Circuit Court for Baltimore City
Case No. 220255001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1374

September Term, 2021

ROBERT J. BROWN

v.

STATE OF MARYLAND

Zic,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: September 12, 2022

A jury sitting in the Circuit Court for Baltimore City convicted Robert Brown ("Brown"), appellant, of one count of electronic harassment of Jeneen Hughes ("Hughes"). The court sentenced Brown to three years of incarceration, with all but two years suspended. On appeal, Brown argues the trial court abused its discretion by failing to propound a question during *voir dire* that sought to uncover gender bias and by admitting pictures of unauthenticated text messages that Brown allegedly sent to Hughes.

ISSUES PRESENTED FOR REVIEW

Brown presents two questions for review:

I. Did the trial court abuse its discretion in failing to ask prospective jurors a *voir dire* question designed to reveal gender bias in a domestically related criminal case?

II. Did the trial court abuse its discretion in admitting improperly authenticated screenshots of text messages alleged to have been sent by Mr. Brown to Ms. Hughes?

Because the substance of the requested question that the court omitted from *voir dire* was fairly covered by other questions and there was sufficient evidence for a reasonable juror to conclude that Brown authored the text messages sent to Hughes, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Between January 2 and 5, 2020, Brown sent Hughes a series of threatening text messages and made repeated calls to Hughes, despite her asking him to stop contacting her. On Sunday, January 5, Brown's threatening behavior culminated with Brown attempting to kick in the doors of Hughes's home and throwing a brick at her window. Brown was charged in the Circuit Court for Baltimore City with misuse of telephone facilities and

equipment (count 1), electronic harassment (count 2), harassment (count 3), two counts of malicious destruction of property (counts 4 and 5), and fourth degree burglary (count 6). In October 2021, the case proceeded to trial.

During *voir dire*, the court asked the venire panel the following pertinent questions:

> THE COURT: The State alleges the Defendant committed the following crimes, telephone misuse, malicious destruction of property, fourth degree burglary, and harassment. Do you have strong feelings about any of the crimes I just listed?
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> * * *
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> Do you have strong feeling about domestically related crimes?
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> * * *
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> Does any member of the panel have strong feelings about the Me Too movement, or any other social movement against sexual abuse or harassment of women?
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> * * *
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> Would you give more or less weight to the testimony of witnesses called by the Defense than to witnesses called by the State? Alternatively, would you give more or less weigh[t] to the testimony of witnesses called by the State than to witnesses called by the Defense?
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> * * *
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> Does any member of the panel hold any beliefs related to race, sex, color, religion, national origin or other personal attributes of the Defendant or other witnesses that would or might affect your ability to reach a verdict based only on the evidence and the law?

The court did not ask the following question that defense counsel requested ("Question 14"):

> Would you give more or less weight to the testimony of a woman accusing a man of a domestically related crime than you would to the testimony of a man defending against a domestically related accusation?

Brown objected to the court's exclusion of Question 14. The court overruled the objection, and the jury was empaneled.

At trial, Hughes testified that she and Brown began a romantic relationship in 2014. A few months into their relationship, Brown became "controlling" such that "if [Hughes] told him no, he'd kind of break stuff, mess up [her] house [and] try to break in[.]" Prior to January 2020, Hughes had attempted to end her relationship with Brown.

According to Hughes, on January 2, 2020, she and Brown planned to spend time together. The plan was disrupted when Brown told Hughes that his son was in the hospital. Brown asked Hughes to go the hospital. Hughes declined and told Brown that she did not believe him. Brown became angry with Hughes. Hughes told Brown that their relationship was over, which angered Brown. Hughes further testified that Brown repeatedly called and texted Hughes and went to her house. Hughes blocked Brown's phone number. Each time Hughes blocked a phone number that Brown was using, Brown would begin calling or texting from a new number. Hughes testified that she knew it was Brown calling and texting her "Because I know his voice, and I know his texts[.]" Brown would call from different numbers and "ask [Hughes] why [she] won't talk to him or let him in[.]" Hughes again asked Brown to stop contacting her. Hughes indicated that she had kept screenshots of some of the text messages that Brown sent to her from January 2 through January 3.[1]

When the State asked Hughes about the screenshots, Brown objected on the basis that the text messages in the screenshots were neither relevant nor properly authenticated. The State responded that the text messages were relevant to show continuing conduct prior

[1] "A 'screenshot' is an image that depicts only the content of the computer screen. 'Screenshot' is synonymously used to indicate a picture taken of the screen of a cellular telephone." *Sublet v. State*, 442 Md. 632, 637 n.3 (2015) (citation omitted).

to January 5, and that it was laying a foundation for the screenshots to be admitted. The court overruled the objection. Hughes testified that the screenshots fairly and accurately depicted text message conversations between her and Brown from January 2 through January 3. The State then moved to admit the screenshots into evidence, and Brown again objected on the same grounds stated previously. The court ruled there was a sufficient basis to believe that the text messages in the screenshots were what the State purported them to be, and the court admitted them into evidence as State's exhibits 1–3.

Each exhibit contains text messages sent to Hughes from different, unnamed numbers. State's exhibit 1 depicts text messages sent to Hughes on the morning of January 2 with the following messages: "I'm a f****** try to kill you"—"I'm going to f*** you up"—"Bitch call me that again I'm going to try and kill u straight up." (Asterisks in original). Another reads: "Bye as soon as I get some leaving this hospital I'm coming to your house[.]" State's exhibit 2 depicts text messages sent to Hughes also on the morning of January 2, including a photograph of what appears to be a hospital bed. State's exhibit 3 depicts text messages sent to Hughes on the evening of January 3. One reads: "And we definitely done and when I do see u Imma spit in ur face[.]" Another reads "I don't give a fuck when u come back I bet if you don't hate me before then when we get done whether it's Sunday or Monday u gonna hate me."

Hughes testified that she was at home on January 5. While there, she observed Brown kicking her screen doors and front door, and she subsequently called the police. At trial, Hughes estimated that it would cost $500 to repair her front door.

The jury convicted Brown of electronic harassment and found him not guilty of misuse of telephone facilities and equipment and not guilty of one count of malicious destruction of property having a value less than $1,000.[2] The court sentenced Brown to three years in prison with all but two years suspended and three years of probation. The court further ordered that Brown complete the House of Ruth battery program, undergo a substance abuse evaluation, undergo a psychiatric evaluation, and complete an anger management program. Brown filed a timely appeal.

DISCUSSION

"An appellate court reviews for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question." *Pearson v. State*, 437 Md. 350, 356 (2014). We similarly review a trial court's determination as to the authenticity of evidence for an abuse of discretion. *Darling v. State*, 232 Md. App. 430, 456 (2017).

I. THE COURT DID NOT ABUSE ITS DISCRETION IN DECLINING TO ASK BROWN'S PROPOSED QUESTION.

Brown argues that the circuit court abused its discretion by failing to ask the venire panel one of Brown's requested *voir dire* questions. Brown contends that the circuit court was required to ask his proposed question because no other question covered that specific focus of gender bias in domestically related crimes. The State responds that the *voir dire* as a whole adequately covered those topics.

[2] Brown moved for a judgment of acquittal on all counts. The Court granted the motion as to fourth-degree burglary (count 6), one count of malicious destruction of property (count 5), and harassment (count 3).

Maryland "adhere[s] to[] limited voir dire." *Washington v. State*, 425 Md. 306, 312, 313 (2012) (quoting *Dingle v. State*, 361 Md. 1, 13–14 (2000)). "[T]he sole purpose of *voir dire* 'is to ensure a fair and impartial jury by determining the existence of [specific] cause for disqualification.'" *Pearson*, 437 Md. at 356 (first alteration in original) (quoting *Washington*, 425 Md. at 312). Causes for disqualification are "biases directly related to the crime[s], the witnesses, or the defendant[.]" *Dingle*, 361 Md. at 10.

Trial courts have "significant latitude in the process of conducting voir dire and the scope and form of questions presented to the venire." *Collins v. State*, 452 Md. 614, 622–23 (2017). The court "reaches the limits of its discretion only when the voir dire method employed by the court fails to probe juror biases effectively." *Id.* at 623 (quoting *Wright v. State*, 411 Md. 503, 508 (2009)). "[T]he court need not ordinarily grant a particular requested [question] if the matter is fairly covered [elsewhere]." *Burch v. State*, 346 Md. 253, 293 (1997) (internal quotation marks omitted). *See Stewart v. State*, 399 Md. 146, 163 (2007), abrogated on other grounds by *Kazadi v. State*, 467 Md. 1 (2020) ("Questions should not be argumentative, cumulative, or tangential.").

On request, a trial court must ask a *voir dire* question "if and only if the *voir dire* question is 'reasonably likely to reveal [specific] cause for disqualification[.]'" *Pearson*, 437 Md. at 357 (quoting *Moore v. State*, 412 Md. 635, 663 (2010)). Where a proposed *voir dire* question is overbroad but encompasses a mandatory question "a trial court should: (1) rephrase the overbroad proposed *voir dire* question to narrow its scope to that of the mandatory . . . question; and (2) ask the rephrased *voir dire* question." *Id.* at 369, n.6.

Here, the parties appear to agree that gender bias was a cause for disqualification because it could have directly related to Brown (the defendant), Hughes (the witness), and the charged crimes. They differ on whether the substance of Brown's proposed question, which aimed to uncover gender bias, was adequately covered on the *voir dire* as a whole.

We conclude that the *voir dire* as a whole covered gender bias as related to the defendant, the witnesses, and the charged crimes. After identifying Brown for the jury and potential witnesses, including Hughes, the court proceeded to ask the following questions:

> THE COURT: The State alleges the Defendant committed the following crimes, telephone misuse, malicious destruction of property, fourth degree burglary, and harassment. Do you have strong feelings about any of the crimes I just listed?
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> * * *
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> Do you have strong feeling about domestically related crimes?
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> * * *
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> Does any member of the panel have strong feelings about the Me Too movement, or any other social movement against sexual abuse or harassment of women?
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> Would you give more or less weight to the testimony of witnesses called by the Defense than to witnesses called by the State? Alternatively, would you give more or less weigh[t] to the testimony of witnesses called by the State than to witnesses called by the Defense?
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> * * *
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> Does any member of the panel hold any beliefs related to race, sex, color, religion, national origin or other personal attributes of the Defendant or other witnesses that would or might affect your ability to reach a verdict based only on the evidence and the law?

Any juror with a predisposition to believe a woman's testimony or to disbelieve a man's testimony would have indicated as much in answering the last question affirmatively. So too, a juror who believes that people accused of domestically related crimes are likely to be guilty or likely to be less credible would have revealed such a belief in answering

affirmatively to the first or fourth questions. Though Brown's proposed Question 14 sought to synthesize these questions into a more specific form, we perceive no error in the court's giving of multiple questions that sought to accomplish the same purpose for which Brown proposed Question 14—revealing underlying biases of potential jurors. Any underlying bias, if present, would have been revealed and thus was fairly covered by the asked questions.

Brown's analogizing of this case to *Moore v. State* and *Contee v. State*, 223 Md. 575 (1960) is misplaced. First, in *Moore*, the defense counsel requested that the court ask the venire two questions that sought to uncover juror bias based on the fact that a witness was testifying for the prosecution or for the defense—in other words, whether a juror would be more or less likely to believe a witness solely because he or she is a prosecution witness or a defense witness. 412 Md. at 642. The trial court refused to ask the questions over the defense counsel's objection, and the Court of Appeals reversed on the basis of the court's refusal to ask the requested questions. *Id.* at 665. *Moore* did not concern whether the questions were fairly covered by the other questions, and in fact no other questions were asked that would have captured the bias the questions sought to reveal. Unlike in *Moore*, here, the bias that Question 14 sought to reveal—gender bias as it pertains to allegations of domestic violence—was fairly covered by the questions actually asked, which specifically aimed to expose strong feelings toward domestically related crimes, sexual abuse or harassment of women, and beliefs related to sex that could impact a potential juror's ability to be impartial.

Similarly, in *Contee v. State*, the defendant was not afforded the opportunity to submit or request *voir dire* questions that were "reasonably calculated to elicit or ascertain such [racial] bias or prejudice as would disqualify a prospective juror from rendering a fair and impartial verdict on the law and the evidence[.]" 223 Md. at 579–80. The Court of Appeals held that the denial of this opportunity constituted reversible error. *Id.* at 581. Here, there was no such denial of an opportunity to submit or request questions relating to gender bias generally, or as it relates to domestically related crimes or gender-based violence. As we discussed, proposed Question 14 was fairly covered by the questions the court asked. Accordingly, because the court's approach to *voir dire* provided "reasonable assurance that prejudice [would] be discovered," the court acted within its discretion in omitting Question 14. *Collins*, 452 Md. at 628.

II. THE COURT WAS WITHIN ITS SOUND DISCRETION TO ADMIT THE TEXT MESSAGES.

Brown argues that the circuit court abused its discretion by admitting the screenshots of the referenced text messages into evidence. Brown reasons that the jury did not have a sufficient basis to conclude that the text messages were authentic. Specifically, he argues that the messages could not be authenticated because (1) Hughes took the screenshots and not a police officer; (2) there was no direct evidence that Brown possessed or controlled a cellphone associated with any of the phone numbers used; (3) the messages did not reference Brown's name or nickname or Brown's son's name, and there was no corroborating evidence that Brown had actually been at the hospital, (4) the messages did not contain information that only Brown would be likely to know; (5) the State did not

adequately explain the basis of Hughes's assertion that Brown authored the text messages; and (6) the State failed to consider that the messages could have been authored by someone else. The State responds that Hughes testified about Brown's repeated pattern of behavior in contacting Hughes using new phone numbers, that the content of the messages was consistent with facts from Hughes's testimony, and that the messages expressed threats that Brown later carried out when he went to Hughes's home on January 5.

The burden of proof for the authentication of physical and electronic evidence is a preponderance of the evidence. *State v. Sample*, 468 Md. 560, 598–99 (2020). Where the proponent seeks to admit electronic evidence, the threshold for authenticity is "whether there is sufficient evidence for a reasonable juror to find that it is more likely than not that the [electronic] evidence is what the proponent of the evidence purports it to be." *Id.* at 598–99; *see* Md. Rule 5-901. "[O]nce a *prima facie* showing of authenticity is made, the ultimate question of authenticity is left to the jury." *Darling*, 232 Md. App. at 456.

Authentication may be shown through both direct and circumstantial evidence.[3] *See Sykes v. State*, 253 Md. App. 78, 92, 94–95 (2021) (holding that defendant's arrest with large quantity of heroin and possession of phone from which text messages were sent were sufficient to authenticate authorship of outgoing messages pertaining to drug transaction); *Dickens v. State*, 175 Md. App. 231, 239–40 (2007) (holding that reference to a custody

[3] Rule 5-901 provides non-exclusive illustrations to authenticate evidence such as "[the] [t]estimony of a witness with knowledge that the offered evidence is what it is claimed to be[,]" Md. Rule 5-901(b)(1), and "[c]ircumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics," Md. Rule 5-901(b)(4).

dispute was sufficient to authenticate husband's authorship of text message received without return number and holding that threatening reference to wedding vows along with evidence showing husband murdered the victim were sufficient to authenticate authorship of other text messages); s*ee also Donati v. State*, 215 Md. App. 686, 713 (2014) ("Other [types of circumstantial evidence] have included an e-mail reference to the author with the defendant's nickname, where the context of the e-mail revealed details that only the defendant would know, and where the defendant called soon after the receipt of the e-mail, making the same requests that were made in the e-mail.").

Here, Hughes's testimony connected Brown to the content of the text messages in several respects. Hughes testified, for example, that she observed Brown kick her door on January 5 and attempt to break in. Brown's actions on January 5, a Sunday, manifested the intent to confront Hughes that had been expressed in a January 3 text message, which stated "if you don't hate me before then when we get done whether it's Sunday or Monday u gonna hate me." Hughes also testified that Brown repeatedly called her from different phone numbers during the period of January 2–5 because he was angry with her—Hughes testified that she knew Brown was calling from the new, unnamed numbers because she recognized his voice. The text messages, also from unnamed numbers, referenced the hospital, expressed anger at Hughes for not going there, questioned Hughes about her whereabouts, and stated the sender would go to her house. Some of the messages from January 3 referenced unanswered calls and the sender's relationship status with Hughes. For example, two messages stated: "So u not gonna answer," and ". . . we definitely done[.]" Although the text messages in each screenshot exhibit were sent from different

numbers, the content of each pertains to the relationship breakdown that Hughes described and follows the pattern of repeated phone contact from new numbers.

The text messages' specific discussion of recent domestic turmoil and the fact that Brown carried out the threatened confrontation are akin to the circumstantial evidence described in *Dickens*, 175 Md. App. at 239–40, where the defendant husband's threatening messages referenced a custody dispute and wedding vows. Though Brown did not "sign" any of the text messages that were sent, the content and context of the messages provide sufficient evidence for a reasonable juror to find that the texts were what the State purported them to be; that is, authored by Brown. The references in the text messages to Hughes and Brown's dispute are more numerous and extensive than the references that were deemed adequate in *Dickens*. We conclude that a reasonable juror could find by a preponderance of the evidence that Brown authored the text messages sent to Hughes.

The arguments Brown raised do not fatally undermine the circuit court's ruling, as the burden of authentication is slight. All of the bases for which Brown contends the texts are not authenticated go to the weight of the evidence, which is for a jury to determine after the court finds sufficient evidence to put the issue of authentication in front of the jury. Moreover, the State is not required to provide direct evidence or follow a rigid template for conforming circumstantial evidence, and the State "need not rule out all possibilities [that are] inconsistent with authenticity, or prove beyond any doubt that the . . . [evidence] is what it purports to be[.]" *Sample*, 468 Md. at 593 (brackets in original) (quoting *Sublet v. State*, 442 Md. 632, 666 (2015)); s*ee Darling*, 232 Md. App. at 456 ("[O]nce a prima facie showing of authenticity is made, the ultimate question of authenticity is left to the jury.").

The State offered sufficient evidence to authenticate Brown's authorship of the text messages to Hughes.[4] The court did not abuse its discretion in admitting the text messages.

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

[4] The out-of-state cases that Brown relies on are not binding and, in any event, are factually distinct. For example, in *Randazza v. Cox*, 2014 WL 1407378 at *3 (D. Nev. Apr. 10, 2014), a summary judgment movant failed to identify, with a supporting affidavit, the source of the screenshot or the sending and receiving numbers. By contrast, Hughes testified that she took the screenshots of messages sent to her phone and captured the sending numbers in the screenshots. In *Smith v. State*, 136 So. 3d 424, 434 (Miss. 2014), and *Commonwealth v. Williams*, 926 N.E.2d 1162, 1172–73 (Mass. 2010), authorship of social media messages could not be established simply by association with the names and photographs attached to social media accounts that had sent the messages or by second-hand testimony that the purported account holders sent the messages. Here, we do not hold that Brown's authorship was established merely by Hughes's assertion. Rather, the content of the messages matched the circumstances of the parties' falling out that escalated over the course of three days with Brown calling repeatedly and eventually going to Hughes's home.