

Circuit Court for Baltimore City
Case No. 118025042

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 562

September Term, 2019

STEPHEN ALLEN

v.

STATE OF MARYLAND

Berger,
Wells,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 31, 2020

*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.

On the morning of November 21, 2017, Shakiare Stokes and Brandon Byrd were shot as they left Ms. Stokes's apartment. Both Ms. Stokes and Mr. Byrd survived their injuries. Ms. Stokes's ex-boyfriend, Stephen Allen, the appellant in this case, was charged in connection with the shootings.

Following a jury trial, appellant was convicted of two counts of attempted murder in the first degree and several related handgun offenses. The court sentenced appellant to a total term of 65 years' imprisonment.

Appellant presents four questions for our review, each challenging a ruling on the admissibility of evidence:

1. Did the trial court err by admitting a segment of a 911 call in which an unidentified person is heard telling the caller, who then repeats the statement to the operator, that the perpetrator is [appellant]?
2. Did the trial court err by admitting hearsay [in the form of progress notes in Ms. Stokes's hospital records]?
3. Did the trial court err by allowing crime lab technician Sarah Lombard to testify concerning the likelihood of obtaining fingerprints from cartridges?
4. Did the trial court err by allowing Detective Jimmy Dease to narrate the contents of a video, when the video [] was not admitted in evidence and his testimony was not based on his firsthand observation?

For the following reasons we shall affirm the judgments of the circuit court.

BACKGROUND

Appellant and Ms. Stokes started dating in September 2016. In July 2017, appellant and Ms. Stokes began living together. The relationship ended in October 2017, and Ms. Stokes moved out of appellant's house and into a basement apartment.

The following month, Ms. Stokes began dating Mr. Byrd. On November 20, 2017, the night prior to the shooting, Mr. Byrd stayed overnight at Ms. Stokes's apartment. After Mr. Byrd fell asleep, Ms. Stokes received a text message from appellant. She eventually fell asleep but woke up some time later when she heard a knock on the window directly above her bed. She then received another text message from appellant. She awakened Mr. Byrd and told him that appellant was outside and that she was "afraid" and wanted Mr. Byrd to "do something." Mr. Byrd was unconcerned and went back to sleep. Ms. Stokes continued to communicate with appellant by text message for another hour or two and then she went back to sleep.

At approximately 6:00 a.m. the next morning, Ms. Stokes and Mr. Byrd exited the apartment together. As they were walking to Ms. Stokes's car, appellant approached them and "screamed" Ms. Stokes's name. Appellant pulled out a gun and put it to Mr. Byrd's head. Appellant then hit Mr. Byrd with the gun and the two men "tussled." Mr. Byrd ran away and, as he did so, appellant shot him four times. Mr. Byrd ran to a gas station and asked the clerk to call an ambulance. Mr. Byrd did not see the shooter's face.

Appellant then returned to where Ms. Stokes was standing. Ms. Stokes was "in shock" and "afraid" because she did not know what was going to happen next. Appellant

screamed, “I did this because I fucking love you. You see what I did.” Ms. Stokes responded, “You love me? How could you love me? Leave, just leave, leave me alone.” Appellant replied, “Well, then, fuck you then, bitch,” pointed the gun directly at Ms. Stokes and shot her five times, hitting her in her stomach, both legs, and one of her arms. Appellant then ran away. As Ms. Stokes laid on the ground, thinking that she was going to die, she “scream[ed]” appellant’s name.

Several neighbors who heard the gunshots called police and came outside to render aid to Ms. Stokes. In one of the 911 calls that was played for the jury, the unidentified caller stated that he was inside his house when he heard shots and that he immediately went outside where he witnessed the following:

And when I get out . . . I see the female. I’m in the backyard, running away from the suspect. All the while, she’s going, “Why are you doing this? I love you,” or something like that, or he says something like, “I love you,” and he - - he walks away. Comes back for another little confrontation and then he pops a couple more times.

The caller told the dispatcher that the suspect was “still running up the road” and described the suspect as a black male wearing a grey hoodie and blue jeans. The court admitted, over objection, a portion of the 911 call in which the caller, who was near the injured and “screaming” Ms. Stokes, told the dispatcher that “the suspect’s name is Stephan [sic] Allen[.]”

Officer Jacob Myers was the first police officer to respond to Ms. Stokes’s location. He stated that Ms. Stokes appeared to be in shock but was coherent and was able to answer questions. Footage from Officer Myers’s body camera was introduced into evidence. It

shows Officer Myers exiting his patrol vehicle and approaching the area where Ms. Stokes is lying on the ground, surrounded by neighbors. As he approaches, he asks Ms. Stokes what happened, and she immediately identifies appellant as the shooter:

[OFFICER MYERS]: What happened, baby?

[MS. STOKES]: My ex-boyfriend shot me.

[OFFICER MYERS]: Okay. What's his name?

[MS. STOKES]: Stephen Allen.

Mr. Byrd was taken to the hospital, where he was stabilized and his wounds were treated. He was released later the same day and subsequently received rehabilitative treatment for nerve damage in his arm. Ms. Stokes underwent surgery and remained hospitalized for three weeks. Two bullets, one that had lodged in her right leg and the other in her back, were not removed because it was feared that the operation would cause additional damage. She received rehabilitative therapy to learn to walk again and to regain the use of her hand.

Over a year after the shootings, and a few weeks before trial was set to begin, appellant placed three telephone calls to Ms. Stokes, from jail. An audio recording of the calls was admitted into evidence, without objection, and was played for the jury. The recording was authenticated by Ms. Stokes, who identified the male voice as appellant's and the female voice as her own.

The pertinent portions of the audiotaped conversations are as follows:

[APPELLANT]: [W]ords can't explain emotionally and mentally the things that I have gone through since []

everything took place. . . . [T]o be locked up for [] what I'm locked up for, [] it takes [] such a physical and mental and emotional toll on me[.] I just want you to know and I need you to know that . . . I never meant to hurt you[.] . . . [M]y intent was never to hurt you.

[W]hen you love a person [] and you know that you did a person wrong, [] all you want to do is try to . . . make up with that person because [] the threat of that person leaving your life really, really scares you. When you realize . . . that you fucked up to the point where this person is getting ready to leave your life, you don't want that person to leave your life[.]

And all you want to do is try to prove to them that you can be a better person. [T]o see that person with another person, [] in a sexual, intimate way, [] that shit does something to your brain[.] . . . A year and some change later, I'm still having bad dreams about this situation. . . . [I]t's haunting me [] to know that [] a person that I love so dearly probably doesn't even forgive me or probably doesn't even love me anymore[.] . . . That shit hurts.

[MS. STOKES]: (Inaudible) turn around and you say, "Fuck you, bitch." You don't think I still remember that? You told me to fuck me and you shot me[.]

[APPELLANT]: Let me ask you this.

[MS. STOKES]: What?

[APPELLANT]: [D]on't you think . . . if that were my [] sole intent, don't you think that I would have [] finished it? I just want - - I just want forgiveness. That's all I want.

* * *

[APPELLANT]: I just wanted to ask you, right, so, like, what would it take for you to forgive me, yo?

* * *

[MS. STOKES]: I don't know. I don't even know. - -

[APPELLANT]: What if - - what if, hypothetically speaking, right? What if - -

[MS. STOKES]: Uh-huh.

[APPELLANT]: - - what if I could get you 20?

[MS. STOKES]: Huh?

[APPELLANT]: Just, like, don't repeat what I said or nothing like -- but what if I could get you 20?

[MS. STOKES]: I don't know what you mean by that.

[APPELLANT]: Just think of what I'm saying.

[MS. STOKES]: I don't need it. I'm fine.

* * *

[APPELLANT]: . . . I know how it makes you feel.

[MS. STOKES]: No, I feel like you're just trying to pay me off or something. Like - -

[APPELLANT]: No, it's not - - that's not - -

[MS. STOKES]: It is. You don't really want to help me.

[APPELLANT]: Of course I do. . . . Let me ask you this[.] Hypothetically speaking . . . if I didn't want to help you, [] and I wanted to just get rid of this situation, . . . that can get that [sic] done. Do you understand what I'm saying?

[MS. STOKES]: It couldn't get anything [sic] done if I'm not even nowhere in Maryland. It can't get done.

[APPELLANT]: . . . [I]f I was on some fucked up shit, . . . I wouldn't even be coming to you trying to help you in that way. . . . I genuinely want to help you. At the same time [] I'm not going to lie and say that I want to go to jail for the rest

of my life. . . . I did a lot of things to you that contributed to damage to the person I love. . . . So I do want to help[.] . . . I realized that it was a lot - - not only [] this situation, but I stagnated you and I do want to help[.]

* * *

[MS. STOKES]: I don't want any - - I don't want anything. I'm going to be fine. I don't want anything. I don't want anything.

[APPELLANT]: But I - - I'm asking you, I'm begging you[.] Please[.] Just take it[.] Please[.] . . . [Y]ou don't have to come in contact with nobody. . . . [N]one of that shit that makes you feel uncomfortable. . . .

[MS. STOKES]: You're asking me to do a lot right now.

[APPELLANT]: I know what I'm asking you to do. . . . I know it's a lot. . . . I'm telling you, [] just take it[.] . . . I will give you everything that you're looking for . . . if you do this for me.

* * *

[APPELLANT]: . . . I got a little settlement. . . . I'm giving you everything[.]

[MS. STOKES]: Why wouldn't you take that money to help yourself?

[APPELLANT]: Because . . . at this point, the only person that can help me is you. . . .

[MS. STOKES]: That's not true. I wish you'd get that out your head. Do you know people saw you? You know there was a whole block - - you do (inaudible).

[APPELLANT]: Listen to me. Listen to me. Listen to me.

[MS. STOKES]: What? What? What?

[APPELLANT]: You are - - without you - -

[MS. STOKES]: No. No, that’s not true. It’s really not true.

[APPELLANT]: Well, in that case - - in that case - - in that case, right - -

[MS. STOKES]: It’s really not true.

[APPELLANT]: Okay. Well, in that case, right - - in that case, right, take it and then if I still lose, then okay.

[MS. STOKES]: No. I’m not doing that. No. I’m not doing that. I don’t want to take it. I don’t want to take it for that reason. I don’t want to take it at all. I don’t want anything from you. . . .

* * *

[APPELLANT]: . . . You just don’t understand that I never meant to hurt you[.] . . . You don’t understand I love you[.] . . . You don’t understand the power of loving somebody and being hurt. . . . You don’t understand the power of not being able to handle your own treatment and being devastated to see that person with another person. You don’t understand that.

Additional facts pertinent to the evidentiary rulings challenged on appeal are included in the discussion that follows.

DISCUSSION

In this appeal, we are called upon to review four rulings on the admissibility of evidence, a matter which is “ordinarily is left to the sound discretion of the trial court.” *Walter v. State*, 239 Md. App. 168, 200 (2018) (citation omitted). “We will not disturb a trial court’s evidentiary ruling unless ‘the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.’” *Id.* (citations omitted). “A court’s decision is an abuse of discretion when it is well removed from any

center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (citations and internal quotation marks omitted).

Improperly admitted evidence is not automatic grounds for reversal. “If [the error] is merely harmless error, [then] the judgment will stand.” *Davis v. State*, 207 Md. App. 298, 317 (2012) (quoting *Conyers v. State*, 354 Md. 132, 160 (1999)) (alterations in original). An error in admitting evidence is harmless if the reviewing court is “satisfied that there is no reasonable possibility that the evidence complained of -- whether erroneously admitted or excluded -- may have contributed to the rendition of the guilty verdict.” *Nicholson v. State*, 239 Md. App. 228, 244 (2018) (quoting *Dionas v. State*, 436 Md. 97, 108 (2013)) (additional citation omitted), *cert. denied*, 462 Md. 576 (2019).

The first ruling challenged by appellant is the admission of the 911 caller’s statement identifying appellant as the suspect. Appellant claims that the court erred in admitting the caller’s statement as an excited utterance because (1) the caller had no firsthand knowledge of the identity of the suspect but was repeating information from another unidentified person at the scene, and (2) “the caller was composed and attempted to calm Ms. Stokes.”¹ Appellant also claims that the admission of the 911 call violated his

¹ We note that the court did not admit the 911 caller’s statement of identification as an excited utterance, but as a present sense impression, pursuant to Maryland Rule 5-803(b)(1) (defining present sense impression as “[a] statement describing or explaining an event or a condition made while the declarant was perceiving the event or the condition, or immediately thereafter.”)

constitutional right to confront witnesses against him.²

Next, appellant claims that the following progress note in Ms. Stokes’s hospital records, written by the hospital chaplain, was inadmissible hearsay:

Chaplain visit initiated to determine patient’s current health status after traumatic injury on Tuesday November 21, 2017 (Multiple [gunshot wounds]). When visited patient was observed to be awake and able to speak [minimal difficulty due to NG tube and dryness of throat post intubation]. Ms. Stokes indicates that she is ‘fearful that the individual will come back and try to finish what he started.’ She has many “why” questions – “Why would someone you love so much hurt you so badly.” “Why didn’t I pay attention to what my mind or God was telling me?” What was evident during the visit is that Ms. Stokes blames herself for her life threatening injury. Chaplain provided an empathetic presence. Ms. Stokes is grateful that she is alive but remains anxious for her friend who was also injured. She is however not yet ready to identify how she will get through the next few days/weeks of recovery as she indicates she is in spiritual pain.

Chaplain notified staff of Ms. Stokes[’s] fear of the perpetrator. However, the staff indicated that security has already issued a “BOLO” for that individual.

The court determined that the note was admissible under the “state of mind” exception to the rule against hearsay and under the hearsay exception for statements made for purposes

² We agree with the State that this argument was not preserved for review as appellant did not raise this argument in the trial court. *See Collins v. State*, 164 Md. App. 582, 605-06 (2005) (noting that, although hearsay rules and the constitutional right of confrontation are interrelated, “the two grounds are not synonymous or coextensive; thus, objecting on one ground does not preserve the other ground.”).

of medical treatment or diagnosis.³ Appellant contends that the evidence was not admissible under either exception.

The third disputed ruling was permitting the crime lab technician, who stated that no fingerprints were recovered from cartridge casings found at the scene, to testify that, in her experience, she had never been able to recover latent fingerprints from cartridge casings. Appellant contends that this was improper lay opinion of the general likelihood of obtaining fingerprints from shell casings.

The fourth and final ruling challenged on appeal occurred during the direct examination of the detective in charge of the investigation, when he was asked whether he reviewed surveillance video and what it showed. Over a general objection, the detective stated that the video, which was not admitted into evidence, showed an individual coming out of a wooded area, prior to the shooting, and walking in the direction of where the shooting occurred. Appellant contends that this was improper lay opinion because the detective had no firsthand knowledge of the events depicted in the video, and his description of the video was not helpful to the trier of fact.⁴

After reviewing the record of the trial, we find it unnecessary to determine whether any of the evidence in question was improperly admitted because we are convinced that any error would have been harmless beyond a reasonable doubt. *See e.g. Fields v. State*,

³ *See* Maryland Rule 5-803(b)(3) and (4).

⁴ The significance the surveillance video is not clear from the record, and appellant does not explain how the evidence may have contributed to the verdict.

395 Md. 758, 759 (2006) (“Because we shall hold that even if the court erred with respect to the evidentiary issue, the error was harmless beyond a reasonable doubt, we do not reach the [merits of the hearsay] issue”); *Brown v. State*, 364 Md. 37, 38 (2001) (declining to address merits of challenged evidentiary ruling where error was harmless in any event).

“The harmless error rule embod[ies] the principle that courts should exercise judgment in preference to the automatic reversal for ‘error’ and ignore errors that do not affect the essential fairness of the trial.” *Frobouck v. State*, 212 Md. App. 262, 284 (2013) (citations and some internal quotation marks omitted). “Reversible error will be found and a new trial warranted *only* if the error was likely to have affected the verdict below.” *Davis*, 207 Md. App. at 317 (citing *Conyers*, 354 Md. at 160).

“To say that an error did not contribute to the verdict is [] to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.” *Dionas*, 436 Md. at 109 (quoting *Bellamy v. State*, 403 Md. 308, 332 (2008) (in turn quoting *United States v. O’Keefe*, 128 F.3d 885, 894 (5th Cir. 1997))). By contrast, an error in admitting evidence is not considered harmless where the evidence “provided potentially scale-tipping corroboration” to other evidence before the jury or “added substantial, perhaps even critical, weight to the State’s case.” *Parker v. State*, 408 Md. 428, 447-48 (2009) (citation omitted). Here, we conclude that the evidence challenged by appellant was not important compared to the other evidence before the jury, and thus was harmless.

The evidence of criminal agency was overwhelming. The chief witness for the State, Ms. Stokes, who was well-acquainted with appellant, identified him as the assailant, and her account of the events leading up to the shootings tended to establish a motive. Ms. Stokes's in-court identification of appellant was consistent with what she told the responding officer immediately after the shooting, as the jury saw in the footage from Officer Myers's body camera. Ms. Stokes's testimony was partially corroborated by the 911 caller, who heard the suspect tell Ms. Stokes that he loved her before shooting her.

Ms. Stokes's testimony was further corroborated by the recorded telephone conversations in which appellant essentially admitted that he shot Ms. Stokes and Mr. Byrd in a jealous rage. He did not deny Ms. Stokes's unequivocal assertion that he shot her, but claimed that he "just want[ed] forgiveness" and emphasized that he did not "finish[] it." Appellant acknowledged that his actions, including "this situation," had caused damage to Ms. Stokes. He begged Ms. Stokes to accept a sum of money, in an apparent effort to buy her silence, because he anticipated that he was going to be convicted, and he did not want to spend the rest of his life in prison.

The State's evidence was not seriously challenged. Defense counsel cross-examined Ms. Stokes about purported inconsistencies between her trial testimony and her statements to police in the immediate aftermath of the shooting, but the differences were insignificant and did not pertain to Ms. Stokes's identification of appellant. Defense counsel suggested to the jury that Ms. Stokes's identification of appellant's voice, without corroboration from another source, was insufficient to prove that it was appellant speaking,

and that it was “not clear” that they were talking about the shooting, but we doubt that those arguments were effective in refuting the authenticity and incriminating nature of the recorded telephone conversations.

Based on our thorough review of the evidence considered by the jury, we are confident that there is no reasonable possibility that the jury’s verdict was influenced by evidence: 1) that the 911 caller identified appellant as the suspect; (2) that Ms. Stokes told the hospital chaplain that she was injured by someone that she loved and was fearful that he would return; (3) that it was difficult to recover fingerprints from spent shell casings; and (4) that a video showed an unidentified person walking toward the scene of the shooting shortly before the shooting occurred. Even if we were to assume that the trial court erred in admitting any or all of the evidence in question, we perceive that evidence to be clearly unimportant in relation to the other evidence before the jury. The disputed evidence provided no “scale-tipping corroboration,” nor did it add substantial weight to the State’s case. Accordingly, we conclude that any error was harmless and, therefore, reversal of the judgments is not warranted.

Appellant asserts that any error in admitting the challenged evidence was not harmless because the State “relied” on the evidence in closing argument. We disagree. In arguing that the evidence established that appellant was the shooter, the prosecutor pointed only to Ms. Stokes’s in-court identification of appellant, her statement to police immediately following the shooting, and the incriminating jail calls. The 911 call was mentioned in passing, but prosecutor did not bring up the caller’s statement of

identification or argue that it was independent evidence of criminal agency. Moreover, the State did not “rely” on the crime lab technician’s testimony regarding her general lack of success in recovering fingerprints from shell casings, but only commented on it briefly, in rebuttal, to counter defense counsel’s argument that there was no physical evidence tying appellant to the shootings. The prosecutor did not mention the chaplain’s note or the surveillance video in closing argument at all. Accordingly, we conclude that any error was harmless and, therefore, reversal of the judgments is not warranted.

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