Circuit Court for Montgomery County
Case No.: 134940

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 375

September Term, 2019

JEFFREY TAYLOR

v.

STATE OF MARYLAND

Reed,
Gould,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 12, 2021

*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.

Appellant, Jeffrey Taylor, was indicted in the Circuit Court for Montgomery County and charged with armed carjacking of a Nissan 350Z, belonging to Julio Cruz Limos, conspiracy to commit armed carjacking, two counts of armed robbery of Julio Cruz Limos and Arnold Acosta Alfaro, respectively, two counts of conspiracy to commit armed robbery, and, finally, use of a handgun in the commission of a felony.[1] Although the jury could not reach a verdict on the conspiracy to commit armed carjacking and the two counts of conspiracy to commit armed robbery, they convicted Taylor of armed carjacking, two counts of armed robbery, and use of a handgun. The State nol prossed the conspiracy counts. After Appellant was sentenced to an aggregate sentence of 30 years for these offenses, with credit for time served, he timely appealed and asks us to consider the following question:

> I. Did the trial court err by admitting a photograph of Appellant holding a gun from five months before the alleged carjacking?

We answer this question in the negative. For the following reasons, we shall affirm.

FACTUUAL AND PROCEDURAL BACKGROUND

In the early morning hours of September 9, 2016, Julio Cruz Limos was driving his red Nissan 350Z on East West Highway near 16th Street in Montgomery County. He was accompanied by his friend, Arnold Acosta Alfaro. His vehicle was rear-ended, twice, by an older model sedan. After Cruz Limos pulled over to the side of the roadway and got out of his car, the rear seat passenger of the white sedan also got out, pointed a small black

[1] Alternate spellings of the victim's name are included in the record. We shall adopt the spelling used when Mr. Cruz Limos testified at trial.

handgun at Cruz Limos and demanded money**.** The man with the black handgun then punched Cruz Limos as another man with long curly hair held a silver gun on Alfaro**.** After both victims were out of the 350Z and had complied with the suspects' demands, the man with the black gun got behind the wheel of the sports car and then the two men escaped in the white sedan and the 350Z**.**

Shortly thereafter, at around 2:58 a.m., the police were contacted and responded to the scene. Cruz Limos provided police with the tag number of his stolen 350Z. Montgomery County Police Detective Vincent Simmel then observed the red 350Z at around 11:15 a.m. later that same day in the District of Columbia. According to the evidence admitted, Detective Simmel had been conducting surveillance near 507 Oneida Place when the stolen 350Z arrived on the scene, followed by a white Acura MDX**.** Two men, one of whom was eventually identified as Denzel Ragland, exited the 350Z and entered the Acura**.** The detective was unable to view the second man from his vantage point. After the Acura drove away, the detective followed it for a short while, up until it "took off on a one-way street at a high rate of speed[.]" Detective Simmel later learned that Appellant resided at 507 Oneida Place.

Later that same day, at around 5:30 p.m., Detective Simmel returned to 507 Oneida Place to find the Acura MDX still parked in front**.** The stolen Nissan 350Z was no longer

there.[2] Ragland again was observed at this time, entering the driver's seat of the Acura, along with four other unidentified individuals. Ragland was arrested a short time later.

Meanwhile, Corporal David Gross of the Prince George's County Police, testified that the police located the stolen Nissan 350Z at around 6:30 p.m. that day, in an apartment complex located in the 2500 block of Darel Drive in Suitland, Maryland. When the police swarmed to the location, Appellant was sitting in the driver's seat. Police found a loaded and operable Beretta model 92FS handgun and a cell phone on the passenger seat of the stolen 350Z. Appellant's DNA was found both on the handgun and inside the 350Z, near the driver's area. His fingerprints were also found at various locations on the stolen vehicle.

Detective Bill Heverly, assigned to the Electronic Crimes Unit for the Montgomery County Police Department and accepted as an expert in digital forensics, testified that he examined the iPhone that was found on the passenger seat of the 350Z next to Appellant when he was arrested. Pertinent to our discussion, Detective Heverly retrieved a number of images from the cellphone and Appellant objected to admission of State's Exhibit 53, a photo depicting him holding a handgun, as follows:

> [DEFENSE COUNSEL]: State's Ex. 53 is, we would object to. It is not contemporaneous. It is not relevant to this proceeding and it's only done for prejudicial purposes.
>
> THE COURT: Counsel?

[2] An automated license plate reader captured an image of the 350Z at various times and locations that day, including after it had been added to the National Crime Information Center ("NCIC") "Hotlist" as a stolen vehicle, at 5:49 p.m. near Suitland Parkway in the District of Columbia. An expert in cell tower site analysis testified that Appellant's and Ragland's cellphones accessed cell tower sites near the same times and places where the tag reader captured images of the stolen 350Z.

[PROSECUTOR]: Your Honor, State's Exhibit 53 helps identify this phone as belonging to Jeffrey Taylor. The fact that it's, in terms of it not being contemporaneous, I think the date is only just a few months before the alleged incident in this case. Looks [sic] the date associated with it is in April 2016.

THE COURT: What it says is just what it says? April 10, 2016 at 2:22 in the morning.

[PROSECUTOR]: So, what this photograph depicts is this defendant with a handgun in his hand. What that helps establish is number one, his access to firearms. We've heard testimony that there are multiple firearms involved in this case. At least two have been described, including a small black handgun like the one that the defendant appears to be holding in this photograph.

THE COURT: Okay. Anybody else?

[PROSECUTOR]: And, Your Honor, it also rebuts some questions from [Defense Counsel] to a previous witness that the defendant was just standing next to the vehicle. And it was also related to the evidence found in the vehicle.

THE COURT: Yes. All right. Anybody else?

[PROSECUTOR]: Nothing further from the State, then.

[DEFENSE COUNSEL]: Nothing else.

THE COURT: All right. Looking at the admissibility under 5-104, the, the evidence, if believed, is (a) from the defendant's phone, (b) defendant's phone, if the evidence is believed, was found inside the car. There has been testimony from witnesses about handguns being used at the event in question. This photograph, if the jury credits it, shows Mr. Taylor holding a black handgun in his right hand and it shows him holding a wad of something in his left hand.

I'm not sure what it is. The question, so that it's clearly relevant to the issues in the case. The question then becomes whether the photograph is, even though probative, is unduly prejudicial. Follow the analysis in State v. (unintelligible) Brinkley (phonetic sp.), in Maryland, at page 677. I find that the probative value of this evidence far outweighs its prejudicial effect.

> You know, is it a trophy photograph in a sense? Yes. But the jury could find that the defendant put it on his phone. It shows the defendant with a gun. And the phone was found inside the car. And a gun was found inside the car. The jury could, but is not required to find that the same gun that the defendant is holding in the picture is the, is the same or similar to the gun that's in evidence. So, the probative value is high and while it is prejudicial, it is not identified for a free balancing test and duly [sic] prejudicial. It will be preserved. Overruled.

Detective Heverly then testified that State's Exhibit 53 was found on the cellphone and that, according to the metadata associated with the image, the photo was taken on April 10, 2016. We may include additional detail in the following discussion.

DISCUSSION

A. Parties' Contentions

Appellant's sole contention on appeal is that the court erred by admitting State's Exhibit 53, a photograph of Appellant holding a handgun, on the grounds that it had no probative value and, even if relevant, that value was substantially outweighed by its potential for unfair prejudice. The State disagrees and contends, ultimately, admission of the photograph was harmless because Appellant possessed a similar black handgun with his DNA on it when he was arrested for the carjacking. We agree with the State and hold the court did not err and that, even so, the error was harmless beyond a reasonable doubt.

B. Standard of Review

"A trial court's ruling on the admissibility of evidence is generally reviewed for abuse of discretion." *State v. Robertson*, 463 Md. 342, 351 (2019) (citations omitted). "A court's decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally

acceptable." *Wheeler v. State*, 459 Md. 555, 560 (2018) (internal citations and quotations omitted). This Court has explained that "[a] trial court abuses its discretion only when 'no reasonable person would take the view adopted by the [trial] court,' or 'when the court acts without reference to any guiding rules or principles." *Baker v. State*, 223 Md. App. 750, 759 (2015) (further citations omitted).

That being said, "'trial judges do not have discretion to admit irrelevant evidence.'" *Fuentes v. State*, 454 Md. 296, 325 (2017) (quoting *State v. Simms*, 420 Md. 705, 724 (2011)). "'[T]he determination of whether evidence is relevant is a matter of law, to be reviewed *de novo* by an appellate court.'" *Id*. (quoting *DeLeon v. State*, 407 Md. 16, 20 (2008)). Pursuant to Md. Rule 5-401, relevant evidence is "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." Evidence that does not meet this standard is inadmissible. Md. Rule 5-402.

Nevertheless, a trial court's weighing of the probative value of the evidence against its harmful effects is subject to the more deferential abuse of discretion standard. *Fuentes*, 454 Md. at 326, n. 13. "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014); *see also Newman v. State*, 236 Md. App. 533, 549 (2018) (defining unfair as "only the incremental tendency of the evidence to prove that the defendant was a bad man") (citation omitted).

C. Analysis

Appellant argues that the photograph was not relevant because the photo was taken five months before the crime and was too remote to be of any probative value. However, chronological remoteness goes to the weight, not the admissibility, of proffered evidence. *See Reed v. State*, 68 Md. App. 320, 330, *cert. denied*, 307 Md. 598 (1986), *cert. denied*, 481 U.S. 1005 (1987). We are persuaded, as was the trial court, that evidence that Appellant was in possession of the same type of handgun that was used to commit the crime was both relevant and probative. *See Hayes v. State*, 3 Md. App. 4, 8-9 (1968) (holding that it is "always" relevant to show that the defendant possessed the means to commit the crime).

Further, Appellant attempts to liken his position to that in *Anderson v. State*, 220 Md. App. 509 (2014), *Gooch v. State*, 34 Md. App. 331 (1976), *cert. denied*, 280 Md. 730 (1977), and *Dobson v. State*, 24 Md. App. 644, *cert. denied*, 275 Md. 756 (1975). These cases, however, are factually inapposite because the evidence as to the handguns in those cases either proved conclusively they were not the weapons used in the crimes or it was never established whether the handguns shared similar characteristics or qualities to the ones used in the underlying crimes. *See Anderson*, 220 Md. App. at 523 (observing that the State conceded that there was no proof that that handgun was the weapon used in the crime); *Gooch*, 34 Md. App. at 339 (concluding evidence that defendant carried a gun six years prior to the crime was irrelevant); *Dobson*, 24 Md. App. at 656 (noting that a revolver and shotgun found during execution of a search warrant was determined by police ballistics not to have been the weapon used in the murder). Moreover, the issue in *Anderson* primarily concerned the admission of an unrelated handgun as collateral extrinsic evidence used to impeach under Maryland Rule 5-616 (b) (2). *Anderson*, 220 Md. App. at 523-25.

Similarly, there was no evidence in *Williams v. State*, 342 Md. 724 (1996), *disapproved on other grounds in Wengert v. State*, 364 Md. 76, 89 n. 4 (2001), another case relied upon by Appellant, to establish that the erroneously admitted evidence in that case, a crowbar and a can of mace found on Williams' person when he was arrested four days after the murder, were actually used in the underlying crimes. *See Williams*, 342 Md. at 738 ("There is simply no evidence in the record establishing any connection between the crowbar and mace and the crimes with which Williams was charged."). A similar result occurred in the other case relied upon by Appellant. *See Smith*, 218 Md. App. at 705 ("[T]he evidence the court admitted regarding Mr. Smith's ownership of unrelated firearms and ammunition was minimally relevant, at best, and highly prejudicial, and should have been excluded from the trial of these charges.").

In contrast, to *Williams* and *Smith*, where the evidence erroneously admitted had no connection to the actual charges at issue, here, the photograph at issue depicted Appellant holding a black handgun, and there was evidence that a black handgun was used in the course of the carjacking. As the court observed, "[t]he jury could, but is not required to find that the same gun that the defendant is holding in the picture is the, is the same or similar to the gun that's in evidence." On the merits then, Appellant has not persuaded us that he was prejudiced unfairly by the admission of the photograph in this case.

Moreover, even were we to conclude the court erred or abused its discretion, clearly, the evidence was harmless beyond a reasonable doubt. *See Dionas v. State*, 436 Md. 97, 108 (2013) and *Clark v. State*, 218 Md. App. 230 (2014) ("An error is harmless when a reviewing court is 'satisfied that there is no reasonable possibility that the evidence

complained of - whether erroneously admitted or excluded - may have contributed to the rendition of the guilty verdict'") (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)).

> In *Dionas*, the trial court prohibited the defense from cross-examining a State's witness about whether the witness had any expectation of receiving leniency in a separate pending case in exchange for testifying against the defendant. On appeal, this Court held that the trial court erred in so limiting the cross-examination but that the error was harmless because of the strength of the State's case and the limited impact the cross-examination probably would have had.
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> The Court of Appeals granted *certiorari* and reversed. It explained that, "in a harmless error analysis, the issue is not what evidence was available to the jury, but rather what evidence the jury, in fact, used to reach its verdict." 436 Md. at 109, 80 A.3d 1058. The Court criticized this Court for "improperly substitut[ing] its fact-finding and credibility determinations for those of the jury; [and] independently, and, in total disregard of the jury's responsibility as the trier of facts, weigh[ing] the evidence produced at trial." *Id.* at 113, 80 A.3d 1058. The *Dionas* Court stated that this Court's "conclusion, that the proffered cross-examination likely would have had limited impact, given the strength of the State's case, was an assumption that could have only been made upon the evidence it would have credited." *Id.* at 116, 80 A.3d 1058. The Court characterized this application of the *Dorsey* analysis as the "otherwise sufficient" test: "if the evidence is sufficient without the improper evidence, if the jury could have convicted without it, harm could not have resulted." *Id.* at 116–17, 80 A.3d 1058. The Court rejected the "otherwise sufficient" test as a misapplication of the harmless error doctrine and explained that the proper harmless error inquiry is "whether the trial court's error was unimportant in relation to everything else the jury considered in reaching its verdict." *Id.* at 118, 80 A.3d 1058 (footnote omitted).

Clark, 218 Md. App. at 242. The photograph was merely cumulative to the strong DNA evidence admitted that conclusively established that, when he was arrested later the same day as the carjacking in or around the stolen 350Z, Appellant possessed a black handgun. Any error in admitting the photograph of Appellant holding a handgun (which also happened to be black), taken five months earlier, was clearly harmless beyond a reasonable doubt.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY THE APPELLANT.