Circuit Court for Carroll County
Case No.: C-06-CR-21-000571

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

2167

September Term, 2022

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Nuquan Chubster Kilson

v.

State of Maryland

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Wells, C.J.
Friedman,
Wilner, Alan M. (Senior Judge),
Specially Assigned

JJ.

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Opinion by Wilner, J.

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Filed: April 26, 2024

A jury in the Circuit Court for Carroll County convicted appellant on two counts of attempted first-degree murder and one count each of use of a firearm during the commission of a crime of violence, home invasion, and illegal possession of a regulated firearm.

Upon those verdicts, appellant was sentenced, effectively, to life imprisonment plus 40 years. He raises three issues in this appeal – whether the trial court erred (1) in allowing opinion testimony by a lay witness; (2) admitting "other crimes" evidence; and (3) allowing the admission of a telephone and a "hot spot" without proper authentication.[1]

## RELEVANT FACTS
### General Background

At approximately 4:30 on the morning of July 2, 2021, the police responded to 575 Houck Road in Westminster, Maryland upon a call for help from Angela Brooks. There were five people living in that home – Angela

[1] "Hot spot" in this context, has been defined as a specific location that provides internet access via a wireless local area network (WLAN). The term is generally synonymous with a Wi-Fi connection. A network that creates a hot spot primarily includes a modem and wireless router. The radio frequency (RF) waves sent by the wireless network extend in different directions from its centralized location. These signals become weaker as they travel, either further from the central location or due to interference.

Brooks, her husband Sean Brooks Sr., their son Sean Brooks Jr., a daughter Shenaira Brooks, and a grandchild who need not be named.

Evidence showed that, borrowing his sister's car, appellant drove from Baltimore to the Brooks' home in Westminster, entered the home through an unlocked door, and went first to the basement of the home where he found Sean, Jr. and shot him in the head. Leaving him for dead, appellant proceeded upstairs to Shenaira's room.[2]

Shenaira had been in a five-year "on and off" intimate relationship with appellant that she ended the night before by informing him that they should "go their separate ways" and by "blocking" him. Shenaira was sleeping but was awakened by feeling a pain in her face by someone hitting her hard enough to cause substantial bleeding. She said that, although the attacker was wearing a mask and a "hoodie," from the manner of the attack and an earlier

[2] The sister, Sherika Perry, admitted lending her car to appellant on July 1 but not on July 2. Video footage from a Royal Farms store near the Brooks' home showed a silver car passing the store at 4:03 a.m. on July 2, and returning later that morning at 4:30 a.m. Footage from a neighbor's security camera showed a car traveling from Carrolton Road pull in and out of the driveway to 573 Houck Road with its lights turned off for 16 minutes from 4:10 a.m. to 4:26 a.m. Detective Harbaugh, who visited the sister's home in the Woodlawn area on July 7, 2021, testified to seeing a silver vehicle that appeared to be the same as shown in the Royal Farms video.

attack by appellant, although the attacker was silent throughout, she knew it was the appellant.

Shenaira fought back as best she could and eventually was able to escape and run to her parents' room. Angela, her mother, testified that, around 4:15 – 4:30 a.m. on July 2, she was awakened by a banging on her bedroom door and found Shenaira on her knees, full of gushing blood, saying that there was someone in the house.

Angela pulled Shenaira into the room and brought her grandchild into her room as well. She woke her husband, had him try to reach their son, and, when he got no answer, they called the police. Angela added that she had seen the appellant previously with a handgun and that he was not allowed to come to their home.

Sean Jr. was taken to the shock trauma unit, where he remained for about a month and temporarily was blinded. Appellant was eventually located in Raleigh, North Carolina. He was arrested on a warrant on or about July 23, 2021, and was returned to Maryland.

## **Evidence of Appellant's Presence**

There was substantial evidence of appellant's presence at the scene, driving a car that resembled appellant's sister's car, which the sister testified

she had allowed appellant to borrow on July 1, 2021, that appellant does not challenge in this appeal. That evidence came principally from video cameras in the vicinity of the Brooks' home showing a silver car matching the description of the sister's car "that had been traveling from Carrollton Road pull in and out of the driveway of 573 Houck Road and then pull off to the side of the road with its lights turned off for 16 minutes from 4:10 a.m. to 4:26 a.m." There was also footage from a nearby Royal Farms store camera showing a silver car passing the Royal Farms at Bethel Road and Md. 140 at 4:03 a.m. and returning in the opposite direction at 4:30 a.m.

**Lay Opinion by Ashley Beighley**

Ashley Beighley, a Forensic Services Technician with the Carroll County Sheriff's Office, went to the Carroll County Hospital Center to photograph the injuries to Shenaira and collect Shenaira's clothing, which Ms. Beighley transported back to her substation and photographed. One of the items she photographed (Exhibit 14Q) was the back of a t-shirt Shenaira had been wearing when she was attacked. Ms. Beighley noticed what she referred to as an "impression" which, based on her experience, she described as "most likely made by the grip of a revolver." The actual colloquy was:

Q And this is Exhibit 14Q. What is this?

A This is a possible impression that I observed on the back of the t-shirt.

Q Why did you think that this particular impression might be relevant to document?

A It's out of ordinary. It's not something that would come on the shirt. So anything that I observe out of the ordinary, I document.

Q Did you have any opinion, based on your observation there at the scene, what impression was of?

A I do. yes.

Q And what was that?

A Based on my experience, that impression was most likely made by the grip of a revolver.

Counsel for appellant objected to that answer on the ground of "basis of knowledge." The court overruled the objection without further discussion.

Citing *State v. Payne*, 440 Md. 680, 698 (2014) and Rule 5-701, appellant complains that Ms. Beighley's response exceeded the limits on non-expert opinions.

The State responds first that Ms. Beighley's response was based on her experience as a trained forensic service technician and that appellant's objection was not based on any lack of expertise on Ms. Beighley's part. The State adds that, because appellant was acquitted of any assault on Shenaira, any error in the admission of her statement regarding the impression on the

shirt was harmless. It adds further that the other evidence that appellant was the intruder in the home – the only intruder – and had used a gun to shoot Sean, Jr. was overwhelming.

We agree with the State's response and find no reversible error regarding this complaint.

**Other Crimes Evidence**

This complaint deals with (1) evidence of an assault by appellant on Shenaira that occurred in June 2020 and (2) evidence of appellant's access to and possession of a gun on a prior occasion that had been challenged in a Motion in *Limine*.

As to the prior assault, Shenaira said that she and appellant got into an argument while in her car that ended up with appellant hitting her in the face. She recounted that she hit him back, which led to his hitting her again "multiple times." She got out of the car, and he followed her and continued the attack, even after she fell down.

Citing principally Rule 5-404(b) and *Thompson v. State*, 181 Md. App. 74 (2008), appellant objected to evidence of that attack as impermissible "other crimes" evidence that was not relevant to appellant's identity with respect to the July 2 assault. The court ruled that evidence of the earlier assault was

relevant to both motive and identity but excluded evidence that appellant had previously threatened her with a firearm.

*Snyder v. State*, 361 Md. 580, 603 (2000) teaches us that "to be admissible, evidence otherwise excludable as other crimes or propensity evidence, must be substantially relevant to some contested issue in the case and be offered for a purpose other than to prove the criminal character of the defendant," one of which, citing *Faulkner v. State*, 314 Md. 634-35 (1989) is "identity." Rule 5-401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

There was evidence that whoever shot her brother also assaulted Shenaira. There was only one shooter in the house, and the issue was who that person was. The issue was not so much the criminal character of appellant; if he was the shooter, his conduct established that.

In her testimony in this case, Shenaira testified about her relationship with appellant, which included some of his mannerisms during the previous attack on her – making no noise while he was pounding her and how he struck her. Based at least in part on that experience, she said there was never any

doubt in her mind who her attacker was in July 2021. We find that to be relevant to determining the attacker's identity.

That brings us to the handgun issue. Unquestionably, the intruder in this case had a gun. He shot Sean, Jr. The gun was not recovered, so there was an issue of whether appellant had access to a gun.

Appellant moved in *limine* to preclude Angela and Shenaira from testifying to having seen appellant in possession of a gun on prior occasions. The court denied that motion in part. It precluded Shenaira from testifying that appellant had previously threatened her with a gun but allowed both women to testify that they had seen appellant with a gun on previous occasions, and they gave such testimony.

Appellant contends that that evidence was not relevant and therefore was inadmissible, on the grounds that there was no evidence that any gun the witnesses saw in his possession on earlier occasions was linked to the events on July 2, 2021. As a fallback position, he adds that, even if there was some probative value in that evidence, it was outweighed by the danger of unfair prejudice.

Appellant conceded that, due to prior misconduct, he was not permitted to be in possession of a gun – any gun – yet a gun was certainly possessed and used by the intruder, who escaped with it. Given the other evidence placing

appellant at the scene, whether he had access to handguns had a special relevance directly linked to the identity of the intruder. Indeed, a contrary conclusion would give shooters a free ride if they manage to escape with their weapon. We find no error.

**Admission of Telephone and Hot Spot**

Detective Richard Harbaugh learned that, at 5:37 a.m. – an hour after the invasion of the Brooks home – Shenaira received on her cell phone a text message from a Pinger phone, the account for which was associated with appellant's email address, indicating to Shenaira that appellant was aware that she had a new boyfriend. Upon being apprised of appellant's subsequent arrest in Raleigh, North Carolina, Detective Harbaugh traveled to Raleigh to collect, pursuant to a search warrant, whatever evidence had been collected by North Carolina police, including appellant's cell phone and hot spot.

Appellant objected, on the ground that there was no evidence that the phone and the hot spot in the possession of the Raleigh police came from appellant. The court denied the motion on the ground that, armed with the warrant, Detective Harbaugh went there to collect whatever they seized from appellant and brought back whatever they gave him. If the North Carolina police mixed up other property with appellant's property, he could argue that,

but there is no indication that he did so or that there was a basis for doing so. More affirmatively, an F.B.I. cellphone analyst traced activity for the hot spot on the morning of the shooting, which placed appellant in the area of the shooting.

As the State points out, the threshold for authentication is slight. *Jackson v. State*, 460 Md. 107, 116 (2018). The *Jackson* Court explained that, under Rule 5-901(a), "a court need not find that the evidence is necessarily what the proponent claims but only that there is sufficient evidence that the *jury* ultimately might do so." See also *Irwin Industrial Tool v. Pifer*, 478 Md. 645, 670-71 (2022). We find no error in the court's ruling.

**JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.**

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

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2167s22cn.pdf