UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0757

September Term, 2014

LIRI FUSHA

v.

THEODORE E. LEONARD, III

Kehoe,
Friedman,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: September 24, 2015

Liri Fusha was a passenger in an automobile that was "rear ended" by a vehicle operated by Theodore Leonard, III. Her tort action against him was tried before a jury of the Circuit Court for Baltimore County, the Honorable Susan Souder presiding. The jury returned a verdict in favor of Mr. Leonard. Ms. Fusha presents one issue, which we have reworded:

> Did the trial court abuse its discretion in permitting Mr. Leonard's medical expert to testify regarding a photograph of the damage to the vehicle in which Ms. Fusha was riding?

We will affirm the judgment of the circuit court.

Background

At trial, the parties agreed that Mr. Leonard was at fault for the accident; the only issue for the jury was the amount, if any, of Ms. Fusha's damages. Mr. Leonard offered the expert testimony of an orthopedic surgeon, Lewis Halikman, M.D., who provided his opinion as to whether Ms. Fusha's injuries were caused by the collision. He based part of his testimony on a photograph, already admitted in evidence, that depicted Ms. Fusha's vehicle after the collision. We set out the relevant portion of Dr. Halikman's testimony (emphasis added):

> [COUNSEL TO MR. LEONARD]: Do you have an understanding Doctor, about the nature of the collision that brought Ms. Fusha to the emergency room?
>
> [DR. HALIKMAN]: I do.
>
> [COUNSEL TO MR. LEONARD]: What is that?

[DR. HALIKMAN]: She was a passenger in a car which was struck from the rear. ***I had seen a photograph of the vehicles and it was interesting to note that the damage was to the trunk lid—***

[COUNSEL TO MS. FUSHA]: ***Objection***, Your Honor. Shall we approach?

THE COURT: ***Objection overruled***.

[COUNSEL TO MS. FUSHA]: He's getting ready to testify—

THE COURT: ***He is describing a picture he saw***. It's in evidence No. 1, right?

[COUNSEL TO MS. FUSHA]: Correct, Your Honor.

THE COURT: Plaintiffs No. 1.

[COUNSEL TO MS. FUSHA]: ***I think he's getting ready to testify about the other vehicle, and he might be a physician, but I'm not sure he's actually a accident reconstructionist and has the ability to testify about crush.***

THE COURT: ***The objection has been overruled.***

[COUNSEL TO MS. FUSHA]: ***Yes.***

[DR. HALIKMAN]: I started to say the photograph showed damage to the rear trunk lid of the vehicle, the bumper was not damaged. So we know from looking at that, that the vehicle that struck it had a higher bumper, and that the impact was sustained to the upper part of the trunk.

[COUNSEL TO MR. LEONARD]: Doctor, does the relative severity of this motor vehicle collision have a bearing on the opinions you are offering in this case?

[DR. HALIKMAN]: Yes, it does.

[COUNSEL TO MR. LEONARD]: How so?

> [DR. HALIKMAN]: It is an important concept in orthopedics. It's called mechanism of injury. And it applies to patients who have been injured, whether on the ball field, whether they're in accidents, whether they fall, however they're hurt. The concept basically involves the direction of forces and the magnitude of forces and how that is intercepted by the body in terms of injury.
>
> As a very general rule, force equals injury. When patients are involved with relatively minor injury, you might expect some minor complaints but you would expect the patients to recover promptly.
>
> [COUNSEL TO MR. LEONARD]: Doctor, based on your knowledge of the nature of this collision, do you have an opinion that you can express, to a reasonable degree of medical probability, as to whether or not it was appropriate for Ms. Fusha to go to the Emergency Room to be checked out?
>
> [DR. HALIKMAN]: I have an opinion.
>
> [COUNSEL TO MR. LEONARD]: What is that opinion?
>
> [DR. HALIKMAN]: I think it is appropriate to go to an Emergency Room to be examined after an accident.[1]

This testimony elicited three relevant pieces of information. First, the witness testified that the severity of a collision impact is significant from an orthopedist's perspective because an understanding of the mechanism of injury can assist in the diagnostic process. Ms. Fusha does not suggest that this testimony was inadmissible. Dr. Halikman opined that it is appropriate for a person involved in a vehicle collision like the one depicted in the photograph to go to an emergency room for examination. Ms. Fusha

[1]The remainder of Dr. Halikman's testimony was based on his review of Ms. Fusha's medical records, and thus not relevant to the issue on appeal.

does not suggest that this opinion fell outside of the witness's expertise. She takes issue with Dr. Halikman's conclusion that "the vehicle that struck [Ms. Fusha's automobile] had a higher bumper, and that the impact was sustained to the upper part of the trunk."

Analysis

Ms. Fusha argues that Dr. Halikman's testimony based on his observations from the photograph were inadmissible because Dr. Halikman was entered as an expert witness in the field of orthopedic surgery and not as an expert in accident reconstruction. She argues that Dr. Halikman was not qualified to give expert testimony as to the nature or severity of the collision. In response, Mr. Leonard suggests that Ms. Fusha's appellate contention is not preserved for review and, in any event, the trial court did not abuse its discretion in permitting Dr. Halikman to testify about the photograph. We think that Mr. Leonard is correct on both scores.

I. Preservation

Md. Rule 2-517(a) states, in part, that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." In other words, this principle, known as the contemporaneous objection rule, *see e.g., Southern Mgmt. Corp. v. Taha*, 378 Md. 461, 499 (2003), requires that an objection be made to the question which will elicit the allegedly objectionable answer. Rule 2-517(b) states: "At the request of a party or on its own initiative, the court may grant a continuing objection to a line of

questions by an opposing party." If the focus of the questioning changes to another topic, but then returns to what is objectionable, a new objection must be made. Joseph F. Murphy, Jr. MARYLAND EVIDENCE HANDBOOK (4th ed. 2010) § 106[A] at 32. Continuing objections "obviate[] the need to object persistently to similar lines of questions that fall within the scope of the granted objection." *Kang v. State*, 393 Md. 97, 119 (2006), *superseded on other grounds in Valonis v. State*, 431 Md. 551 (2013).

Taken together, Rule 2-517(a) and (b) establish that an objection will preserve an issue for our review if either a) the objection is made immediately following the question that will elicit the objectionable evidence, or b) a continuing objection is granted for a line of questions. Ms. Fusha's trial counsel did not ask for or obtain a continuing objection; thus the objection he made only preserved the information that was elicited from the question he objected to. In the present case, that information was Dr. Halikman's description of the damage to Ms. Fusha's vehicle that he observed from the photograph.

Ms. Fusha's arguments on appeal do not pertain to Dr. Halikman's description of the vehicular damage or his suggestion that the bumper on Mr. Leonard's vehicle must have been higher than the bumper on her car. Instead, she contends that Dr. Halikman's medical opinions were inadmissible because they were based upon his observations drawn from the photograph.[2] But Ms. Fusha's counsel never objected to any of these

[2]During oral argument, Ms. Fusha's counsel argued that the remainder of Dr.
(continued...)

statements and the trial court was deprived of any opportunity "to attempt to cure any error[.]" *Ware*, 170 Md. App. at 19. Her appellate contentions are not preserved for our review.

II. Dr. Halikman's Testimony

Looking past the issue of preservation, we see no error by the trial court.

"A trial court has broad discretion over the admissibility of expert testimony." *Morton v. State*, 200 Md. App. 529, 545 (2011). Once a judge has exercised that discretion, its decision "will not be disturbed on appeal unless clearly erroneous." *Blackwell v. Wyeth*, 408 Md. 575, 618 (2009). "Put another way, 'it is well settled . . . that the trial court's determination [regarding the qualification of experts] . . . may be reversed if it is founded on an error of law or some serious mistake, or if the trial court clearly abused its discretion' and 'will seldom constitute a ground for reversal.'" *Id.* (quoting *Radman v. Harold,* 279 Md. 167, 173 (1977)).

Ms. Fusha contends that his testimony regarding the photograph was inadmissible because it was not medical in nature. We disagree.

[2](...continued)
Halikman's testimony was "permeated" with references to the nature or mechanism of injury, but he did not direct us to, nor were we able to find, any reference to the mechanism of injury in Dr. Halikman's testimony outside of that portion of the transcript detailed *supra*.

First, the Maryland Rules do not prohibit an expert witness from basing his or her opinion in part upon evidence in the record. *See* Md. Rule 5-703(a). That the impact to Ms. Fusha's vehicle was sustained to its trunk is obvious from the photograph itself. Dr. Halikman did testify that the location of the damage indicated that "the vehicle that struck [Ms. Fusha's automobile] had a higher bumper" but this is a matter of common sense.[3] The trial court did not abuse its discretion in allowing this testimony.

Dr. Halikman also opined that "[a]s a very general rule . . . . [w]hen patients are involved with relatively minor injury, you might expect some minor complaints but would expect the patients to recover promptly." To the extent that this observation constituted an expert opinion, it was a medical opinion that Dr. Halikman was unquestionably qualified to provide. The Court of Appeals addressed a very similar question, albeit in the context of closing argument, as opposed to expert testimony, in *Mason v. Lynch*, 388 Md. 37, 58 (2005):

> Courts, almost uniformly, have taken the position that there is in motor vehicle accident cases, as a matter of probability, a correlation between the nature of the vehicular impact and the severity of the personal injuries. . . . Courts have generally taken the position that this belief is rooted in common sense—a position with which we agree.

[3]On cross-examination, Ms. Fusha's counsel questioned Dr. Halikman on his qualifications to opine on accident reconstruction. Dr. Halikman responded that his testimony regarding the vehicular damage was based on common sense rather than expertise.

With these considerations in mind, we conclude that the circuit court did not abuse its discretion in admitting Dr. Halikman's testimony pertaining to his observations of the photograph.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.