible in criminal trials.” *Williams v. State*, 478 Md. 99, 105 (2022). To preserve the issue, however, a timely objection must be made. *Givens v. State*, 449 Md. 433, 438 (2016).

In *Givens v. State*, the Supreme Court of Maryland made clear that “to preserve the issue of legally inconsistent verdicts for appellate review, a defendant in a criminal trial by jury must object or make known any opposition to the allegedly inconsistent verdicts before the verdicts become final and the trial court discharges the jury.” *Id.* The Court explained that “where (as here) a defendant raises an issue as to inconsistent verdicts after the verdicts have become final and the trial court has discharged the jury, the defendant’s delay deprives the trial court of the opportunity to address any inconsistency in the verdicts.” *Id.* at 473. “Simply stated, it would be incongruent with the administration of justice to permit a

defendant to acquiesce while a trial court accepts inconsistent verdicts—despite the circumstance that the inconsistent verdicts may be easily recognized—then raise the issue of the inconsistent verdicts later, when it is too late for the trial court to send the jury back to resolve the inconsistency.” *Id.* at 477.

Diggs did not object to the verdicts here. After the jury foreperson announced the jury’s verdict, Diggs’s counsel asked for the jury to be polled, after which the jury hearkened to the verdict. The jury was then discharged a few minutes later. Counsel made no objection before the jury was discharged. It was not until May 20, 2024—ten days later—that Diggs filed a Motion for New Trial alleging that the verdicts were inconsistent. By failing to raise an objection to the verdicts before the jury was discharged, Diggs has failed to preserve this issue for appeal.

Despite this, Diggs asks us to review the circuit court’s acceptance of the jury’s verdict for plain error. Plain error review permits this Court to review, at its discretion, an “unpreserved error.” *Winston v. State*, 235 Md. App. 540, 568 (2018). Plain error review is rare and is “reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial.” *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)).

Three conditions must be met for plain error review:

(1) the error must not have been “intentionally relinquished or abandoned, i.e., affirmatively waived”; (2) the error must be “clear or obvious rather than subject to a reasonable dispute”; and (3) the error must have affected the “substantial rights” of the appellant, which means “he must demonstrate that it affected the outcome of the [circuit] court proceedings.” Even if these three requirements are met, this Court should exercise its discretion to review the

error only if it “seriously affects the fairness, integrity or public reputation of judicial proceedings.”

Mungo v. State, 258 Md. App. 332, 370 (2023) (citations omitted).

Under the circumstances here, we decline to exercise our discretion to engage in plain error review. *See Morris v. State*, 153 Md. App. 480, 507 (2003) (“the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation”).

SUFFICIENCY OF THE EVIDENCE

Diggs’s final claim on appeal is that the evidence presented at trial was legally insufficient to sustain the convictions for attempted armed carjacking and conspiracy. As to the attempted armed carjacking conviction, Diggs argues that the evidence was insufficient for three reasons: (1) “[Diggs] did not take the motor vehicle from Mr. Rogers”; (2) “[a]ccording to Mr. Rogers, [Diggs] demanded the keys from him; however, there was no testimony about what [Diggs] said about the keys at that moment[;]” and (3) “[w]hile Mr. Rogers testified that [Diggs] struck him with a handgun, no gun was recovered in connection with this case.” Also, Diggs contends that the evidence was insufficient, as to the conspiracy convictions, because there was no direct evidence of an agreement between himself and the other man who entered Mr. Rogers’s vehicle.

“[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . is 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.” *State v. Morrison*, 470 Md. 86, 105 (2020) (quoting

Smith v. State, 415 Md. 174, 184 (2010)); *see also Allen v. State*, 402 Md. 59, 76–77 (2007) (“[W]e review a challenge to the sufficiency of the evidence in a jury trial by determining whether the evidence, viewed in a light most favorable to the prosecution, supported the conviction . . . , such that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”). Accordingly, “[w]hile we do not re-weigh the evidence, we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.” *White v. State*, 363 Md. 150, 162 (2001). “[C]ircumstantial evidence alone is sufficient to sustain a conviction,” provided that the inferences drawn therefrom rest upon more than mere speculation or conjecture. *Smith*, 415 Md. at 185.

A. Attempted Armed Carjacking

Section 3-405 of the Criminal Law Article governs armed carjacking. The section provides:

(b) *Prohibited – Carjacking* – (1) An individual may not take unauthorized possession or control of a motor vehicle from another individual who actually possesses the motor vehicle, by force or violence, or by putting that individual in fear through intimidation or threat of force or violence.

(2) A violation of this subsection is carjacking.

(c) *Prohibited – Armed carjacking* – (1) A person may not employ or display a dangerous weapon during the commission of a carjacking.

(2) A violation of this subsection is armed carjacking.

CR § 3-405 (1957, Repl. Vol. 2021).

Accordingly, to convict Diggs of attempted armed carjacking, the State had the burden to prove: (1) that Diggs attempted to obtain unauthorized possession or control of a motor vehicle; (2) that the motor vehicle was in the actual possession of another person at that time; (3) that Diggs used force or violence against that person or put that person in fear, through intimidation or threat of force or violence, in order to obtain the motor vehicle; and (4) that he employed a dangerous weapon. *See Maryland Criminal Pattern Jury Instructions* (“MPJI-Cr”) 4:04 (carjacking), 4:04.1 (armed carjacking).

At trial, Mr. Rogers testified that he was a member of Narcotics Anonymous and, on April 16, 2023, he left home to meet with a young woman who had sought a referral for detox. At approximately 4:00 p.m., he was waiting for her in his vehicle in a parking lot near 2100 Maryland Avenue in Baltimore City as she went into a store.

Q: Okay. Now, if you can continue from there.

A: So, she went back into the store and I guess she stayed in there four or five minutes. And then I’m sitting in the car and this guy walks with a guitar case around the front of my vehicle, and the next thing I know, he’s in my back seat.

Q: Okay.

A: And then the next gentleman jumps in my front seat.

Q: The “front seat,” you mean the –

A: Front passenger seat with a black – with a black handgun.

Q: He has a handgun in his hand?

A: In his hand. And he says, “You know what it is.” And I said, “Okay.” I keep some money over my visor, because I was going to give my brother some money for my mother, and I gave him the money. And he said, “Give me your keys.” And I said, “Man, I’m not giving you my keys. Get out of my car.” And he hit me in the center of my head with the butt of the handgun.

Q: Mr. Rogers – and this all took place while he was seated inside your driver’s seat?

A: Yes.

Q: Mr. Rogers, when this man said, “You know what it is,” when he used that phrase, what did that phrase mean to you? What does that mean?

A: It meant they were robbing me. There’s no other reason for him to get in my car with a guy sitting behind me – directly behind me – and he had a gun in his hand.

Mr. Rogers then identified Diggs as the man who had gotten into the front seat of his vehicle with the handgun.

Viewing this evidence in the light most favorable to the State, a jury could reasonably find that this testimony satisfied each of the four elements required to convict Diggs of attempted armed carjacking. Diggs’s demand for Mr. Rogers’s keys could be rationally interpreted as a demand for control of his vehicle, as Mr. Rogers believed it to be. Mr. Rogers’s testimony that he was sitting in the front seat of his own vehicle demonstrates his actual possession of the car. Furthermore, Diggs’s use of the handgun is both a threat of violence and employment of a dangerous weapon.

Moreover, that fact that Diggs did not succeed in obtaining control over Mr. Rogers’s vehicle is of no consequence because Diggs was convicted of *attempting* armed carjacking, not armed carjacking. To find Diggs guilty of an attempt, the jury needed to find that: (1) Diggs took a substantial step, beyond mere preparation, toward the commission of the crime of armed carjacking; and (2) that he intended to commit armed carjacking. *See* MPJI-Cr 4:02 (attempt). The evidence here supported both of those elements.

B. Conspiracy

As we have already explained, a criminal conspiracy consists of the combination of two or more persons to accomplish an unlawful purpose or a lawful purpose by unlawful means. *Jordan*, 246 Md. App. at 599. ““The essence of a criminal conspiracy is an unlawful agreement. 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 *Khalifa*, 382 Md. at 436).

“Conspiracy may be proven by ‘circumstantial evidence, from which a common scheme may be inferred.’” *Sequeira v. State*, 250 Md. App. 161, 204 (2021) (quoting *Hall v. State*, 233 Md. App. 118, 138 (2017)). This is often the case, as this Court has explained:

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. It is a commonplace that we may infer the existence of a conspiracy from circumstantial evidence. 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.

Jones v. State, 132 Md. App. 657, 660 (2000).

Diggs argues that direct evidence of an agreement was necessary to sustain a conspiracy conviction, albeit erroneously. *See Sequeira*, 250 Md. App. at 204. Mr. Rogers testified that Diggs and another man entered his vehicle at that same time and surrounded him while Diggs demanded his money and keys. By that testimony, the two men were acting in “what appears to be a concerted way to perpetrate a crime[.]” *Jones*, 132 Md. App. at 660. The jury could reasonably infer that Diggs and his accomplice jointly intended a concert of action, and that the two men were acting with “a unity of purpose and design.”

Jordan, 246 Md. App. at 599. Accordingly, the evidence was sufficient to support his conspiracy convictions.

CONCLUSION

For all of the foregoing reasons, the judgment of the Circuit Court for Baltimore City is affirmed in part and vacated in part. We remand this case to the Circuit Court with instructions to vacate Diggs's convictions on counts four, six, and eight of the indictment. The judgment is affirmed in all other respects.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED IN
PART AND VACATED IN PART. CASE
REMANDED WITH INSTRUCTIONS
TO VACATE THE CONVICTIONS FOR
COUNTS FOUR, SIX, AND EIGHT.
OTHERWISE, THE CONVICTIONS
ARE AFFIRMED. COSTS TO BE
DIVIDED EQUALLY.**