

Circuit Court for Baltimore City
Case No. 122140003

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 628

September Term, 2023

DAQUAN ALLEN

v.

STATE OF MARYLAND

Zic,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 29, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Baltimore City of possession of cocaine with intent to distribute, Daquan Allen, appellant, presents for our review a single issue, which for clarity we rephrase: whether the court, in sentencing Mr. Allen, relied on impermissible considerations. For the reasons that follow, we shall affirm the judgment of the circuit court.

At trial, the Honorable Althea M. Handy presiding, the State presented evidence that on April 24, 2022, Baltimore City Police Detective Brenden Swain saw Mr. Allen walking down an alley and “displaying characteristics of an armed person.” At the end of the alley, Mr. Allen “began to flee on foot,” and Detective Swain exited his vehicle and pursued Mr. Allen. During the pursuit, Mr. Allen went “behind a parked vehicle,” and the detective “heard a loud metallic object strike the ground.” As Mr. Allen “continued to run,” Detective Swain “dropped to the ground underneath the vehicle” and “recovered [a] handgun.” The detective “continued the pursuit on foot,” “caught up to” Mr. Allen, and “caught him in . . . a little parking lot.” When Detective Swain’s “backup” arrived, Baltimore City Police Officer Sharod Watson searched Mr. Allen’s person and discovered “an ounce of uncut cocaine” and “small ziplock bags.” The State played for the jury video recordings made by Detective Swain and Officer Watson’s body worn cameras.

Mr. Allen contends that the court erred at sentencing “by considering bare allegations for which [he] had not been tried, the conduct of people in the courtroom for which he was not responsible, and conduct of which he had been entirely acquitted.” Mr. Allen was initially charged in the instant matter with possession of cocaine with intent to distribute, possession of a firearm during and in relation to a drug trafficking crime,

wearing, carrying, or transporting a loaded handgun, and illegal possession of a regulated firearm. Mr. Allen was also charged in circuit court case number 122153041 with attempted first degree murder and related offenses. On February 2, 2023, Mr. Allen appeared before Judge Handy in both cases. During the hearing, Mr. Allen elected “to go to trial” in case number 122153041, and the court heard motions in the case.

The following day, the parties appeared for trial, and the following colloquy occurred:

[PROSECUTOR:] Your Honor, as you are aware, the State was fully prepared to go forward on the case that was called yesterday, the case ending in 041. Last evening, approximately . . . sometime around 8 p.m., I received a call from one of the State’s witnesses, the one who was present in the [c]ourtroom yesterday, who said that the sister of the other victim had called her and stated that someone she knows to be part of a criminal gang in the city, the Black Gorilla [sic] family, called and inquired about why she had come to [c]ourt today. Ms. [B.] is now terrified to come to [c]ourt and is understandably not wanting to come to [c]ourt today. Based on this recent development, the State is prepared to go forward on the other matter ending in 003, the Firearm and Drug Trafficking case

* * *

THE COURT: Okay. I will – let me say this first of all about the first case. There were three gentlemen in [c]ourt yesterday. I don’t know if you observed them. [M]y deputy said all three of them were on their phones. And he had told them not to have their phones on, but he caught them with their phones on. I’m just putting that out there because I don’t know what was going on, but obviously, no one can have their phones on in the [c]ourtroom. So that’s totally inappropriate. They knew they couldn’t have them on, so I’m not sure what was so important that they had them on.

The court subsequently commenced trial in the instant matter. Following the close of the evidence, the jury convicted Mr. Allen of possession of cocaine with intent to distribute, but acquitted him of the remaining offenses.

On March 17, 2023, the State filed a Sentencing Memorandum, in which it “recommend[ed] the maximum sentence of 20 years.” The State stated, in pertinent part:

On May 5, 2021, [Mr. Allen] pled guilty to a domestic Assault in the Second Degree in Baltimore City District Court Case Number 2B02430367. The victim, [B.C.], reported that [Mr. Allen], her children’s father, had gotten into a verbal altercation with her and then used closed fists to punch her in the face. Ms. [C.]’s sister attempted to intervene and [Mr. Allen] started pushing her away in an attempt to continue assaulting Ms. [C.]. The assault resulted in a bloody nose and other scrapes to Ms. [C.]’s face. Ms. [C.] was treated by medics for her injuries. . . .

On October 13, 2021, [Mr. Allen] pled guilty to another domestic Assault in the Second Degree in Baltimore City Circuit Court Case Number 821259001. The same victim, [B.C.], reported that [Mr. Allen] had punched her in the back of the head and broke a phone that [he] had gifted her, but that she paid the phone bill for. At the time, there was an active protective order prohibiting [Mr. Allen] from having contact with the complaining witness that [he] admitted to being aware of. [Mr. Allen] was sentenced to 2 months and 28 days incarceration.

* * *

[Mr. Allen] has also been arrested and charged with several other violent offenses that did not result in a conviction but are nevertheless relevant as to understanding a complete and escalating nature of violence.

On April 15, 2018, Baltimore City Police Officers responded to 5905 Arizona Ave[.] for a reported assault. There, they spoke with [C.D.] and [D.E.], who reported that their brother, [Mr.] Allen, assaulted [Ms. D.] by striking her in the face with a closed fist, then grabbed [Ms. E.] (aged 11 at the time of the incident according to [Ms. D.]) by the neck and pushed her away. [Mr. Allen] was charged in Baltimore City District Court Case Number 2B02372624. The family members were referred to mediation. The case was eventually Nol Prossed when the victims failed to appear in court.

On April 24, 2022 at approximately 8:36AM, Baltimore City Police responded to 2500 Eutaw [P]lace for a shooting. There they located [A.B.], who advised that she and her boyfriend, [E.F.], had been approached by an unknown black male wearing a dark hoodie with an olive green coat over it, and a hood that covered most of the man’s face. The man pulled out a handgun and demanded that Mr. [F.] give him what was in his pockets. Mr.

[F.] stated “credit or debit?” The man fired 4-5 shots at Mr. [F.] while Ms. [B.] was standing next to Mr. [F.]. The suspect fled. CCTV from a nearby store captured the two victims and the unknown man before and after the shooting incident, and clearly shows the unknown man running from the scene with what appears to be a gun in his hand. Ms. [B.] identified the man running away in the olive green jacket and gray track pants as the person who shot at Mr. [F.]. Four shell casings were recovered from the scene for analysis.

[Mr. Allen] was arrested at approximately 10:25AM, less than two hours after the shooting in reference to this instant Possession with Intent to Distribute Cocaine case, again wearing the same distinctive outfit. After a hit in the National Integrated Ballistic Information Network (NIBIN) suggested a possible match between the shell casings recovered at 2500 Eutaw and the firearm recovered in case number 122140003, the arresting officer in case number 122140003 was shown the CCTV footage from the shooting incident. That Officer identified the person in the olive green jacket that Ms. [B.] had identified as the shooter to be [Mr.] Allen. A review of the Bodyworn Camera footage from the arrest of [Mr. Allen] and the CCTV footage clearly corroborates the Officer’s identification of [Mr. Allen].

* * *

The overall guidelines for [Mr. Allen] are 1 month to 2 years.

(Record references omitted.)

On May 5, 2023, the parties appeared for sentencing, where the prosecutor again “ask[ed] for the maximum penalty of 20 years” for the reasons stated in the State’s sentencing memorandum. Defense counsel replied:

In reviewing the State’s memorandum, Mr. Allen scored a 2 on the guidelines. And his guidelines are 30 days to 2 years on this offense. And those guidelines take into account any prior record. . . . Twenty years is substantially, it’s not just a little bit over the guidelines, it is substantially over the recommended sentencing guidelines.

Mr. Allen, yes[,] he is pending a trial for Attempted Murder, but that wasn’t presented to the jury in this case. And again, it is pending, he is accused, but he remains innocent until that goes to trial, and a jury decides what they’re going to do with that case. . . .

. . . . But the reason for the State asking for an extended sentence over the guidelines is because of his prior convictions, which again are factored into the guidelines, a pending case that he hasn't been adjudicated on, and that . . . there claims to be a danger to the community.

. . . . He doesn't need to be incarcerated for 20 years for a drug case, which again, I can't stress enough that it's just substantially over the guidelines, and the State wants the [c]ourt to punish Mr. Allen because they weren't able to go forward on a case. But it's pending, it's scheduled for trial. So I think that's an inappropriate request by the State.

I think looking at his prior record, looking at the guidelines is where the [c]ourt should look in passing sentence in this particular case.

* * *

And I think the State asking for 20 years in this case is just . . . over and above what is necessary in this particular matter.

The following colloquy then occurred:

THE COURT: All right. I just want to make sure that I'm remembering accurately part of what happened. What was the reason that the victims came into the [c]ourtroom that day.

[PROSECUTOR]: Your Honor, I was having discussions with . . . Mr. Allen's attorney at trial.¹ She indicated to me that the global offer that the State was making at that time[,] they were considering it and the hang up was that Mr. Allen did not believe that the victim was going to come in to testify. And . . . what [defense counsel] represented to me was if he saw that the State's victims or at least one of them came in that he may be willing to go along with the global offer. So I had her come down and come into the [c]ourtroom and be present –

THE COURT: Yeah, I remember they were sitting right over there.

[PROSECUTOR]: Yes, Your Honor.

¹The attorney who represented Mr. Allen at sentencing is different from the attorney who represented Mr. Allen at trial.

THE COURT: Yeah, okay, because obviously I was here for the entire thing. I knew that they were trying to work out a plea. In fact, I was told there was going to be a plea. I was under the impression there was going to be a plea. . . . In addition, there were three gentlem[e]n that were in the [c]ourtroom that had to be removed by the Sheriff because they had their cameras, excuse me, their phones, strike the cameras. They had their phones out and on, and so they were removed from the [c]ourtroom. So it just seems very strange that [Mr. Allen] needed to see the victims. They come over. Three people that were here to support him had cameras. Now he's not responsible for their actions, but you know[,] I want to see the victim, then it's going to probably be a global plea. And then the victims refused to come back to [c]ourt because they were threatened allegedly by someone who's involved with BGF. And that's why this case went forward. I was present during obviously every moment of this trial. I heard the evidence. I saw the body camera video. So your sentence is 20 years to the Department of Corrections.

Mr. Allen contends that, for three reasons, the court, in sentencing him, relied “on impermissible considerations.” First, the court “had no evidence whatsoever about the ‘bald accusations’ of attempted murder and assault raised by the prose[cu]tion.” Second, “the State presented no evidence that Mr. Allen was responsible for the threat against the witness in that case, and indeed, the court explicitly found [that] Mr. Allen was not responsible for the actions of the three men in the courtroom.” (Emphasis omitted.) Third, “it was impermissible for the sentencing court to consider Mr. Allen’s possession of the firearm after the jury found him not guilty of all charges connected to the firearm.” The State counters that Mr. Allen, “conflating the prosecutor’s comments with the court’s actions, never objected to the latter,” and hence, Mr. Allen’s contention “is unpreserved.” Alternatively, the State contends that Mr. Allen “fails to show that the court relied on any impermissible sentencing considerations.”

We disagree with the State as to whether Mr. Allen’s contention is preserved for our review. Rule 4-323(c) states that “[f]or purposes of review . . . on appeal of any . . . ruling or order” other than on an objection to the admission of evidence, “it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court.” Here, defense counsel, at the time that the prosecutor asked the court to impose upon Mr. Allen a sentence of twenty years’ imprisonment, made known to the court that she desired that the court impose a sentence of no greater than two years’ imprisonment. Defense counsel further made known to the court her objection to the court’s consideration of Mr. Allen’s pending charge and trial, the State’s inability to “go forward on” that case, the court’s consideration of the alleged “danger to the community,” and the court’s imposition, on any grounds, of a sentence of twenty years’ imprisonment. These statements were sufficient to make known to the court the action that Mr. Allen desired and his objections to the action of the court, and hence, his contention is preserved for our review.

Nevertheless, we reject Mr. Allen’s contention. Although the court recognized that Mr. Allen was being prosecuted in a separate case, three men “had to be removed [from the courtroom] because they had their phones out and on,” and “the victims [in the separate case] refused to come back to [c]ourt because they were threatened allegedly,” the only considerations explicitly cited by the court in imposing sentence were “the evidence” in the instant matter and the “body camera video.” The court did not make any comments indicating that it had considered the allegations, presented by the State in its sentencing memorandum, that Mr. Allen had assaulted Ms. C., Ms. D., and Ms. E., or that it had relied

to any extent on a belief that Mr. Allen was in possession of any contraband other than the cocaine. Also, the court did not make any comments indicating that but for the considerations cited by Mr. Allen, the sentence would have differed, and was not required to impose a sentence within the sentencing guidelines range as calculated by the State. From these circumstances, we conclude that the court did not rely on impermissible considerations in imposing sentence.

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