

Circuit Court for Baltimore City
Case Nos.: 122138011 & 422139001

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

Nos. 449 & 452

September Term, 2023

TEVIN HINES

v.

STATE OF MARYLAND

Arthur,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 10, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On March 10, 2023, following trial in the Circuit Court for Baltimore City, a jury found Tevin Hines, Appellant, guilty of armed robbery and unlawful possession of a regulated firearm by a prohibited person.¹ On May 4, 2023, the court sentenced the Appellant to twenty years of imprisonment with all but ten years suspended for armed robbery, and five consecutive years of imprisonment for the firearm offense.

Thereafter Appellant noted a direct appeal to this Court presenting the following questions:

1. Did the trial court err in admitting into evidence hearsay and statements that violated [Appellant's] constitutionally protected right to confrontation?
2. Was defense counsel ineffective for failing to move for the trial court to dismiss the charge that [Appellant] had violated Md. Public Safety Article § 5-133 on the grounds that it was unconstitutional under *New York Rifle and Pistol Association v. Bruen*, 597 U.S. 1 (2022)?

For the reasons stated below, we shall affirm the judgments of the circuit court.

BACKGROUND

At about 5:00 in the morning on December 13, 2021, Lola Buchanan, the victim, drove to 1526 North Durham Street in Baltimore City to meet with the Appellant. Just days earlier, she had encountered him on the internet dating application Tinder and the two agreed to meet at that location at that time.² Shortly after she arrived, she called him. When

¹ The jury acquitted Appellant of a different count of unlawful possession of a firearm by a prohibited person, and of one count of unlawful possession of ammunition.

² A police detective determined that the Tinder profile the Appellant had used to contact the victim was falsified.

he appeared, he was wearing a mask and he told her that they could not go inside the residence as planned. She then agreed to stand at the rear of her car with him and “just chill and smoke” and “just talk[.]”

The victim testified that, at first, she was unconcerned that Appellant wore a mask as it was not an uncommon thing to do when it is cold outside. Nonetheless, she asked the Appellant to remove his mask and jokingly said “What? You going to rob me?” before she reached over and pulled his mask down. At that point, the Appellant said, “I’m not going to lie. I need everything[.]” before he unzipped his hoodie, displayed a distinctive black and copper colored pistol, and took the victim’s fanny pack, phone, and keys. She said that, during the robbery the Appellant repeatedly threatened to kill her. She also testified that she begged and screamed for her life. Appellant then ran into an alley and the victim ran the other way looking for someone to help. The victim found someone and together they called 911 to report the armed robbery.

Meanwhile, Towanda Young, a neighbor, watched the whole episode and also called 911. She said that the assailant displayed a two-tone pistol, was wearing a dark hoodie and grey sweatpants, and ran up the alley after robbing the victim.

About 15 minutes later, the police arrived. The victim told them that she had an app on her phone that would enable them to find it. Utilizing that app, they found her phone a short distance away lying on the ground near trash cans.

Several months later, on March 31, 2022, after a police detective became aware that the police forensics team had confirmed that the Appellant’s fingerprint had been lifted from the victim’s phone, he scheduled an appointment with the victim so that he could

show her a photograph of Appellant. When he showed her the Appellant’s photograph, she became “extremely emotional” and identified the Appellant as her attacker. The detective then sought and obtained a warrant for the Appellant’s arrest. He then forwarded the warrant to the Warrant Apprehension Task Force (WATF) to be served.

On April 20, 2022, at 6:25 a.m., the WATF entered a home, not far from the location of the robbery, where they believed Appellant lived. Upon entry, they encountered a person named Yolanda Malone who called out to the Appellant. Wearing only a tank top and underwear, the Appellant came down the stairs and the police arrested him. Yolanda Malone went upstairs and retrieved some of Appellant’s clothing for him to wear. After securing the home, the police then sought and obtained a search warrant, which they then executed.

During the search, police recovered a distinctive black and tan/copper pistol from a toy bin full of children’s toys in what appeared to be a child’s bedroom. The pistol was loaded and operable and had no safety. The police also recovered another loaded pistol from the top shelf of a closet in the same room along with some rifle ammunition.³ The police found adult clothing in bags in that same room.

After discovering the weapons, the police interviewed Yolanda Malone, who, among other things, told police, as captured by body-worn video camera, that she did not

³ The jury found appellant guilty of unlawfully possessing the two-tone black and copper pistol, and acquitted him of unlawfully possessing the ammunition and the other pistol.

know that there were guns in the home, and that the room where the police found the two pistols belonged to her 7-year-old nephew.

Between March 7 and March 10, 2023, the case proceeded to trial before the Honorable Stephen Sfekas of the Circuit Court for Baltimore City. At the end of trial, the Appellant was convicted of robbery with a deadly weapon and possession of a firearm as a prohibited person. On May 4, 2023, the court sentenced Appellant to twenty years of imprisonment with all but ten years suspended for armed robbery, and five consecutive years of imprisonment for the firearm offense. Additional background facts will be added as they become germane to our discussion.

DISCUSSION

I. INTRODUCTION OF INADMISSIBLE HEARSAY

Background

At trial, after opening statements and before the presentation of evidence had taken place, the Appellant moved *in limine* to exclude the recorded statements of Yolanda Malone, who was not present at trial to testify. He argued that the statements constituted inadmissible testimonial hearsay which, if admitted, would violate his right to confront his accusers through cross-examination under the Sixth Amendment to the United States Constitution.

The State did not specify any hearsay exceptions that would have applied and did not offer a theory supporting a view that the statements were non-testimonial under the confrontation clause. Rather, the State emphasized the relative unimportance of the statements, as follows:

Your Honor, the State would argue that the statements made by Ms. Malone are not a violation of any Confrontation issues. There's, there will be evidence that, or hearsay, there will be evidence that the Defendant is, was arrested in the home of the address that is 1608 North Durham Street.

He was arrested there that morning. There is video footage of him coming down the steps from the bedroom in his boxers and his underwear. So, there are no statements that she made in terms of who the guns belong to. She doesn't know about the guns or anything of that nature.

She merely says that he was at the house, which we already know because that's where he was arrested. But there is no acknowledgment of any weapons whatsoever. As the [c]ourt acknowledged, she said that she didn't know anything about them whatsoever, and that's where the question ended and that's where the statements ended.

And it's also no secret that a child that is there, whether he lives there, or whether he is there at times because there would be video footage of it. It is very clear that it's a child who is under ten years old bedroom where the guns were recovered from.

The trial court granted the motion in part, and otherwise denied it. The court agreed to exclude a portion of the recorded statement where Yolanda Malone said that Appellant was at her house earlier. As to the other portions of her statement which the trial court deemed admissible, the court commented:

I think it is acceptable. Or else I think frankly, it doesn't advance or damage particularly [Appellant]'s case.

I think whether or not, you know, the issue is not whether there was a child. The issue is, did [Appellant] have the guns? Did [Appellant] have the ammunition? The State still has to prove in some fashion there is a connection between the guns seized and [Appellant]. That is a critical issue, obviously, I would think. We will have to see what happens with the testimony –

At trial, the State played for the jury portions of the recording of Yolanda Malone's conversation with a police detective captured by body-worn camera. On appeal, the

Appellant points to two specific portions of that recording that he believes were admitted erroneously.

First, Appellant directs our attention to Ms. Malone’s statements in response to police questioning to the effect that her 7-year-old nephew lived in the house:

[POLICE DETECTIVE]: [D]o you have any kids that stay in this house?

[YOLANDA MALONE]: Yes.

[POLICE DETECTIVE]: Okay What’s the child’s name?

[YOLANDA MALONE]: That like live here or like –

[POLICE DETECTIVE]: Well, there’s a kid’s room upstairs, right?

[YOLANDA MALONE]: Yeah.

[POLICE DETECTIVE]: Okay. What kid stays up there?

[YOLANDA MALONE]: Taylen.

...

[POLICE DETECTIVE]: Okay. Are you his mom?

[YOLANDA MALONE]: No, his aunt.

Next, Appellant directs our attention to a portion where Ms. Malone indicated that she did not know about the pistols police found in her house:

[POLICE DETECTIVE]: All right. So, let you know we did take some things out of the house. All right. So, we got some handguns out of the house and some ammunition. Okay?

[YOLANDA MALONE]: Mm-hm.

[POLICE DETECTIVE]: So, do you have any questions for me about this? No? You had no idea the guns were there?

[YOLANDA MALONE]: No.

After that portion was played for the jury, the Appellant asked to approach, and at the bench said: “It was my understanding, Your Honor, that the testimony of Ms. Malone was not going to be played; that part of my objection was that her assertion of who was in the house, whose bedroom it is, or whatever. She’s not available for me to cross-examine her.” The trial court overruled the objection.

Standard of Review

Unlike other evidentiary rulings, decisions by a trial court to admit or exclude hearsay are not reviewed for abuse of discretion. *See State v. Galicia*, 479 Md. 341, 360 (2022). Instead, “the trial court’s ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review.” *Gordon v. State*, 431 Md. 527, 538 (2013). Therefore, “the trial court’s legal conclusions are reviewed *de novo*, . . . but the trial court’s factual findings will not be disturbed absent clear error[.]” *Id.* (citations omitted).

Hearsay and the Confrontation Clause

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Md. Rule 5-801(c). “Except as otherwise provided by [the Maryland] rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible.” Md. Rule 5-802. “If one or more hearsay statements are contained within another hearsay statement, each must fall within an exception to the hearsay rule in order not to be excluded by that rule.” Md. Rule 5-805.

Maryland Rule 5-803(b)(8)(D), provides that, when certain prerequisites are met, an electronic recording of a matter made by a body camera worn by law enforcement is admissible. In *Paydar v. State*, this Court concluded that Rule 5-805’s requirement that hearsay within hearsay must fall within its own exception to be admissible, also applies to body-worn camera recordings. 243 Md. App. 441, 452–56 (2019). Therefore, any statements within the recording offered for the truth of the matter asserted still must meet a hearsay exception to be admissible. *Id.* at 456.

In addition, in *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court determined that, under the Confrontation Clause of the Sixth Amendment, testimonial hearsay is inadmissible at trial without the accused having had the opportunity to cross-examine the declarant. *Id.* at 53–54; *see also State v. Norton*, 443 Md. 517, 530 (2015). Testimonial hearsay is not defined by *Crawford*, but the *Norton* court pulled out key inquiries, like “[t]o whom the statement is made,” “whether the statement had been solicited,” and whether the statement was “made ‘for the purpose of establishing or proving some fact’ in a criminal prosecution or investigation.” *Norton*, 443 Md. at 530–31.

Analysis

On appeal, the Appellant asserts that because Yolanda Malone’s recorded statements from a police body-worn camera constituted hearsay within hearsay, and because they do not fall within a recognized exception to the hearsay rule, they were inadmissible. Furthermore, he argues that, because the statements were testimonial in nature, their admission violated his Sixth Amendment right to confront, through cross-

examination, his accusers. According to the Appellant, therefore, his conviction for illegal possession of a firearm should be reversed.

Anticipating that the State might argue that the admission of Yolanda Malone’s statements was a harmless error, the Appellant claims that the admission of her statement denying knowledge of the guns “deprived [him] of the ability to argue that the guns belonged to her and not to him and served as proof that the guns were under his control and possession and no one else.” Appellant claims her statement that her nephew lived in the home, “tended to establish that the guns belonged to Mr. Hines and to no one else, as if Ms. Malone did not know about the guns and the only resident of that bedroom was a child, the guns more likely belonged to Mr. Hines”.

The State concedes that Yolanda Malone’s statements were inadmissible under both the hearsay rules and the Confrontation Clause, but argues that any error in admitting them into evidence was harmless. While we are not bound by the State’s concession of error, *Coley v. State*, 215 Md. App. 570, 572 n.2 (2013), we accept it in this case. Moreover, we agree with the State that any error in admitting those statements into evidence was harmless.

An error is harmless where the reviewing court “upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict[.]” *Dorsey v. State*, 276 Md. 638, 659 (1976). “To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.” *Dionas v. State*, 436 Md. 97, 111 (2013) (quoting *Taylor v. State*, 407 Md. 137, 165

(2009)); *see also Fields v. State*, 395 Md. 758, 764 (2006) (“The collective effect of the other evidence in this case so outweighs any possible prejudice resulting from the admission of the questioned evidence that there is no reasonable possibility that the jury would have reached a different result had that evidence been excluded.”).

The most damaging aspect of Yolanda Malone’s statements was that they could be used to support the unremarkable proposition that the Appellant was more likely the possessor of the pistols than either Yolanda Malone or her nephew. The jury heard other evidence that was substantial connecting the Appellant to the pistol including (1) the victim’s identification of the Appellant as the man who robbed her at gunpoint with a distinctive black and copper pistol, (2) an independent witness’s testimony that the assailant used a two-tone pistol, (3) the Appellant’s fingerprint was found on the victim’s cell phone which had been discarded and recovered shortly after the armed robbery, and (4) a distinctive black and copper pistol was found in a toybox in a home where the Appellant lived. In light of the weight and breadth of that other evidence connecting Appellant to the two-tone black and copper pistol, we are persuaded beyond a reasonable doubt that the jury did not utilize Yolanda Malone’s statements to dispel any notion that the pistols recovered by police belonged to her or her nephew and not the Appellant.

We are, therefore, persuaded beyond a reasonable doubt that any error in admitting Yolanda Malone’s statements into evidence was harmless based on the collective effect of the admission of substantial alternative evidence of the Appellant’s guilt.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

The Appellant argues that he was deprived of his right to effective assistance of counsel when counsel failed to move to dismiss the charge of illegal possession of a firearm on the basis that the statute is unconstitutional under *New York Rifle and Pistol Associations v. Bruen*, 597 U.S. 1 (2022), which held that a New York law prohibiting firearm possession outside of one’s home without a license violated Bruen’s rights under the Second Amendment to the United States’ Constitution.

As the Maryland Supreme Court has repeatedly pointed out, although it is possible for an appellate court to address a claim of ineffective assistance of counsel on direct appeal, “[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel acted or omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to allegations of the counsel’s ineffectiveness.” *Bailey v. State*, 464 Md. 685, 704 (2019) (quoting *Mosley v. State*, 378 Md. 548, 560 (2003)). We think Appellant’s claim of ineffective assistance of counsel is best heard within a post-conviction posture and we decline to consider the issue here.

Consequently, we affirm the judgments of the circuit court.

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