COURT OF APPEALS OF VIRGINIA

Record No. 0042-26-2

KAVONTE JAKYLE DREQUAN GAYLES
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Beales, Frucci and Senior Judge Clements

Opinion Issued October 6, 2026*

FROM THE CIRCUIT COURT OF MECKLENBURG COUNTY
S. Anderson Nelson, Judge

(Charles F. Felmlee; Chuck Felmlee Law, P.C., on brief), for appellant. Appellant submitting on brief.

(Jay Jones, Attorney General; Timothy J. Huffstutter, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION
PER CURIAM

Following a jury trial, Kavonte Jakyle Drequan Gayles was convicted of second-degree murder,[1] two counts of attempted aggravated murder, three counts of the use of a firearm in the

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

[1] The conviction order reflects that Gayles was found guilty of one count of attempted aggravated malicious wounding in circuit court case number CR23-187-03; but, Gayles was indicted for and found guilty of attempted aggravated murder in circuit court case number CR23-187-03. Similarly, the sentencing order reflects that Gayles was found guilty of murder in the first degree in circuit court case number CR23-187-00. However, while Gayles was initially charged with murder in the first degree, the record reflects that the jury found him guilty of murder in the second degree and that he was sentenced for murder in the second degree for case number CR23-187-00. Therefore, we remand to the circuit court to correct the clerical errors in the sentencing and conviction orders. *See* Code § 8.01-428(B); *Bagley v. Commonwealth*, 73 Va. App. 1, 30 n.10 (2021).

commission of a felony, and three counts of the reckless handling of a firearm.[2] On appeal, Gayles contends that the evidence was insufficient to convict him of the two counts of attempted aggravated murder and the corresponding two counts of use of a firearm in the commission of a felony.[3] For the following reasons, we affirm the circuit court's judgment.[4]

BACKGROUND[5]

In June 2023, D.A.[6] lived with her boyfriend, Dustin Gayles ("Dustin"), and her two-year-old son. Dustin's adult son, Gayles (sometimes called "Tay"), would occasionally visit. One evening, D.A. told her sisters, Marnesha and T.A., that Dustin was abusing her and asked them to help move her out of the house.

[2] Gayles was also tried for two counts of aggravated malicious wounding and two counts of wounding in the course of a felony, to which the jury returned a verdict of not guilty. He also was tried for maliciously shooting within an occupied dwelling, to which the circuit court granted his motion to strike. The jury also found Gayles guilty of felony murder; however, the Commonwealth "concede[d] to strike" the verdict and the circuit court granted the "motion." Additionally, the jury found Gayles guilty of two additional counts of the use of a firearm in the commission of a felony, but the circuit court granted Gayles's motion to set those verdicts aside.

[3] Gayles does not challenge the remaining convictions.

[4] Having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because "the appeal is wholly without merit." Code § 17.1-403(ii)(a); Rule 5A:27(a). Also, Gayles waived oral argument.

[5] We recite the facts "in the 'light most favorable' to the Commonwealth, the prevailing party in the trial court." *Hammer v. Commonwealth*, 74 Va. App. 225, 231 (2022) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)). In doing so, we discard any evidence that conflicts with the Commonwealth's evidence, and regard as true all the credible evidence favorable to the Commonwealth and all inferences that can be fairly drawn from that evidence. *Cady*, 300 Va. at 329.

[6] We use initials, rather than names, to respect the privacy of the victims mentioned throughout this opinion.

Around 11:00 p.m., Marnesha arrived with her daughter, A.A., and stepdaughter, E.M.[7] T.A., her boyfriend (X.T.), and a friend were already at the house. The group proceeded to pack D.A.'s belongings in their vehicles.

D.A., Dustin, and Gayles were also at the house. Dustin and T.A. began to argue. Dustin and Gayles went inside the house. When they came back outside a short time later, everyone else was out in the yard. Gayles and Dustin began to open fire on the group. Marnesha heard over seven gunshots, and E.M. hid behind a tree and heard over ten gunshots. A.A. saw two "sources of light" coming from the porch, hid behind a vehicle, and heard "a lot" of gunshots.

When the shooting ceased, Marnesha, A.A., and E.M. got into their vehicle to leave. With the light of the vehicle's headlights, Marnesha saw X.T. and T.A. on the ground. Marnesha ran to them and called 911.[8] X.T. was unconscious, T.A. was in and out of consciousness and had gunshot wounds to her legs, and D.A. was nearby with gunshot wounds to her legs. Dustin and Gayles walked off the porch into the front yard, and Dustin yelled at Gayles: "Why did you kill her?" Dustin also said either: "You didn't have to shoot her" or "You didn't have to kill her" to Gayles. Dustin asked Gayles, "Why did you do it, Tay?"[9] The two went to the side of the house, where Dustin gave Gayles his firearm and then Gayles fled. Dustin then apologized to D.A.

When police and emergency medical personnel arrived, officers were told that "they" were shooting, that there were two shooters, and Dustin was identified as one of the shooters. Dustin was arrested at the scene, and six cartridge cases from a .40 caliber firearm and three cartridge cases

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[7] We also use initials, rather than names, to respect the privacy of the minors mentioned throughout this opinion.

[8] At trial, the 911 call was admitted into evidence and played for the jury. In the 911 call, the shooters were identified as Dustin and "his son."

[9] A video capturing a portion of the shooting was admitted into evidence and played before the jury. The sounds of the recording included numerous gunshots and the statements Dustin said to Gayles.

from a .380 caliber were found. X.T., D.A., and T.A. were taken to the hospital. X.T. was later pronounced dead from a gunshot wound to the head. T.A. was hospitalized for a week and required two surgeries. After some time, both she and D.A. had numerous scars on their legs from the gunshot wounds.

As the police searched for Gayles the morning after the shooting, an officer spoke to a man who lived down the road from Dustin. He told the officer that a "young man" had knocked on his door about an hour earlier and that he had told the man to "go away." He then gave the officer permission to search his property. Gayles was found in a camping trailer on the property.[10] As he was arrested, he asked, "Who told on me?"

When asked about the shooting, Gayles claimed he knew nothing about a shooting and that he had been asleep "all night" at the trailer. Gayles told the officers that he had never shot anybody "in his life," that he "would put that on his mama," that he "didn't play with guns," and that he "didn't like guns." At the police station, Gayles was tested for gunshot residue. He had gunshot residue on both of his hands.

At trial, Gayles conceded that he fired a firearm, but he moved to strike the evidence, arguing, in part, that it was insufficient to prove that he actually hit someone. The circuit court denied his motion. Following, the jury found him guilty of numerous charges, including the second-degree murder of X.T., the attempted aggravated murder of T.A., the attempted aggravated murder of D.A., three corresponding counts of the use of a firearm in the commission of a felony, and three counts of the reckless handling of a firearm.

Gayles then filed a motion to set aside the verdict, arguing, in part, that he did not have the intent to kill either D.A. or T.A. The circuit court denied that portion of his motion to set aside, and

[10] The camping trailer's floors "started to give" when the officer entered it and the roof had "quite a bit" of water damage and was "falling down."

sentenced Gayles for the second-degree murder of X.T., the attempted aggravated murder of T.A., the attempted aggravated murder of D.A., three corresponding counts of the use of a firearm in the commission of a felony, and three counts of the reckless handling of a firearm. Gayles appeals.[11]

ANALYSIS

On appeal, Gayles argues that "[t]he evidence was insufficient to convict [him] of [the] two counts of [a]ttempted [a]ggravated [m]urder and the corresponding two counts of [u]se of a [f]irearm in the [c]omission [of a felony,] as [he] did not possess a specific intent to kill either [D.A. or T.A]." "When an appellate court reviews the sufficiency of the evidence underlying a criminal conviction, its role is a limited one." *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024). "The judgment of the trial court is presumed correct and will not be disturbed unless it is 'plainly wrong or without evidence to support it.'" *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (quoting Code § 8.01-680). "Thus, 'it is not for this [C]ourt to say that the evidence does or does not establish [the defendant's] guilt beyond a reasonable doubt because as an original proposition it might have reached a different conclusion.'" *Commonwealth v. Barney*, 302 Va. 84, 97 (2023) (alterations in original) (quoting *Cobb v. Commonwealth*, 152 Va. 941, 953 (1929)).

Given this narrow standard, the only relevant question for this Court on review "is, after reviewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (quoting *Sullivan v. Commonwealth*, 280 Va. 672, 676 (2010)). "If there is evidentiary support for the conviction, 'the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.'" *McGowan*

[11] This Court previously dismissed Gayles's initial appeal for failure to file a notice of appeal in the circuit court. However, he then moved for a delayed appeal, which this Court granted.

v. Commonwealth, 72 Va. App. 513, 521 (2020) (quoting *Chavez v. Commonwealth*, 69 Va. App. 149, 161 (2018)).

Code § 18.2-31 defines aggravated murder. Under Code § 18.2-31(7), aggravated murder includes the "willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction." "An attempt to commit a crime is composed of two elements: (1) [t]he intent to commit it; and (2) a direct, ineffectual act done towards its commission." *Fletcher v. Commonwealth*, 72 Va. App. 493, 506 (2020) (quoting *Haywood v. Commonwealth*, 20 Va. App. 562, 565 (1995)). "Determining intent is 'generally a question for the trier of fact.'" *Id.* (quoting *Haywood*, 20 Va. App. at 566). The jury "may infer that a person intends the immediate, direct, and necessary consequences of his voluntary acts." *Id.* (quoting *Moody v. Commonwealth*, 28 Va. App. 702, 706-07 (1998)). "The intent required to be proven in an attempted crime is the specific intent in the person's mind to commit the particular crime for which the attempt is charged." *Id.* (quoting *Wynn v. Commonwealth*, 5 Va. App. 283, 292 (1987)). "A defendant's intent may be proved by circumstantial evidence, including the defendant's statements and conduct." *Welch v. Commonwealth*, 79 Va. App. 760, 768 (2024). "The inferences to be drawn from proven facts, so long as they are reasonable, are within the province of the trier of fact." *Hancock v. Commonwealth*, 12 Va. App. 774, 782 (1991). Furthermore, "a defendant may act with more than one intent." *Eberhardt v. Commonwealth*, 74 Va. App. 23, 38 (2021).

Here, Gayles retrieved a firearm from inside of the house following the argument between his father and T.A. Gayles then proceeded to fire the weapon numerous times at the individuals located in the front yard in front of him, including D.A. and T.A. While Gayles claimed to the police officers that he did not participate in the shooting, he was identified as one of the shooters by three witnesses, Dustin's son was named as one of the shooters in the 911 call, gun residue was on his hands, and the statements made during the video of the shooting all

would support a finding that he was involved in the shooting and not asleep in a trailer as he proclaimed. Though "the use of a deadly weapon, standing alone, is not sufficient to prove the *specific intent* required to establish attempted murder," *Goodson v. Commonwealth*, 22 Va. App. 61, 78 (1996) (quoting *Hargrave v. Commonwealth*, 214 Va. 436, 437 (1974)), we cannot say that here, viewing the evidence in its totality, a rational fact finder could not have concluded, beyond a reasonable doubt, that Gayles intended to kill the individuals that were in the front yard. Thus, the evidence was sufficient to support the finding of the necessary intent for the attempted aggravated murder convictions.[12] As his claims about the use of a firearm convictions are dependent upon the attempted aggravated murder convictions argument, his argument fails in regard to those convictions as well.

CONCLUSION

For the foregoing reasons, we affirm the circuit court's judgment and remand to correct the clerical errors in the conviction and sentencing orders.

Affirmed and remanded.

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[12] To any degree Gayles's arguments attribute the shooting to Dustin and claim that this limits the jury's ability to find that Gayles had the necessary intent to sustain these convictions, there was ample evidence that the two acted in concert.

> If there is concert of action with the resulting crime one of its incidental probable consequences, then . . . all who participate in any way in bringing it about are equally answerable and bound by the acts of every other person connected with the consummation of such resulting crime.

Spradlin v. Commonwealth, 195 Va. 523, 528 (1954). In other words, "each participant in the crime may be held accountable for the actions of the other participants." *Davis v. Commonwealth*, 36 Va. App. 291, 296 (2001). "[T]he law is well settled in Virginia that each co-actor is responsible for the acts of the others, and may not interpose his personal lack of intent as a defense." *Owens v. Commonwealth*, 54 Va. App. 99, 104 (2009) (quoting *Carter v. Commonwealth*, 232 Va. 122, 126 (1986)). Here, after Dustin argued with T.A., Dustin and Gayles both went into the house together and then came back outside and started shooting, together, at a group of people. The potential death of individuals that the two repeatedly fired towards were an incidental probable consequence of their actions.