

Circuit Court for Baltimore City
Case No. 117121001

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 714

September Term, 2018

GEORGE B. TAYLOR, JR.

v.

STATE OF MARYLAND

Nazarian,
Wells,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 8, 2019

*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.

George B. Taylor, Jr., appellant, was convicted by a jury in the Circuit Court for Baltimore City of second-degree murder and related weapons offenses. Mr. Taylor appeals his convictions, presenting two questions for our review:

1. Did the trial court err in failing to issue a curative instruction after the prosecutor commented on facts not in evidence during opening statement where those facts were inadmissible and the prosecutor could not prove them during trial?
2. Did the trial court err in admitting into evidence the entirety of a witness's police interviews as prior inconsistent statements?

For the reasons that follow, we shall affirm.

BACKGROUND

On the afternoon of March 9, 2017, Corey Wynn was travelling on Saratoga Street in a car driven by her friend, Lisa Gough. According to Ms. Wynn, they were about to turn left on Monastery Street when she heard gunshots and saw a person, whom she described as “real skinny[,] tall[,]” and “light-skin[ned,]” wearing a gray “hoodie” with the hood up, running from the passenger side of a parked black Honda, with a gun in his hand, and up a nearby alley. Ms. Gough, the driver, stated that she heard gunshots, then saw the passenger door of a black car open and saw someone, who was wearing a hoodie, running up the alley. Ms. Gough backed up, away from the Honda, then parked her car around the corner and called 911.

Officer Christopher Valis of the Baltimore City Police Department responded to the call for gunshots fired “in reference to a black vehicle.” Officer Valis observed a black Honda Accord parked on Saratoga Street near the intersection of Monastery Street, with its engine idling, and with what appeared to be a bullet hole in the driver's side door. A

male, later identified as Kalil Matthews, was in the driver’s seat, “unresponsive and sort of lying back in the seat just not moving.” Officer Valis observed blood on Mr. Matthews’s shirt and upper torso. Mr. Matthews was taken to Shock Trauma, where he was pronounced dead of multiple gunshot wounds.

Police recovered four shell casings from the passenger seat and two bullets from the inside of Mr. Matthews’s shirt. In Mr. Matthews’s pants pocket, police found gel capsules and Ziploc bags containing white powder, and \$2,406 in currency. According to Detective Richard Moore of the Baltimore City Police Department, the primary homicide detective assigned to the case, Mr. Matthews was in the car when he was shot.

Detective Moore reviewed video surveillance footage from a camera located outside of Kim’s Grocery and Liquor Store on Monastery Street. The surveillance camera had captured images of Mr. Matthews’s vehicle as well as a “person of interest” who matched a physical description of a potential suspect. A still image of the suspect, taken from the surveillance video, was posted to social media on March 13, 2017. That same day, Mr. Taylor went to the Western District police station and identified himself as the person in the still image.

Mr. Taylor was interviewed by Detective Moore, and a video recording of the interview was admitted into evidence and played for the jury. The recorded interview was not transcribed for the record. According to Detective Moore, Mr. Taylor admitted to knowing Mr. Matthews and being in his car on March 9, 2017 but denied shooting him.

Mr. Taylor told Detective Moore that he saw someone else “shooting down the alley.”¹ The parties stipulated that Mr. Taylor’s DNA was found on the exterior passenger door of the 2013 black Honda Accord which belonged to Mr. Matthews.

During Detective Moore’s direct examination, defense counsel objected to the admission of the still image that was taken from the surveillance video on grounds that the State had not laid a proper foundation for the admission of the video. The court sustained the objection and excluded from evidence the surveillance video and the still image.

Christopher Walker appeared as a witness for the State by way of a body attachment. He stated that he knew Mr. Matthews but claimed that he did not recall telling detectives that he saw Mr. Matthews at the store at the corner of Monastery Street the day he was killed. He said that he had been in an accident that affected his memory of what he told homicide detectives. The court determined that Mr. Walker was feigning memory loss and permitted the State to introduce into evidence two videotaped statements Mr. Walker gave to Detective Moore, which were then played for the jury.²

In the videotaped statements, Mr. Walker explained to Detective Moore that he saw a man wearing a gray or tan “hoodie” get into Mr. Matthews’s vehicle after Mr. Matthews pulled up outside the store. Mr. Matthews then drove away. Mr. Walker did not see the

¹ Police recovered 11 shell casings from the alley, approximately 100 feet from where Mr. Matthews’s vehicle was parked. It was determined that those shell casings were fired from a different gun than the gun that had been used to shoot the casings found inside Mr. Matthews’s vehicle.

² The interviews were not transcribed into the record, but the CDs that were admitted into evidence as State’s Exhibits 23 and 24 were forwarded by the circuit court and made part of the record on July 15, 2019.

passenger get out of the car, and he did not see where Mr. Matthews’s car went. Two to three minutes later, Mr. Walker heard a series of gunshots from behind the store. He saw the person that had gotten into Mr. Matthews’s car running away.

DISCUSSION

I.

In opening statement, the prosecutor mentioned the contents of the video surveillance footage that was ultimately excluded from evidence, telling the jury that:

. . . at about between 4:15, 4:20 in the afternoon, Mr. Matthews drives up Monastery Avenue and he stops right in front of a store called Kim’s Liquors, it’s at 200 Monastery Avenue. And when he stops at the store, you see a group of young men approach his vehicle. One of those individuals that approached his vehicle was Christopher Walker. Another one of those individuals that approached his vehicle was the Defendant, George Taylor.

The prosecutor stated that the jury would see on a video that Mr. Taylor was wearing a gray hoodie and that the video would corroborate “what the witnesses have told detectives” as well as “the evidence that the detectives found in this case.”

Later in trial, after the court ruled that the surveillance video and any still images taken from the video were inadmissible, the court suggested that defense counsel could request a curative instruction:

there’s two things that the State said in opening that apparently they’re not going to be able to produce. One was the videotape[.]³ I can instruct the jury that they have - - you know, in State’s opening statement, they said . . . you would see this videotape. I think I can give an instruction that could remedy the fact that this evidence was not produced. So you can think about that if you want me to give some sort of instruction.

³ The court was also concerned about the prosecutor’s references to Mr. Walker’s anticipated testimony, as Mr. Walker had not yet been located. As stated above, Mr. Walker was eventually served with a body attachment and appeared as a witness at trial.

Defense counsel did not request the curative instruction and expressed satisfaction with the court’s instructions to the jury prior to beginning their deliberations.

On appeal, Mr. Taylor contends that the circuit court “abused its discretion in permitting [the prosecutor’s] improper remarks in opening statement and by failing to issue a curative instruction once it became clear that the State would not be able to support its claims.” Because he did not ask the court to give the instruction, however, this claim was waived. *See* Maryland Rule 4-325(e) (“[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.”)

Even if not waived, we would find no error under the circumstances here. *See Malekar v. State*, 26 Md. App. 498, 501-02 (holding that the trial court did not err in failing to give a curative instruction, *sua sponte*, when the prosecutor mentioned, in opening statement, a confession which was later ruled to be inadmissible, where there was no indication that the prosecutor acted in bad faith and where defendant failed to except to instructions as given and failed to request further instructions), *cert. denied*, 276 Md. 747 (1975).⁴

II.

Mr. Taylor contends that the circuit court erred in admitting the entirety of Mr. Walker’s recorded statements because they “included descriptions of the surveillance video

⁴ We find no support in the record for Mr. Taylor’s contention that, in discussing the surveillance footage in opening statement, the prosecutor “demonstrated bad faith.”

as narrated by the interrogating officer” which “allowed the State to present inadmissible evidence to the jurors, effectively getting in the back door what it could not get in through the front.” The State responds that Mr. Taylor has no appellate claim with respect to the admission of the first recorded statement, and that any error in admitting Mr. Walker’s second recorded statement was harmless beyond a reasonable doubt. We agree with the State.

Approximately one hour into the playing of Mr. Walker’s first recorded statement (State’s Exhibit 23), defense counsel objected, stating that the detective appeared to be showing Mr. Walker a still photograph taken from the surveillance video, which was not in evidence. In response, the prosecutor voluntarily stopped the video at that point. The court found that the State’s offer to halt the jury’s viewing of State’s Exhibit 23 resolved the objection, and no further remedy was requested. Consequently, Mr. Taylor has no grounds for appeal with respect to State’s Exhibit 23.⁵ See *Jackson v. State*, 288 Md. 191, 197 (1980) (“the appellant was granted the only protection he requested. He got all he asked for and his failure to ask for more resulted in a waiver of his right to complain on appeal.”)

Mr. Taylor next asserts that Mr. Walker’s second recorded statement (State’s Exhibit 24) contained inadmissible hearsay. In particular, Mr. Taylor claims that the detective “can be heard asking Mr. Walker if he could see the person in the gray hoodie getting into the car in the video,” and the detective “also noted that Mr. Walker saw the

⁵ Because State’s Exhibit 23 was not played in its entirety, the jury was not permitted to take the exhibit to the jury room during deliberations.

same person running away, on the video.” Assuming, without deciding, that Detective Moore’s statements in State’s Exhibit 24 were admitted improperly, we conclude that any error was harmless beyond a reasonable doubt.

In a criminal case, an error is harmless when a reviewing court, after independently reviewing the record, is satisfied beyond a reasonable doubt “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.” *Dorsey v. State*, 276 Md. 638, 659 (1976). Erroneously admitted evidence may be harmless if ““there was sufficient evidence, independent of the [evidence] complained of, to support the appellant[‘s] conviction[.]”” because the “cumulative evidence tends to prove the same point as other evidence presented during the trial[.]” *Dove v. State*, 415 Md. 727, 743-44 (2010) (citation omitted). This analysis requires us to determine “whether the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded.”” *Id.* at 744 (citation omitted).

Here, the jury had already heard Mr. Walker explain, in his first recorded statement, that the person that got into Mr. Matthews’s vehicle was wearing a hoodie that was either gray or tan in color.⁶ Moreover, there was testimony from two other witnesses, Ms. Wynn and Ms. Gough, that they saw a person in a gray hoodie running away from a black car. At most, the statements challenged on appeal were merely cumulative of other evidence

⁶ See State’s Exhibit 23 at 53:19 to 53:33.

that was admitted without objection. We are satisfied beyond a reasonable doubt that any suggestion that there was a video that showed what witnesses had already testified to, without objection, did not contribute to the guilty verdict.

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