Circuit Court for Wicomico County
Case No. 22-K-16-000385

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 436

September Term, 2017

SHAWNA HOURNBUCKLE

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 5, 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.

A jury in the Circuit Court for Wicomico County convicted Shawna Hournbuckle, appellant, of second-degree murder, first-degree assault, second-degree assault, and wearing or carrying a dangerous weapon openly. The court sentenced appellant to a twenty-year period of incarceration for murder and merged her remaining convictions. On appeal, appellant contends that: 1) the circuit court erred in permitting lay opinion testimony from a State's witness; and 2) that there was insufficient evidence to sustain her convictions for murder and first-degree assault. For the reasons stated below, we affirm.

BACKGROUND

Appellant does not dispute that she stabbed Jeremy Nolin, her husband, in their Pittsville home on the night of April 27, 2016. She also does not deny that she did not call police until the afternoon of April 28, after discovering Nolin's body that morning. Appellant, however, challenges the State's version of events presented to the jury at trial.

A neighbor testified that on the night of April 27, he heard appellant and Nolin arguing loudly when he took out his trash. Later that night, around 10:00 or 11:00 P.M., Edward Cook was at a park near appellant's home with two of his friends. Cook testified that he and his friends were sitting in a car smoking cigarettes when appellant got into the back seat of the car. He stated that neither he nor his friends knew appellant. He testified that appellant asked his friends for drugs and that she seemed to be under the influence of something. When Cook informed appellant that he did not have any drugs, she exited the vehicle.

On the afternoon of April 28, appellant called police and stated that she thought her husband was dead. Appellant said that Nolin had held her down on the bed, and she stabbed

him. She stated that it was an accident and that she did not mean to kill him. Police located appellant in the park near her home. Initially, she told investigators that she and Nolin had been arguing and had gotten into a physical fight.[1] She said she had bruises on her arms from Nolin and that he had punched her in the face.[2] She also stated that when she was lying in bed that evening, Nolin entered the room and held her down, choking her. Appellant flailed and found a small paring knife, which she jabbed at Nolin. Later in the interview, appellant stated that she had actually used a large butcher knife, which she had carried into the bedroom from the kitchen. She claimed that after being stabbed, Nolin said, "You got me," and went to the living room. Appellant also stated that she and Nolin had been drinking and smoking marijuana that day.

From the home, investigators recovered a large butcher knife from a drawer in the kitchen. It had blood on it, later determined to be Nolin's. Police took photographs of the body, which was found in a chair in the living room. Dr. Carol Allan, accepted as an expert in forensic pathology, testified that Nolin died as a result of a single stab wound to the chest. She stated that the wound was three inches deep and had pierced Nolin's heart in a downward path. Dr. Allan stated that the wound was "rapidly fatal," and Nolin's heart continued to pump blood after the injury, meaning that he quickly bled out. Photographs of the home revealed blood in the living room next to the body, but no blood in the

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[1] The State entered a transcript of appellant's interrogation with the police into evidence, and the jury had it available during deliberations.

[2] Investigators took photographs of appellant's injuries, which were shown to the jury at trial.

bedroom. There was also testimony that appellant had attempted to clean up the body, as evidenced by a menstrual pad taped to Nolin's chest.

Appellant did not testify at trial, but her theory of the case was that she acted in self-defense.

DISCUSSION

I. Lay Opinion Testimony

Prior to the prosecutor calling Cook, defense counsel made a motion *in limine* to suppress his lay opinion testimony that appellant was under the influence of some substance. The court permitted Cook to testify that appellant appeared to be under the influence, but he could not opine as to which substance. During Cook's direct examination, he testified that appellant "seemed like" she was under the influence of something "big time" and that she was "amped-up," like "she was on an upper[.]"

On appeal, appellant contends that the court permitted impermissible lay opinion testimony from Cook. Appellant concedes that Cook's testimony concerning her demeanor and behavior was permissible, but she asserts that he did not have the requisite expertise to testify as to what particular substance – such as an upper – appellant may have been abusing. Appellant also admits that defense counsel failed to object to Cook's testimony at trial, but she argues that he testified immediately after the court's ruling on the motion *in limine* and urges this Court to exercise its discretion to review the issue. Alternatively, appellant asks this Court to conclude that defense counsel rendered ineffective assistance so that we may rule on the merits of this contention.

Rule 4-323(a) provides that an "objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." *See also Darling v. State*, 232 Md. App. 430, 456 (stating that the party objecting to the admission of evidence admitted by the denial of a motion *in limine* must still object at the time the evidence is offered to preserve the issue for appeal), *cert. denied*, 454 Md. 655 (2017).

We perceive no reason to overlook appellant's failure to preserve this issue for review. Appellant contends that the prosecutor elicited the objectionable testimony immediately after defense counsel's motion, but a review of the transcript reveals that this is not true. Immediately after the court's ruling on defense counsel's motion *in limine*, the prosecutor began Cook's direct examination. After some testimony, the prosecutor excused him from the stand and called another witness to establish a timeline for Cook's statement to police. The prosecutor then recalled Cook, who then testified about appellant's demeanor. These circumstances are not similar to *Dyce v. State*, 85 Md. App. 193, 198 (1990), in which we reviewed the admission of testimony, even though Dyce had failed to comply with the provisions of Rule 4-323(a), where the objectionable testimony and the motion *in limine* were within close "temporal proximity[.]"

We will also not review this issue for ineffective assistance of counsel. Generally, claims of ineffective assistance of counsel are better reviewed in a collateral proceeding and not on direct appeal. *See Testerman v. State*, 170 Md. App. 324, 335 (2006). There are "exceptional cases where the trial record reveals counsel's ineffectiveness to be 'so blatant and egregious' that review on appeal is appropriate." *Mosley v. State*, 378 Md. 548, 562

(2003) (quoting *Johnson v. State*, 292 Md. 405, 435 n.15 (1982)). This is not one of those cases.

II. Sufficiency of the Evidence

Appellant contends that there was insufficient evidence to sustain her convictions for murder and first-degree assault. She maintains that the evidence demonstrated that she acted in self-defense and, therefore, lacked the requisite intent to be convicted of these crimes. At the very least, she argues that she acted objectively unreasonably or as a result of a provocation, either of which would have served to mitigate her convictions to voluntary manslaughter and second-degree assault.

In reviewing the sufficiency of the evidence to sustain a conviction, we ask "'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.'" *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This Court has noted that "weighing 'the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact.'" *Darling*, 232 Md. App. at 465 (quoting *In re Heather B.*, 369 Md. 257, 270 (2002)). "Thus, 'the limited question before an appellate court is not whether the evidence should have or probably would have persuaded the majority of fact finders but only whether it possibly could have persuaded any rational fact finder.'" *Id.* (emphasis omitted) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004), *aff'd*, 387 Md. 389 (2005)).

We conclude that a rational jury had sufficient evidence from which it could convict appellant of second-degree murder and first-degree assault. Indeed, appellant conceded that she stabbed Nolin, which resulted in his death. Appellant is correct that there was evidence from which a jury could find that she acted in self-defense. But there was other evidence negating that theory. The fact finder is "entitled to (1) accept – or reject – all, part, or none of the testimony of any witness, including testimony that was not contradicted by any other witness, and (2) draw reasonable inferences from the facts that it found to be true." *In re Gloria H.*, 410 Md. 562, 577 (2009) (emphasis omitted). Moreover, "'[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder.'" *Fone v. State*, 233 Md. App. 88, 115 (2017) (quoting *Larocca v. State*, 164 Md. App. 460, 471 (2005)). "In addition, we give 'due regard to the [fact finder's] finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Id.* (quoting *Larocca*, 164 Md. App. at 471-72).

Accordingly, the jury was free to accept or reject, in whole or in part, appellant's theory of self-defense.

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