Circuit Court for Baltimore City
Case No. 117115030

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 524

September Term, 2018

ANTONIO MACKLIN

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: December 26, 2019

On a warm day in February 2017, Laron Griffin was shot through the heart on a busy street in Baltimore. A year later, a jury convicted appellant Antonio Macklin of first-degree murder (and two handgun offenses) for the killing.[1] On appeal, Macklin challenges that one eyewitness was allowed to testify that she had been reluctant to make a written identification to the police, and he argues that a detective improperly identified him as being on surveillance footage of the event. Finding no error with respect to either claim, we affirm the Circuit Court for Baltimore City.

BACKGROUND & PROCEDURAL HISTORY

Around 4 p.m. on February 28, 2017, Griffin was standing on the 1500 block of Pennsylvania Avenue in Baltimore City when an assailant walked up and shot him multiple times in broad daylight.[2] At least 20 people were present nearby at the time. Two of those witnesses, LaShawn Bolling and Deon Johnson, would later testify that the shooter was Macklin (widely known throughout the neighborhood by the nickname "Bone"). Further evidence at trial would reveal that Macklin and Griffin had had a confrontation just a few days earlier, on the same block, over the fact that Griffin's

[1] Macklin had been re-tried immediately after a previous effort to convict him of the murder ended in a mistrial.

[2] As a medical examiner testified, Griffin suffered multiple entry wounds to his chest (one bullet passed through his heart), as well as entry wounds in his back, arm, and thigh.

cousin had become intimate with a woman ("Portia") with whom Macklin had a passionate yet tempestuous relationship.[3]

Bolling, then 30 years old, testified that she no longer lived on Pennsylvania Avenue, but was back visiting her old neighborhood at the time of the shooting and was enjoying the warm day outside. She told the jury that she did not know Griffin's real name—he was known as "Level" or "Level 5"—but that they were "cool" and shot dice together. She further testified that she had known Macklin since she was a teenager, and that they were also "cool." Bolling recounted that a few minutes after Macklin walked past her on Pennsylvania Avenue that day, she heard a gunshot; before running away from the sound of the gunfire, she saw Macklin fire a subsequent shot at Griffin. Bolling did not stay at the scene to talk to the police or call 911.

Johnson had even closer exposure to the crime: he was standing an arm's length away from Griffin right before Macklin opened fire. (Johnson's presence next to Griffin was captured by surveillance footage and introduced into evidence.). Johnson, who was 26 when he testified, had known Macklin from the neighborhood since he was 12 or 13 years old. Additionally, he testified that his best friend was a relative of Griffin's.

A few days after the shooting, Bolling got pulled over for a traffic stop in neighboring Baltimore County. Bolling was driving without insurance and on a suspended license; hoping to avoid arrest for those infractions, Bolling's discussions with

[3] For instance, during his March 2017 police interrogation, Macklin claimed that Portia broke his cell phone when, while lying in bed together that New Year's, she saw incoming text messages from another woman informing him about a pregnancy.

the County police eventually turned to the topic of whether she was aware of any crime in Baltimore City. When she told the police that she knew "Level" and "Bone," Baltimore City detectives came to see her at the County station. During her interview with Detective Jonathan Riker, Bolling identified Macklin in a photo array, but would not sign the identification. As she put it at trial: "I told them I wasn't going to court and I'm not going to put my life on the line for them." At trial, Bolling could not recall whether she was aware at the time of the interview that her identification of Macklin was being recorded.

As we shall discuss further in this opinion, in addition to Bolling and Johnson's testimony, other critical evidence at trial consisted of medical and forensic testimony; FBI testimony placing Macklin's cell phone near the scene of the crime; and, most notably, the video recording of Macklin's police interrogation with Detective Riker.

Ultimately, the jury convicted Macklin of first-degree murder, use of a handgun in the commission of a crime of violence, and illegal possession of a regulated firearm. At a subsequent hearing, the circuit court sentenced Macklin to life in prison for the murder. Macklin received a consecutive sentence of fifteen years, the first five without parole, for the handgun offenses.

Macklin's appeal followed.

DISCUSSION

I. LaShawn Bolling Did Not Impermissibly Testify About Her Reluctance to Make a Written Identification.

As mentioned above, LaShawn Bolling refused to sign the photo array or make a written identification during the police interview at which she identified Macklin as the shooter. On appeal, Macklin challenges that Bolling was allowed to testify that she had told the police she was refusing to make a written entry because she "wasn't going to court and [was] not going to put [her] life on the line for them." Specifically, Macklin argues that this testimony—that Bolling had declined to make a writing because she was "not going to put my life on the line for [the police]"—(1) improperly bolstered Bolling's credibility through "anticipatory rehabilitation" (*i.e.*, conveying to the jury that Bolling was taking a personal risk by appearing in court); and (2) injected into the trial a prejudicial implication that Bolling faced retaliation from Macklin or his associates.

Macklin first argues that Bolling's testimony improperly bolstered her credibility by making it seem as though she was testifying in court at great personal risk to herself. Macklin contends that this testimony constituted impermissible "anticipatory rehabilitation." *See* Md. Rule 5-616(c); *Hopkins v. State*, 137 Md. App. 200, 207 (2001). However, Macklin overlooks that prior to Bolling's testimony on this point, Macklin's defense counsel had already "opened the door" on the issue of Bolling's credibility during opening argument. *Fullbright v. State*, 168 Md. App. 168, 184 (2006) (quoting *Hopkins*, 137 Md. App. at 208) ("Anticipatory rehabilitation evidence may be introduced during the direct examination of a witness for the State 'if the opening statement of [the

defendant's] trial counsel predicts that jurors will receive evidence that would—when presented—'open the door' to the [rehabilitation evidence].'") (Alterations in original). The bulk of defense counsel's opening statement was devoted to calling into question the State's witnesses' credibility. Specifically, defense counsel stated:

> …there will be at least the two witnesses that [the prosecutor] mentioned[4] who claim to have seen the incident and will be testifying as to what happened that day. And, ladies and gentlemen, I ask you especially to play close attention to these witnesses, to all witnesses, but especially these people who claim to have seen the incident. Do they have a reason to lie? Do they have a reason to fabricate and falsify to cover up for something they said earlier, to cover up for—to obtain something or accomplish something that's an ulterior motive?
>
> Now, when the evidence is done, [the circuit court] will give you instructions and these will be instructions as to the law in the case. One of the instructions as to the law in the case. One of the instructions [the court] will give you is credibility of witnesses, things that you're allowed to consider when you decide whether a witness is credible. So you'll hear this again at the close of the evidence, but in the meantime, as [the prosecutor] said, you all come in here with your common sense and I ask that you use it when you're listening to these witnesses and ask yourself are they credible.

Given that "the opened door doctrine applies in the context of opening statements[,]" *Mitchell v. State*, 408 Md. 368, 388 (2009), Bolling's subsequent testimony on this point was permissible, and not a disproportionate remedy.

[4] In his brief, Macklin contends that defense counsel did not open the door because he "did not mention Ms. Bolling's name in opening argument, and merely noted, in general terms, that the jury should consider whether the eyewitness accounts were credible." However, as the above-quoted text shows, defense counsel was specifically responding to statements made by the State in *its* opening argument—statements that not only identified Bolling by name, but which made the same exact point (about Bolling not wanting to sign the photo array) that Macklin now challenges on appeal as improper. Notably, Macklin's counsel did not object to the State's opening statement, effectively waiving the point.

We also note that, as referenced by defense counsel's opening statement, the State had already made the same point about Bolling's credibility and the photo array during *its* opening statement. In opening, the prosecutor told the jury:

> You're going to hear from LaShawn Bolling how, man, she wanted to do the right thing. She told the police what happened; picked the defendant out from a photo array and told them, "Man, I'm not signing this. You're risking my life. I want to help you. I want to tell you what happened, but please don't make me come to court."

Macklin's counsel did not object to this statement during or after the State's opening argument. As such, Macklin's claim on appeal—that describing Bolling's reluctance to sign the photo array improperly bolstered her credibility—can be deemed not preserved. *Correll v. State*, 215 Md. App. 483, 514-15 (2013) (Appellant's contention that the prosecutor "bolstered the testimony of a key State's witness" in opening statement and closing argument was not preserved "because he did not object to any of the allegedly improper remarks.").

Furthermore, this issue was effectively waived because the same exact point arose during Deon Johnson's testimony: Johnson also testified that he had refused to sign an identification because he believed it would pose a risk to his life.[5] Defense counsel did

[5] Although Johnson did write a statement underneath Macklin's picture in the photo array—"This is the person that was the shooter and his street name [is] 'Bones'—Johnson immediately went on to testify:

> [The State]: Now, underneath that, there is a section . . . there is a spot for you to sign. Did you sign?
>
> [Johnson]: No, ma'am.

(Continued…)

not object during Johnson's testimony with respect to this issue. *See DeLeon v. State*, 407 Md. 16, 31 (2008) (citing *Peisner v. State*, 236 Md. 137, 145-46 (1964)) ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection.").

Alternatively, Macklin argues that Bolling's testimony regarding the photo array should have been excluded under Rule 5-403, on the basis that her testimony's probative value was substantially outweighed by the danger of unfair prejudice: "the obvious implication from [Bolling's] testimony was that she risked retribution from [Macklin] (or his associates) if she put her name to her accusations." We are not persuaded.

Generally, it need not constitute error for a jury to hear that a witness might have been scared to go to the police. *See Armstead v. State*, 195 Md. App. 599, 642, 644 (2010) (No abuse of discretion in allowing a witness to testify that he did not initially go to the police because "[he] was scared. In the street, you just don't tell on nobody.'"); *see also Moore v. State*, 194 Md. App. 327, 360 (2010), *rev'd on other grounds*, 422 Md. 516

> [The State]: Why?
>
> [Johnson]: Because I ain't want my name to be on none of this. I ain't . . . court and everything.
>
> [The State]: You didn't want to –
>
> [Johnson]: No, I felt my life was in danger. I ain't want to do court.

During this portion of Johnson's testimony, Macklin's counsel objected to the introduction of the photo array on the basis that the jury would see a mug shot of Macklin, but did not object with respect to Johnson's testimony.

(2011) (By informing police of his desire to be "no snitch," appellant utilized "a phrase of such notoriety as to be 'a matter of common knowledge.'"); *cf. Hammonds v. State*, 436 Md. 22, 47 n. 8 (2013) (Noting legislative efforts to stem "the serious problem of witness intimidation and retaliation"). Here, under the circumstances, we would find it even harder to construe Bolling's statement as unfairly prejudicial (let alone reversible error), given that, as mentioned above, the exact same concept regarding a witness's fearfulness to cooperate with the police was raised without objection during Johnson's testimony.

Moreover, we note that over the course of the trial the jury heard other evidence on the topic of Macklin and violence:

- Deon Johnson testified that the premeditated murder had been precipitated by a "confrontation" a few days earlier in which Griffin had told Macklin "not to mess with" Griffin's cousin (who was intimate with the same woman as Macklin).

- Johnson testified that Macklin continued shooting Griffin even after Griffin was lying on the street from the first gunfire.

- The jury heard a stipulation that Macklin had been convicted of a crime that precluded his possession of a regulated firearm.

Thus, contrary to Macklin's suggestion that Bolling's statement risked misleading the jury "by implying that Mr. Macklin was a violent person who was willing to exact retribution if Ms. Bolling implicated him[,]" we do not believe that Bolling's comment prejudicially injected into the proceedings an otherwise-absent notion that Macklin might be "a violent person who was willing to exact retribution." Indeed, we remain mindful of the very fact that the jury sat through four days of dramatic evidence and argument, and that Macklin was accused of premeditated first-degree murder—specifically, of shooting

Griffin six times, in broad daylight, on a bustling public street, a few days after having a confrontation with him over a romantic partner who had become intimate with Griffin's cousin. Under the circumstances, Bolling's testimony was not improper.

II. Detective Riker Did Not Improperly "Identify" Macklin on the Surveillance Footage.

Macklin argues that the jury improperly heard Detective Riker testify, without being qualified as an expert, that he could identify Macklin as an individual (*i.e.*, the shooter) who had been captured on surveillance footage walking up Pennsylvania Avenue moments before the shooting, when the image of the individual captured by the footage was otherwise unclear.

Specifically, Macklin challenges the following exchange from the State's direct examination of Detective Riker, when Detective Riker was asked about the video recording of Macklin's police interrogation (which the jury had seen the day before):

> [The State]: [Y]esterday, we heard the statement that you took from the defendant?
>
> [Detective Riker]: Yes.
>
> [The State]: And in that statement, you referred to viewing some video?
>
> [Detective Riker]: That is correct.
>
> [The State]: Now, previously, when I asked you if you tricked the defendant into giving a statement, you said "no"?
>
> [Detective Riker]: That is correct.
>
> [The State]: But you told the defendant that you saw him on video?
>
> [Detective Riker]: Yes.

> [The State]: Can you explain, please?
>
> [Detective Riker]: Okay. Based on all the information that we received in this investigation, the block itself, the route of travel of the suspect, to include clothing, what actions he was doing prior to walking down, and, then, on top of that, looking at the time frame and the video, **we can say in overall, the investigation part, we can locate the suspect on this video**.

Macklin argues that it was improper for Detective Riker to "identify" Macklin as the individual on the surveillance footage because Detective Riker had not observed the event, and because he lacked the requisite personal knowledge, special expertise, or familiarity with Macklin to otherwise make the identification.

Regardless of whether Detective Riker had the knowledge to make such an identification, we agree with the State that any issue as to whether it may have been prejudicial for the jury to hear those words was not preserved (or was harmless). To begin, the jury had already heard, without objection, Detective Riker make the earlier statement to the same effect on the video recording that the jury viewed the day before.[6] Nor did Macklin's counsel object when, later on re-direct examination, Detective Riker repeated: "[W]e did have video of the incident, and with the whole totality of the investigation, all the evidence that we had, we did see him on the video." *DeLeon*, 407 Md. at 31; *Yates v. State*, 429 Md. 112, 120-21 (2012) ("Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received.") (Quotation marks and citation omitted). Indeed, on cross-

[6] On the video recording of the police interview, the jury heard Detective Riker say to Macklin: "Well, the problem is, you know, there's video all up and down that block. How is it that we see you on that block at that point for that murder?"

examination defense counsel brought the issue up again (presumably, to cast doubt on Detective Riker's ability to make the identification), asking Detective Riker: "Now, I believe, during the statement of Mr. Macklin, you told him that cameras up and down the street recorded his presence, correct? . . . [a]nd the basis for that was the video that we were shown a few minutes ago?"

Furthermore, we agree with the State that the premise of Macklin's claim is misplaced. The primary purpose of Detective Riker's challenged statement was not to prove that the individual on the footage was, in fact, Macklin, but rather to explain that Macklin's statement to the police was voluntary. Indeed, the earlier statement that Detective Riker was commenting upon—and which he had made *to Macklin*—was itself designed to elicit a confession, and not to prove that it was Macklin on the footage. After all, Macklin would hardly require the State to identify himself, to himself. As such, it was not error to allow Detective Riker to make the statement that Macklin now challenges on appeal.

In sum: because there was no error in allowing Bolling's testimony regarding her reluctance to make a written identification, or Detective Riker's statement about the surveillance footage, we affirm Macklin's convictions.

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