

Circuit Court for Cecil County
Case No. C-07-CR-20-000021

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 502

September Term, 2020

THOMAS ANTHONY SMITH

v.

STATE OF MARYLAND

Friedman,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 19, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Thomas Smith was charged in the Circuit Court for Cecil County with two counts of second-degree assault and one count of malicious destruction of property valued at less than \$1000. Smith was acquitted of malicious destruction of property and one count of second-degree assault. Smith was convicted of one count of second-degree assault and was sentenced to five years in prison, all but one year suspended, and three years of supervised probation. On appeal, Smith presents one question for this court’s review, as follows:

Did the trial court commit reversible error by allowing testimony regarding the domestic violence supplemental police report and the police referral to a domestic violence counselor?

For the reasons set forth below, we affirm the circuit court.

BACKGROUND & PROCEDURAL HISTORY

In October 2019, Amy Purfield was living with her daughter in a rental home. She was in an “on-and-off relationship” with Smith, who would stay with her when the relationship was on, and would stay in Philadelphia when the relationship was off. Smith stayed with another woman when he was in Philadelphia. Ms. Purfield’s relationship with Smith was rocky, and Smith began questioning her about where she was at all times.

On October 28, the couple had a fight.¹ Smith went outside and kicked the side of Ms. Purfield’s car. He then grabbed her, and she told him to get off of her. Multiple people passing by stopped to ask if she needed help. Two days later, on October 30, Ms.

¹ Smith was acquitted of the two counts associated with the alleged altercation on October 28, 2019.

Purfield drove her daughter to school and had to stop to put air in her tires. When she returned home, Smith asked her where she had been. Smith accused her of having sex with someone else because it had taken her so long to get home. Smith yanked Ms. Purfield off the couch by her sweatshirt and pulled her to the ground. He kept shaking her with his fists and hitting her chest. Her head struck the ground numerous times.²

Prior to work that day, Ms. Purfield stopped at the Christiana Mall in Newark, Delaware to pick up some things. Smith accompanied her to the mall, then she dropped him off at a corner store in Philadelphia around 1:00 p.m. because he would not tell her where he stayed in Philadelphia. Ms. Purfield believed that was the end of their relationship and returned home.

After returning home, Ms. Purfield's son came over and drove her to the police station because he knew "what was going on." Ms. Purfield claimed she had not previously gone to the police when Smith was staying with her because she didn't want "things to escalate."

Ms. Purfield arrived at the North East Barracks of the Maryland State Police to file a police report at around 6:00 p.m. on October 30. Trooper Jacob Bruno spoke to Ms.

² At trial, however, Ms. Purfield testified that Smith never hit or shook her on October 30, and that she grabbed him and pulled him onto the ground. Smith testified that on the drive to Philadelphia, they made up and he planned to pick up his things and bring them back to Ms. Purfield's house. Smith called the other woman to inform her of his plans, but allegedly Ms. Purfield misunderstood their conversation because it was spoken in Spanish, and told Smith to stay in Philadelphia. When she dropped him off, he told her that she would eat her words.

Purfield in the lobby for approximately ten to twenty minutes. Trooper Bruno believed Ms. Purfield seemed “concerned” when she described what occurred that morning. The Maryland State Police has a protocol for interviewing alleged victims of domestic violence, including filling out a domestic violence supplemental report. Trooper Bruno provided Ms. Purfield with the report, and based on the contents of the report, he contacted a domestic violence counselor. Ms. Purfield briefly spoke to the counselor. Ms. Purfield later emailed Trooper Bruno a photo depicting some bruising in her chest area. After her interview with Trooper Bruno, he completed an application for charges against Smith.

The jury convicted Smith of one count of second-degree assault and acquitted him of all other counts. Smith was sentenced to five years in prison, all but one year suspended, and three years of supervised probation. This timely appeal follows.

DISCUSSION

Smith contends that the trial court erred in admitting testimony with respect to the domestic violence supplemental report and the referral to the domestic violence counselor. Smith argues the evidence of the domestic violence supplemental report and the referral to a domestic violence counselor was irrelevant and thus inadmissible.

During Trooper Bruno’s testimony, he described the Maryland State Police policy to fill out a domestic violence supplemental report when someone alleges domestic violence. The State then marked the report as State’s Exhibit 1. Smith objected that the line of questioning regarding this report was not relevant. The State responded that

Trooper Bruno completed the document and the State planned to lay the foundation should it need to use the document against Ms. Purfield. The court permitted Trooper Brown to identify the document and to testify that he completed the first page and Ms. Purfield completed the second page.

With respect to the referral to a domestic violence counselor, the State asked Trooper Bruno if he ever put Ms. Purfield in contact with anyone else. Following Smith's objection that the testimony was irrelevant, a bench discussion ensued. The State argued that because the defense's argument is that Ms. Purfield's description of events is fictitious, it was prudent for the State to show that she followed through with the trooper's referral. The court allowed Trooper Bruno to testify that as a matter of course, once the report is screened and certain questions are answered affirmatively, the officer contacts the counselor. Trooper Bruno also confirmed that Ms. Purfield spoke to the counselor briefly. Specifically, Trooper Bruno explained that if someone answers "yes" to the first two or three questions, it's an "automatic high dangerous assessment," resulting in a call to a domestic violence counselor, or if they answer "yes" to four or more questions in the bottom section of the report, it also results in a call to a domestic violence counselor.

During cross examination, Trooper Bruno admitted that he does not vet the credibility of the situation or evaluate whether the answers are truthful in order to determine whether to contact a domestic violence counselor, but instead is following a set

procedure. Trooper Bruno also explained the reason he filled out the report is due to Ms. Purfield's description of the relationship between her and Smith.

Ms. Purfield testified that she spoke with Trooper Bruno and a domestic abuse counselor. She testified that the domestic abuse counselor asked if she needed shelter, but she declined because Smith did not have any means of transportation to get to her home from Philadelphia. The State referenced the report and referral in closing, stating that Ms. Purfield filled out the form and was screened in to speak to a domestic violence counselor. The court sustained an objection to this statement. The State continued that based on what Ms. Purfield told Trooper Bruno and wrote in the report, coupled with his observations, Trooper Bruno filed for charges against the defendant.

“The determination of evidentiary relevance is a legal question that is reviewed de novo.” *State v. Robertson*, 463 Md. 342, 353 (2019). Smith claims that the report and referral are irrelevant because it did not make it more or less probable that he committed the assault. Smith contends that the State's theory of the case was that this was an instance of domestic violence and Ms. Purfield was the victim to Smith's violence. Smith continues that the jury's split verdict indicates that there was a credibility contest between Smith and Ms. Purfield, and the result “may have been a close one.” The State argues that because Smith's theory of the case was that the allegations were a “revenge” tactic to “get back at [Smith] for cheating,” he put the victim's credibility at issue. At the time of trial, Ms. Purfield and Smith were still dating, so the State was concerned that Ms.

Purfield would be a “turncoat witness.”³ As Ms. Purfield was the only witness to the assaults and malicious destruction, she was the State’s key witness.

“[A] witness’s credibility is always relevant.” *Devincentz v. State*, 460 Md. 518, 551 (2018). Depending on how Ms. Purfield testified at trial, the report was likely admissible as substantive evidence or to rehabilitate her credibility. *See* Md. Rule 5-616(b)-(c) (providing that extrinsic evidence of prior inconsistent statements may be admitted, and a witness’s credibility may be rehabilitated by any evidence the court finds relevant). In anticipation of either scenario, the State properly had Trooper Bruno identify the report for foundational purposes should the report need to be introduced into evidence. Though the report was not ultimately admitted into evidence, the State had the option to use the report to rehabilitate Ms. Purfield’s credibility after Smith inquired whether she was aware that had her report been untruthful, she could be prosecuted, implying that she lied in the report. Further, Ms. Purfield did in fact provide inconsistent testimony when she testified at trial that she was the aggressor by pulling Smith to the ground.

Similarly, Trooper Bruno’s testimony that he referred Ms. Purfield to a domestic violence counselor was relevant. Trooper Bruno testified that he complied with domestic violence protocols established by the Maryland State Police. His testimony with respect to the referral to a domestic violence counselor did not impermissibly bolster the victim’s

³ A turncoat witness is one who repudiates her prior statements to police at trial. *See Nance v. State*, 331 Md. 549, 552 (1993).

credibility as he never testified as to whether he believed Ms. Purfield to be truthful. Contrary to Smith’s assertion, Trooper Bruno did not provide any testimony that he “believed [the] victim and found her account both credible and serious enough to require the referral.” The testimony was also relevant in an effort for the State to show that Trooper Bruno complied with all protocols because his failure to do so would have provided Smith “a proper and legitimate defense tactic for attempting to create reasonable doubt.” *Wise v. State*, 132 Md. App. 127, 136 (2000). The Court of Appeals has held that “where there is unexplained silence concerning a routine ... it is within the scope of permissible argument to comment on this gap in the proof offered.” *Eley v. State*, 288 Md. 548, 555 (1980). As Smith argued that there was a lack of physical evidence and accused the State of “making excuses for why they can’t prove the case,” it was prudent of the State to confirm that Trooper Bruno complied with the domestic violence protocols established by the Maryland State Police.

Even if the court erred in permitting testimony with respect to the report and the referral to a domestic violence counselor, it was harmless beyond a reasonable doubt. “Courts are reluctant to set aside verdicts for errors in the admission or exclusion of evidence unless they cause substantial injustice. *Crane v. Dunn*, 382 Md. 83, 92 (2004) (Citations omitted). The error must be “both manifestly wrong and substantially injurious.” *Id.* Smith contends that Trooper Bruno’s testimony with respect to the report and referral bolstered her credibility because he “created the impression that [he] had found Ms. Purfield’s allegations credible,” which in turn created “tension in the jury’s

verdict” because Smith was acquitted of the October 28 allegations and convicted of the October 30 allegations. We disagree.

Trooper Bruno testified that he filled out the supplemental report as a matter of procedure, based on an objective factor, i.e., the nature of the relationship between Ms. Purfield and Smith. Trooper Bruno also testified that the referral to a domestic violence counselor was based on the objective fact that Ms. Purfield answered certain questions in the affirmative. Both actions taken by Trooper Bruno were required by police protocol, and Trooper Bruno repeatedly confirmed that at no point in time did he assess Ms. Purfield’s credibility or decide whether her statements were truthful.

The court’s instructions to the jury communicated that the jury was the sole judge of the victim’s credibility. The jury is presumed to follow the instructions given by the court, and it is presumed that the jury made their own independent credibility assessment of the victim. *See Dillard v. State*, 415 Md. 445, 465 (2010) (“Jurors generally are presumed to follow the court’s instructions[.]”).

The jury’s verdict is also indicative that if there was error on behalf of the court, it was harmless. The jury acquitted Smith of charges related to the October 28 assault and malicious destruction. The split verdict is likely attributed to the fact that the October 30 charges were supported by physical evidence – the photo of Ms. Purfield’s bruising. The acquittal of the October 28 incident and conviction of the October 30 incident seems to suggest that the jury afforded greater weight to the physical evidence than the report and referral to a domestic violence counselor. We find that the court did not err in admitting

testimony with respect to the domestic violence supplemental report and the referral to a domestic violence counselor.

**JUDGMENT OF THE CIRCUIT COURT
FOR CECIL COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**