UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0652

September Term, 2014

CHRISTINE COOPER

v.

STATE OF MARYLAND

Eyler, Deborah S.
Hotten,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: June 15, 2015

Appellant, Christine Cooper, was convicted in the Circuit Court for Baltimore City of second degree assault. Appellant presents one question for our review, which we have rephrased as follows:

> Did the trial court abuse its discretion in admitting into evidence a letter purportedly received by the victim from appellant?

We shall hold that the letter was admitted properly and affirm.

I.

Appellant was charged by criminal information in the Circuit Court for Baltimore City with second degree assault and wearing/carrying a dangerous weapon with the intent to injure. The jury convicted appellant of second degree assault. The court sentenced appellant to a term of incarceration of three years.

The following evidence was presented at trial. On February 15, 2014, appellant went to the home of Juan Floyd, a former boyfriend with whom she had been in a relationship "off and on over 20 years," to have dinner. Appellant's sister and son accompanied her. Mr. Floyd testified that, between 9:30 and 10:00 p.m., he received a text. Appellant grabbed Mr. Floyd's phone and refused to return it. The two began "yelling in each other's faces," and appellant "hack[ed] spit in [Mr. Floyd's] face" twice. At some point during the argument, appellant saw that the text message was "from another female" and threw the phone behind the sofa.

Mr. Floyd went behind his sofa to retrieve the phone, and appellant went the kitchen. While Mr. Floyd was bending down to get his phone, he heard the knife drawer open.[1] Mr. Floyd testified that the altercation continued as follows:

> "[MR. FLOYD]: She comes towards me. As she comes towards me, her sister gets between us and she reaches around her sister and stabs me with something. I don't know whether it's a knife or whatever she pulled out of that drawer. It was a knife drawer. She stuck me with something and then tried to run out the door. I tell her, 'There ain't no sense in running because you're going to jail.' She spit in my face twice in my apartment.
>
> THE STATE: So you say she stabbed you with something. How did you know you were stabbed?
>
> [MR. FLOYD]: Because I started bleeding."

Mr. Floyd called 911 and, while on the phone with police, attempted to chase down appellant. Mr. Floyd was able ultimately to stop a police officer after appellant ran into a gas station. Police arrested appellant and sent Mr. Floyd to a hospital. At some point before she was taken away by police, appellant gave Mr. Floyd $45.00, saying "I don't want to go to jail. Here, take this. I don't want to go to jail."

After the incident, Mr. Floyd and appellant contacted one another several times. Mr. Floyd sent appellant two money orders returning her $45.00 and "left a message with her daughter to tell her do not call me, do not write me, do not nothing." Appellant tried to call Mr. Floyd, but he hung up on her. Additionally, Mr. Floyd received two letters. The first

[1]Mr. Floyd testified that he was certain that the drawer he heard open was the knife drawer "[b]ecause that's the drawer I keep my knives in. The drawer was left open."

letter was not admitted into evidence for reasons unrelated to this appeal. The second letter, which was admitted as evidence, read as follows:

> "Dear Juan
>
> I truly apologize to you for what I have done. I always want people to feel what they have put me threw. I'm which you have put me through more than you know. That night of our incident I said to you I am doing to you what you have numerous times have done to me and I was wrong for that. That's gods job to Chastize you not mine.
>
> I with an sincer heart do apologize from the bottom of my heart any pain and/or suffering I may have caused you. I hope what ever you are trying to accomplish god blesses you to accive. Crazy but I still love you and will give you your wish to never enter you life again. I wish you well
>
> Sincerly
> Joy"

"Joy" listed the return address as "GUESS WHO?" followed by Mr. Floyd's address.

At trial, the State attempted to introduce the excluded letter as follows:

> "THE STATE: And you said it's a letter from [appellant]. How do you know its from [appellant]?
>
> [MR. FLOYD]: I know the handwriting because, when I was incarcerated before, all we used to do was write back and forth to each other, and this says, 'Wow. So this is how I should have treated you.'
>
> THE STATE: One second. One second. So you recognize the handwriting?
>
> [MR. FLOYD]: Yes, I do.
>
> * * *

THE STATE: And, Mr. Floyd, I'm showing you what has been marked for identification purposes as State's Exhibit No. 4B. Do you recognize what this is?

[MR. FLOYD]: It's an envelope.

THE STATE: And do you recognize this envelope?

[MR. FLOYD]: Yes.

THE STATE: And do you recognize the handwriting on this envelope?

[MR. FLOYD]: Yes, I do.

THE STATE: And how do you recognize the handwriting on this envelope?

[MR. FLOYD]: It's [appellant]'s handwriting.

THE STATE: And how do you know that?

[MR. FLOYD]: She always starts off with 'Guess who?' Then she put my address so it will come directly back to me so I won't have to be involved in the Post Office. This is a trick that you do if you don't have stamps."

* * *

THE STATE: And at this point, Your Honor, the State would move to admit [the excluded letter] into evidence.

[DEFENSE COUNSEL]: Your Honor, objection.

THE COURT: Pardon?

[DEFENSE COUNSEL]: I would object.

THE COURT: Grounds?

> [DEFENSE COUNSEL]: There's no external verification. There's no handwriting expert submitted by the State to verify that this is, in fact, my client's writing. They're going solely based on his expertise.
>
> THE COURT: Overruled."

After the court ruled on all of appellant's objections, the court summarized its ruling as follows:

> "THE COURT: Okay. So [the admitted letter and its envelope] would be admitted. [The excluded letter and its envelope] are going to be excluded.
>
> DEFENSE COUNSEL: So you're admitting [the envelope that contained the admitted letter], then?
>
> THE COURT: The envelope?
>
> DEFENSE COUNSEL: I just don't see that it's relevant.
>
> THE COURT: Well, I think that — only because of his testimony of how he knew it was hers, because she has this 'Guess who?'
>
> DEFENSE COUNSEL: So you're not admitting the letter.
>
> THE COURT: No, (inaudible) knew that this was her handwriting, because you objected to the admission based on the identity of the defendant as the person who wrote it and he said she does this quirky 'Guess who?' thing.
>
> So I think that would be admissible and I would exclude [the excluded letter] and [its envelope]."

After the court overruled appellant's objections, the State continued examining Mr. Floyd. It did not repeat its questions regarding appellant's handwriting or her habit of signing letters

with a return address of "Guess who?" followed by the address of the recipient. Mr. Floyd testified as to the authenticity of the second letter as follows:

> "THE STATE: Mr. Floyd, just briefly, do you recognize the signature?
>
> MR. FLOYD: Yes. That's Joy's signature.
>
> THE STATE: And you just said, 'That's Joy's signature.' Who is 'Joy'?
>
> MR. FLOYD: It's Christine Cooper.
>
> THE STATE: Christine Cooper has — can you explain why —
>
> MR. FLOYD: Christine Joy Cooper. 'Joy' is her middle name. She goes by the name 'Joy.' She don't like nobody to call her 'Christine.' She goes by 'Joy.'
>
> THE STATE: Okay. Thank you, Mr. Floyd. Your Honor, at this point the State would ask to have this letter published to the jury.
>
> THE COURT: For the record, over defense objection to the exhibit, I will permit you to publish it at this time."[2]

The jury convicted appellant of second degree assault.

This timely appeal followed.

[2] Appellant testified that she wrote the letter in question to Mr. Floyd, explaining that she wrote it to apologize to him. Because appellee does not argue waiver, we need not address the line of cases stating that when a party affirmatively introduces evidence on an issue previously objected to, the issue is waived.

II.

Appellant contends that the circuit court erred when it admitted the letter into evidence without adequate authentication. The State did not call a handwriting expert to authenticate the letter, but relied instead on Mr. Floyd's authentication. Although appellant concedes that Rule 5-901 allows a lay person to identify handwriting with which he or she is familiar, appellant argues that Mr. Floyd's authentication of the letter was inadequate. First, she avers that Mr. Floyd was not asked whether he was familiar with appellant's handwriting before he was permitted to testify that the letter was written in appellant's handwriting and that appellant referred to herself as "Joy." Second, appellant alleges that there is nothing in the letter that could not have been written by anyone else familiar with the situation, such as Mr. Floyd himself, and that Mr. Floyd had a motive to forge the letter. Since he was also the only witness to testify as to the authenticity of the letter, she suggests that he "could have perpetrated a fraud upon the court."

The State argues that the circuit court admitted the letter properly. The State contends that Rule 5-901 permits the court to admit letters that are authenticated by a lay witness familiar with the handwriting. The State alleges that it was required to produce evidence from which a jury could conclude that the letter was written by appellant, but that once it met this minimal threshold, the origin of the letter was a question for the jury.

III.

We review a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *Donati v. State*, 215 Md. App. 686, 708 (2014). Maryland Rule 5-901 addresses the requirements to authenticate letters and provides as follows:

> "**(a) General provision**. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
>
> **(b) Illustrations**. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:
>
> (1) Testimony of witness with knowledge. Testimony of a witness with knowledge that the offered evidence is what it is claimed to be.
>
> (2) Non-expert opinion on handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for the purposes of litigation.
>
> (3) Comparison with authenticated specimens. Comparison by the court or an expert witness with specimens that have been authenticated.
>
> (4) Circumstantial evidence. Circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be. . . ."

Under the Rule, the proponent of the evidence bears the burden initially of producing evidence "sufficient to support a finding that the matter in question is what its proponent

claims." Rule 5-901. Once this *prima facie* showing is made, "the ultimate question of authenticity is left to the jury." *Gerald v. State*, 137 Md. App. 295, 304 (2001).

Authentication by a handwriting expert is only one of several "illustrations" of permissible methods of authenticating a letter in Rule 5-901(b)'s non-exhaustive list. Another, equally valid, example under the Rule is authentication by non-expert testimony regarding handwriting. Rule 9-501(b)(2). Prior to testifying about the admitted letter, Mr. Floyd testified that he was familiar with appellant's handwriting because they wrote regularly to each other when he was incarcerated. Regular, personal correspondence of this nature would be sufficient for him to obtain "familiarity [with appellant's handwriting] not acquired for the purposes of litigation." Rule 5-901(b)(2).

A third option listed under the Rule is authentication by circumstantial evidence. Rule 5-901(b)(4). In evaluating circumstantial evidence of authenticity, the circuit court was permitted to consider the "appearance, contents, substance, internal patterns, location, or other distinctive characteristics . . ." of the letter. *Id*. The State presented evidence of several distinctive characteristics of the letter, including that the name "Joy" was in fact appellant's name, that she "always starts off with 'Guess who?'" and that appellant was familiar with a "trick" in which a person can list the return address as the address of the recipient in order to mail a letter without paying postage.

The trial court did not abuse its discretion in admitting the letter and envelope into evidence.

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