Circuit Court for Baltimore County
Case No. 03-K-16-003420

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 535

September Term, 2017

JACQUES MAURICE JONES

v.

STATE OF MARYLAND

Berger,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: July 13, 2018

A Baltimore County jury found appellant Jacques Maurice Jones guilty of first-degree burglary; robbery with a deadly weapon; first-degree assault; use of a firearm in the commission of a crime of violence; theft of a motor vehicle; theft of property having a value between $1,000 and $10,000; wearing, carrying, or transporting a handgun on his person; wearing, carrying, or transporting a handgun in a motor vehicle; and illegal possession of a regulated firearm. The court sentenced Jones to incarceration for a total of 50 years. This timely appeal followed.

QUESTIONS PRESENTED

Jones presents the following three questions for our consideration:

I. Did the circuit court err in precluding the admission of relevant evidence?

II. Did the circuit court err in preventing defense counsel from making permissible closing argument?

III. Did the circuit court err in permitting the lead investigator to offer impermissible lay opinion?

For the reasons discussed below, we shall affirm.

FACTUAL BACKGROUND

On the evening of Sunday, May 29, 2016, Ryan Johns and two friends drove into Baltimore City in Johns's black Mercedes. By the early morning hours of the next day, Johns and his friends found themselves at the Horseshoe Casino in Baltimore. As the sun was about to come up, Johns and one of his friends left the casino and drove back to the house that Johns shared with his mother and her friend in Woodlawn. When they arrived

at the house, Johns went to bed; his friend remained outside, in the backseat of Johns's car, where he had fallen asleep on the way back from the casino.

At about 10:00 a.m. that morning (Memorial Day, Monday, May 30, 2016), Johns's friend woke up to find that his shoes, watch, and cellphone were missing. Suspecting that he was the victim of a prank, he asked Johns if he had taken them, but Johns knew nothing about their whereabouts. The two men looked for the missing shoes, watch, and cellphone, but did not find them. A few hours later, the friend got a ride home. At some point, Johns realized that someone had broken the rear window of his Mercedes.

Johns testified that, at about 5:00 or 5:30 p.m. that afternoon, while he was alone in the house, talking on the telephone, he heard a boom. Moments later, he heard people running around on the first floor of the house. He looked downstairs and saw an older man, whom he later identified as Jones, run into the house. Jones told John to "shut the fuck up," threatened him with a gun, ordered him to hang up the telephone, and demanded to know where the money was. He said that he knew there was money in the house because he could "smell it." Johns responded he did not have any money.

Another younger black man, whom Johns later identified as Jones's co-defendant Michael Isaac, ran upstairs with a gun. Isaac told Johns to "stop fucking playing" and demanded to know where the money was. Johns noticed that both Jones and Isaac were wearing blue medical gloves.

Jones and Isaac went through Johns's bedroom drawers and closet. Then they took him into his mother's bedroom and went through her drawers, asking him where the jewelry was. Jones held a gun to Johns's side.

Jones asked Johns where his bank card was. Johns told him that the card was in the pocket of his jeans, which he had left near the front door when he arrived home from the casino. The two men took Johns to the first floor to find his jeans. When Johns lifted the jeans from the floor, the keys to his Mercedes fell out. Isaac said that they were going to take Johns's car.

The two men took televisions from Johns's bedroom, his mother's bedroom, and the basement and put them in the foyer. Isaac began loading the televisions into Johns's Mercedes. At one point, Isaac came back into the house and said that the neighbors were taking pictures outside.

Jones went outside and began loading the televisions into Johns's Mercedes, while Isaac stayed upstairs with Johns. Isaacs told Johns that "these neighbors are about to get your head blown off."

Isaac put Johns into the bathroom and went into a bedroom to look for Johns's phone. While Isaac was in the bedroom, Johns ran out of the bathroom and down the steps, but tripped and fell. As Johns got back up, Isaac fired two or three shots, one of which struck Johns in the forearm. Johns ran outside, screaming for help. He made it to the house of a neighbor, who locked the door and called the police.

One of Johns's neighbors testified that at about 5:45 p.m. on Monday, May 30, 2016, she observed a blue Hyundai Sonata parked directly outside her house and another

car pull up directly behind it. One of the men in the Hyundai got out and climbed into the other car, which drove off. Two men, wearing blue medical gloves, got out of the Hyundai and walked straight into Johns's house. The neighbor called another neighbor and told him what she had observed. Then she took her dog outside for a walk. She observed that the Hyundai's engine was running. She saw a man walk out of Johns's house carrying things and putting them in Johns's Mercedes. Shortly thereafter, she heard the sound "pop, pop, pop" and saw someone running out of Johns's house yelling for help. She ran into her house and locked the door. The other neighbor called her and said that Johns had been shot and asked her to call 911, which she did.[1]

A police officer who responded to the 911 call observed that the front door to Johns's house was wide open, that there was a television in the driveway, and that the house appeared to have been ransacked. During a protective sweep, the officer saw gloves on the stairs and a television that appeared to have been struck by a bullet.

A crime-scene technician photographed the blue Hyundai Sonata, which was still parked and running outside of the house. After obtaining consent to search the house, the police collected two bullets, one from the frame of the front doorway and another from the dining room, as well as the two pairs of gloves.

The police towed the Hyundai to a garage, obtained a warrant, and searched and photographed the automobile. They recovered a wallet that contained Jones's Maryland identification card; Jones's social security card; an earnings statement for Isaac; a

[1] The other neighbor was unable to testify, because at the time of the trial he was deployed to Afghanistan with the United States Army.

cellphone that belonged to Jones; a license plate for a vehicle owned by Isaac and his grandmother, Consundra Bradford; an Enterprise Rent-A-Car rental agreement that identified Consundra Bradford as the person who had rented the Hyundai; and the watch and cellphone that belonged to Johns's friend who had fallen asleep in the back of the Mercedes earlier that day. The police also recovered several fingerprints from the exterior of Johns's Mercedes. None of the fingerprints matched either Jones's or Isaac's prints, but one matched those of a person named Terry Griffen.

Johns was taken to a hospital, where he was treated for a gunshot wound to his forearm. After he was released, the police showed him a photo array, from which he identified Isaac as the man who shot him. A bit later, the police showed Johns another photo array, from which he identified Jones as the other person who was involved in the home invasion.

Pursuant to a subpoena, the director of surveillance and risk for the Horseshoe Casino provided police with information that was captured by surveillance equipment in the early morning hours of May 30, 2016. According to the witness, images of Johns's black Mercedes and the blue Hyundai Sonata had been captured by license-plate readers and video cameras in the casino's parking garage. The evidence showed that Johns had turned left onto Russell Street, just outside the casino, at 4:49.14 a.m. The evidence also showed that the blue Hyundai Sonata, rented by Isaac's grandmother, turned left onto Russell Street 35 seconds later, at 4:49.49 a.m.

The risk management coordinator for Enterprise Rent-A-Car testified that at about 10:26 a.m. on May 31, 2016, the day after the home invasion, the blue Hyundai Sonata that was rented to Consundra Bradford was reported stolen.

Bradford testified that Isaac, who is her grandson, stayed with her and her husband "quite often." Isaac was listed as an additional driver on the Enterprise rental agreement, and Bradford gave him the car to use on May 29, 2016. According to Bradford, Isaac called her on May 30, 2016. As a result of that call, she said, they started looking for the rental car, but did not locate it. Bradford informed the Baltimore City police that the rented vehicle had been stolen. The City police advised Bradford that she should report the stolen vehicle to the police in Baltimore County. Thereafter, she informed the Baltimore County Police Department and Enterprise Rent-A-Car that the car had been stolen.

A Baltimore County police officer testified that at about 1:00 p.m. on Tuesday, May 31, 2016, Bradford reported that the Hyundai Sonata had been stolen sometime between May 30, 2016, at 9:11 p.m. and May 31, 2016, at 1:30 a.m. A Baltimore County detective testified that the police already had custody of the Hyundai when Bradford reported it as stolen.

On June 1, 2016, the police found Johns's Mercedes a block and a half from Jones's residence on the eastern side of Baltimore City.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Jones challenges two evidentiary rulings, in which, he says, the court erroneously excluded relevant evidence offered by his co-defendant.

The first of the challenged rulings involves a police detective's testimony about Terry Griffen, the person whose fingerprint was recovered from the outside of Johns's Mercedes. During Isaac's cross-examination of the detective, the trial court sustained the State's objection to a question about whether Griffen has a criminal background. Jones contends that the court committed reversible error in sustaining that objection, because, he says, Griffen's criminal background was relevant to whether Griffen was responsible for the home invasion or the theft of Johns's Mercedes.

The second ruling involves Consundra Bradford's testimony that, to the best of her knowledge, Isaac last had possession of the rented Hyundai on May 29, 2016, the day before the home invasion. When Isaac's counsel attempted to elicit that testimony, the court sustained the State's objection and struck the answer. Jones contends that the court committed reversible error, because Bradford's answer would support an inference that someone other than Jones or Isaac had used the Hyundai in the home invasion on May 30, 2016. Jones also contends that Bradford's testimony would have countered the State's evidence that Bradford reported that the Hyundai was stolen between 9:11 p.m. on May 30, 2016, and 1:00 a.m. on May 31, 2016.

The State argues that neither of these two challenges is properly preserved for appellate review, because, in the State's view, Jones "acquiesced in the trial court's

rulings." The State observes that, in both instances, Jones is attempting to challenge the exclusion of evidence offered by his co-defendant, Isaac. The State notes that Jones's counsel merely "stood silent" when the court excluded the evidence. Jones argues that he was not required to make any additional objections after the court had sustained the objections made by the State.

Assuming for the sake of argument that Jones can rely, for preservation purposes, on the evidence offered by his co-defendant, we would reject the challenge. The evidence was properly excluded on the ground that it was irrelevant or that its probative value was substantially outweighed by the danger of confusing of the issues or misleading the jury. *See* Md. Rule 5-403.

Evidence is relevant if it tends 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." Md. Rule 5-401. A court may admit relevant evidence, but it has no discretion to admit evidence that is irrelevant. *Smith v. State*, 218 Md. App. 689, 704 (2014) (citing Md. Rule 5-402). A ruling that evidence is legally relevant is a conclusion of law, which we review de novo. *See id.*

Even if evidence is relevant, however, a court may exclude it "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. We review that decision for abuse of discretion. *See, e.g.*, *Carter v. State*, 374 Md. 693, 705 (2003).

When weighing the probative value of proffered evidence against its potentially prejudicial nature, a court abuses its discretion "where 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." *Webster v. State*, 221 Md. App. 100, 112 (2015) (alteration in original) (citations and quotation marks omitted). For the court to have abused its discretion, "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *King v. State*, 407 Md. 682, 697 (2009). The decision "will not be reversed simply because the appellate court would not have made the same ruling." *Id.*

In the case at hand, the question of whether Griffen had a criminal record had little, if any, probative value, because it would require several long leaps of inference to conclude that Griffen had any responsibility for the home invasion. There was no way to determine when or how Griffen left his fingerprints on the exterior of the Mercedes, nor any other evidence indicating that Griffen was present during the crime. For all anyone knows, Griffen may not have touched the Mercedes until after the home invasion, when it was parked around the corner from Jones's residence in East Baltimore. In short, Griffen's criminal record alone would do almost nothing to implicate him as the perpetrator of this particular crime. In these circumstances, the evidence of Griffen's criminal background had no bearing on Jones's guilt or innocence; and even if it were arguably relevant in some highly tenuous way, it might well mislead or confuse the jury.

The court, therefore, did not err or abuse its discretion in sustaining the State's objection to the question concerning Griffen's criminal background.

Nor did the trial court err in sustaining the State's objection to Bradford's testimony about when, to her knowledge, Isaac last had possession of the rented Hyundai Sonata. In closing argument, Jones's attorney conceded that the question of when the car was reported to have been stolen had "nothing to do with [Jones]." Furthermore, in the theory of the case that Jones's counsel pitched to the jury in closing, Jones had caught a ride with an unknown driver; the driver decided to commit a home invasion at Johns's house; and Jones had walked away from the scene, leaving his cellphone, wallet, and identification papers in the car. Under that theory, it made no difference whether the unknown driver was Isaac or someone who had stolen the car from Isaac. Therefore, on the issue of Jones's guilt or innocence, it was irrelevant whether Consundra Bradford might have believed that Isaac last had the rental car on the day before the home invasion.[2]

II.

During Isaac's closing argument, the court sustained the State's objections to counsel's assertions that Isaac found out that the Hyundai was stolen on May 30, 2016, the day of the home invasion; that Bradford and Isaac knew that the Hyundai had been stolen before Bradford first reported the theft on May 31, 2016; that Isaac was nowhere

[2] Alternatively, Jones suffered no prejudice from the exclusion of Bradford's testimony about when Isaac last had possession of the Hyundai, because his theory of the case did not turn on whether he had been driven to Johns's house by Isaac or by someone who had stolen the Hyundai from Isaac.

near the Hyundai on May 30 or May 31, 2016; and that Isaac last saw the Hyundai on May 29, 2016, the day before the home invasion. Jones contends that the court erred in sustaining those objections to comments made by counsel for his co-defendant.

Assuming that Jones may assert that the trial court erred by restricting arguments by his co-defendant even though he did not express dissatisfaction with those rulings at trial, we conclude that the court's rulings were proper. The court sustained those objections because counsel's assertions were not based on facts in evidence, but on the testimony of Consundra Bradford that the court had stricken. An attorney does not have the right to discuss facts not in evidence. *Ware v. State*, 360 Md. 650, 682 (2000). The circuit court, therefore, did not err in prohibiting Isaac's counsel from advancing arguments based on Bradford's stricken testimony.

Jones responds that Isaac's counsel had to refer to facts not in evidence only because the circuit court had erred in striking Bradford's testimony that Isaac had last seen the Hyundai on May 29, 2016. We have already dispensed with that argument in the preceding section. In brief, Jones admitted that he had arrived at Johns's house in the Hyundai, but he claimed to have gotten there by means of a ride from an unidentified driver and to have left before the home invasion occurred. In these circumstances, it was irrelevant whether Jones arrived with Isaac or with someone who had stolen the Hyundai from Isaac. Jones's theory of the case, therefore, did not depend on whether or when the Hyundai had been stolen. For that reason, the court did not err in striking Bradford's testimony or in preventing Isaac's counsel from making an argument based on the stricken testimony.

III.

In Jones's case, he re-called a Baltimore County detective to ask whether Johns had told him that either of the assailants had missing teeth. (Jones's front teeth are missing.)

When Isaac's counsel had the opportunity to examine the detective, she inquired about how he had selected the photographs of persons other than Jones and Isaac in the photo array. Counsel insinuated that Isaac's complexion and the complexions of the persons other than Jones did not match Johns's description of the complexions of his assailants. When the detective recalled Johns saying that the assailants had a medium complexion, counsel asked the detective whether he had asked what Johns meant by "medium complexion." Counsel also asked the detective whether he understood what Johns meant when he said that one of the assailants had "brown skin." She questioned whether the persons depicted in the array all had the same complexion. Finally, she asked whether a person of color had assisted the detective in preparing the array and whether he thought that a person of color might see the "hues" differently.

In response to those questions, the State reminded the detective of Johns's description of the two assailants: "a male . . . approximately six feet tall, 215 to 220 pounds, in his thirties, dark skin with hair on his face" and "a black male, approximately five-eight to five-nine 150 to . . . 160 pounds, 20-25 years and medium to dark skin." The State asked the detective whom he "attribute[d]" those descriptions to – an awkward and ambiguous formulation that appears to have been intended to identify which photograph was intended to match the first description and which was intended to match

the second. The detective testified that he "attributed" the first description to Jones and the second to Isaac. He went on to testify that he placed Jones's and Isaac's photographs in the array and tried to obtain similar photographs, taking into consideration the complexions of both men.

Jones contends that the detective's responses to the State's questions involve impermissible lay opinion testimony. We disagree. When the testimony is viewed in the context of Isaac's examination, it is apparent that the detective was simply explaining why he selected the photographs of Jones and Isaac and how he had selected the photographs of the other persons in the array. In particular, he explained that he had selected the other persons because he thought that they resembled Jones and Isaac (and not, as Isaac's counsel implied, because he was relying on an imperfect understanding of what Johns meant when he described an assailant "brown skinned"). It was appropriate for the State to elicit this testimony in light of the apparent insinuation that the detective had been insensitive or inept in preparing the photo array.

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