

Circuit Court for Baltimore County
Case No.: 03-K-17-005202

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 201

September Term, 2018

KHEVYN ARCELLE SHARP

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.

On February 9, 2018, appellant, Khevyn Arcelle Sharp, was convicted by a jury sitting in the Circuit Court for Baltimore County of attempted second-degree burglary, attempted fourth-degree burglary, and rogue and vagabond. The court sentenced him to a total term of seven years of incarceration, with all but five years suspended. In his timely appeal he argues that it “was error to admit into evidence [his] criminal [warrant] from another case” and that the trial court erred when it admitted a video recording. We disagree and affirm.

BACKGROUND

Ronald Andrews is the owner of Fix My Car LLC, an auto repair business located at 6801 Loch Raven Boulevard in Towson. On September 26, 2016 he returned to his business after being absent for a week. Upon his return he discovered that the toolboxes belonging to one of the trucks parked in his parking lot had been left open, and that laying in front of his garage door were several bricks and a bucket that had not been there when he had left the business on September 19th. After exiting his entry door, he noticed that there was a sharp-edged tool near the door and black tar covered portions of the door. Andrews also discovered a folded piece of paper by his front door that had not been there when he had left the business on September 19th.

Andrews reviewed his surveillance camera system. Andrews had installed the system, which consisted of eight cameras installed at various locations around the outside of the building. The cameras recorded to a DVR which was connected to a television on which he could view the camera footage in real time, or rewind to view footage captured up to ninety days prior. Andrews reviewed several days’ worth of footage and discovered

that on September 24th someone had come onto the parking lot and had entered several vehicles that were parked on the property. The video surveillance also captured the individual retrieving tools from one of the trucks located on the property and using it to break into the doors of other vehicles parked on the lot. Further, the individual captured by the surveillance system was seen picking up bricks and throwing them at the entry door.

Officer Laura Ruiz responded to the business and observed the markings and black tar on the entry door and found damage on four of the vehicles parked on the lot. She recovered the sharp-edged tool and the folded piece of paper which Andrews had found on the ground outside of the entry door. Upon inspection, the paper was a warrant for appellant's arrest in a separate case. Appellant was not a customer of the repair shop, nor did Andrews know him. At trial, Andrews identified the person in the video tampering with the cars on the lot as appellant.

Andrews showed Officer Ruiz the video footage captured by the surveillance system. Upon request, he copied the video and gave the police a copy. Andrews did not know how to download and save the video from the DVR, so he played the relevant portions of the surveillance video on the attached television and used his cell phone to record the television screen. He then downloaded the footage he had captured on his phone to a flash drive, which he gave to the police.

DISCUSSION

On appeal, appellant argues that the trial court erred when it admitted the copy of an arrest warrant with appellant's name on it, which was found at the crime scene. He also

argues that the trial court erred when it admitted the surveillance video. Both of his claims are without merit.

Criminal Warrant

Appellant first asserts that it “was error to admit into evidence appellant’s criminal warrant from another case.” He argues that this “other crimes” evidence “could distract the jury and unfairly prejudice” appellant. We disagree.

Generally, “all relevant evidence is admissible.” Maryland Rule 5-402. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Md. Rule 5-403. We review the “trial court’s relevancy determination, as well as its decision to admit relevant evidence over an objection that the evidence is unfairly prejudicial,” for abuse of discretion. *Collins v. State*, 164 Md. App. 582, 609 (2005).

Generally, “[e]vidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith.” Maryland Rule 5-404(b). Such evidence “may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.” Md. Rule 5-404(b). Other crimes evidence may be admitted “if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant’s guilt based on propensity to commit crime of his character as a criminal.” *State v. Faulkner*, 314 Md. 630, 633 (1989).

To determine whether evidence of other crimes, wrongs or acts should be admitted, the first step is to determine if the evidence falls within one of the exceptions as enumerated

by Md. Rule 5-404(b). *Id.* at 634. If the evidence does fall within one of the enumerated exceptions, “the next step is to decide whether the accused’s involvement in the other crimes is established by clear and convincing evidence.” *Id.* If this prong of the test is satisfied, then the trial court must weigh the “necessity for and the probative value of the ‘other crimes’ evidence” against “any undue prejudice likely to result from its admission.” *Id.* at 635.

Prior to trial, defense counsel made a motion *in limine* to exclude the warrant with appellant’s name on it, which was found near the entrance to the business, whereupon the following exchange occurred:

[DEFENSE COUNSEL]: Yes, Your Honor, and my argument is that the prejudice resulting from introduction or even for identification, is going to be so great that it outweighs its relevance. My argument is, it’s a twofold. The jury won’t be able to set aside the fact that they’re seeing an arrest warrant for my client and they’re going to conclude, I call it propensity, some people call it character evidence, they’ll conclude since he had an arrest warrant for this alleged crime, then they’re going to, they can assume, they can infer, that he must have committed this crime. I also think that it is tantamount, without my client taking the stand, to give the jury something not quite a conviction, but too close in terms of prejudice and then there’s the other argument that it’s other crimes evidence, which I would argue is not admissible.

THE COURT: All right. Well, identification of the Defendant is the central issue in this case and finding a warrant, an arrest warrant, with the Defendant’s name on it on the property is an important piece of evidence for the State to identify the Defendant was there. I’m assuming the Defendant didn’t have any business on the property, Ms. Kelly?

[THE STATE]: No, sir.

THE COURT: He wasn’t supposed to be there?

[STATE]: No, sir, he did not have a car on the lot.

THE COURT: Okay. So, this is an important piece of evidence to identify the Defendant. It wouldn't be any different than finding his wallet with his identification in the wallet. So, it is relevant to identifying the Defendant as being on the property at a time when he shouldn't be there. It was found on the morning of the 26th, the business was closed on the 25th, the business was closed on the, at the time this person was seen on the property on the 24th. So, it is very relevant to identifying the Defendant. I think the relevance outweighs the prejudice to the Defendant, particularly since, as we discussed, what I would do is order the State to redact the charges against Mr. Sharp that are listed on the warrant, since they are, at least the robbery charge, is similar to, similar to a burglary charge. I'll ask the State to redact the charges listed on the warrant. He's charged with robbery and second-degree assault, both of those charges will be redacted at the top of the warrant. Is there any other reference to the nature of the charges, [State]?

[STATE]: Charges? No, sir. No, sir.

THE COURT: And I'll point out also, and [the State] referred to this in [its] opening statement, it's not just a piece of paper with Kheyvn Sharp's name on it. It's an arrest warrant. It's the kind of important document that he would have on his person and not just casually discard, you know, by littering it somewhere. It would be something that he would have on his person. So, the fact that it is an arrest warrant is also important to the identification of Mr. Sharp. I will order that the charges be redacted from the document.

After the court ruled on the motion, defense counsel agreed to the court's suggestion to redact the warrant so that the document would not indicate with what appellant had been charged. This redacted version of the warrant was then admitted into evidence and the jury was instructed on the exhibit as follows:

You have received evidence that the Defendant was charged with another crime. And I'm referring to what's been marked as State's Exhibit 4. This is not a charge in this case. You may

consider this evidence only on the question of identity. However, you may not consider this evidence for any other purpose, specifically, you may not consider it as evidence that the Defendant is a bad character or has a tendency to commit crime.

First, as the trial court noted, ‘the identification of the defendant [was] the central issue’ in the case. Proof of identity is one of the exceptions to the general rule against the admissibility of other crimes evidence and therefore the warrant passes the first prong of the *Faulkner* test. The next prong of the *Faulkner* test is to determine if the “accused’s involvement in the other crimes is established by clear and convincing evidence.” *Id.* at 634. The State correctly notes that appellant did not raise this issue below and therefore it cannot be raised on appeal. Moreover, appellant agreed to the redaction of the warrant at trial and therefore the jury never heard the nature of the charges included in the warrant. As a result, he cannot now argue that the warrant should not have been admitted because his involvement in those other crimes was not established by clear and convincing evidence.

Finally, balancing the probative value of the warrant found at the crime scene with its potential prejudicial effect weighs in favor of admission. Identity of the perpetrator was the central issue in the case, and therefore finding an important document with appellant’s name on it at the scene of the crime was heavily probative. The charges were redacted from the document, so the jurors were not aware of the charges appellant was facing. For all of the foregoing reasons, the trial court did not abuse its discretion when it admitted the redacted copy of the warrant.

Video Recording

Appellant next contends that the “trial court erred by admitting the video recording because there was “no assurance that the images of the offender – on which the jurors were expected to rely – were copied and recopied without substantial loss or distortion of: clarity, focus, definition, contrast, accuracy, detail, color, complexion, or level of lighting.” This claim is without merit.

Maryland Rule 5-901(a) provides:

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

“A videotape is considered a photograph for admissibility purposes,” and is “admissible in evidence and is subject to the same general rules of admissibility as a photograph.” *Washington v. State*, 406 Md. 642, 651 (2008). “[V]ideotapes may be authenticated through first-hand knowledge, or, as an alternative, as ‘a mute or silent independent photographic witness because the photograph speaks with its probative effect.’” *Jackson v. State*, 460 Md. 107, 116 (2018) (quoting *Washington*, 406 Md. at 652). Such evidence “may be admissible as probative evidence in themselves rather than merely as illustrative evidence to support a witness’s testimony, so long as sufficient foundational evidence is presented to show the circumstances under which it was taken and the reliability of the reproduction process.” *Washington*, 406 Md. at 652.

During a pre-trial hearing on appellant’s motion *in limine* to exclude the surveillance video, Andrews testified that he installed the surveillance system and that it was operating

normally on the dates in question. He testified that the images captured accurately reflected how his business appeared at the time. He then testified to the precise steps he used to transfer the video onto a thumb drive for the police department, and ultimately for the jury. Any alleged loss of “clarity, focus, definition, contrast, accuracy, detail, color, complexion, or level of lighting” would go to the video’s weight, not its admissibility. Accordingly, we hold that the trial court did not err in admitting the video.

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