Circuit Court for Anne Arundel County
Case No. C-02-CR-15-000850

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1466

September Term, 2016

EDGAR ALLEN POTEAT

v.

STATE OF MARYLAND

Arthur,
Friedman,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: February 22, 2018

Edgar Allen Poteat (Poteat) was convicted by a jury sitting in the Circuit Court for Anne Arundel County of illegal possession of a firearm, related firearm offenses, and fleeing and eluding police officers.[1]

In his appeal, Poteat asks if, during cross-examination:

1. Did the court err in allowing the prosecutor to ask [Poteat] if he had ever run from the police?

2. Did the court err in permitting the prosecutor to ask [Poteat] whether drug dealing and [guns] go hand in hand?

For the reasons that follow, we shall affirm the judgments of the circuit court.

BACKGROUND

The charges against Poteat relate to events that occurred on June 13, 2015 in Annapolis, Anne Arundel County. Because Poteat challenges only rulings by the trial court, and not the sufficiency of the evidence, and because we assume the familiarity of the facts by counsel and the parties, we need not provide a detailed review of the events leading to the charges. *See Washington v. State*, 190 Md. App. 168, 171 (2010). It is sufficient for our purposes to note that, on June 13, 2015, a City of Annapolis police officer, alerted to a certain vehicle, pursued and attempted to stop that vehicle. Rather than stopping, the operator leapt from the moving vehicle and fled, eluding arrest. In the vehicle was found a loaded 9mm Ruger handgun in a shoebox on the passenger seat. Upon investigation, the

[1] The convicted offenses were based on possession of a firearm based on a prior felony conviction, carrying and possessing a handgun, illegal possession of ammunition, and fleeing and eluding police officers. He was sentenced to a term of five years on the lead count and concurrent terms on the remaining counts.

police identified Poteat as the person who fled the vehicle, and warrants were issued for his arrest.

Subsequently, on November 16, 2015, in the course of a traffic stop of a truck in the Bay Ridge area, a passenger jumped from the truck and attempted to flee. That passenger was Poteat, who was quickly apprehended.

TRIAL

During the State's case in chief,[2] defense counsel objected to the introduction of evidence about Poteat's attempted flight when arrested in November.[3] The court, after entertaining extended discussion from both counsel, sustained defense counsel's objection, stating:

> More importantly in this case, he did have warrants. And he had more than one. And even if assuming that last statement is accurate that he knew that he had a warrant in this case, the flight five months later from being pulled over may certainly be relevant as to his consciousness that he had a warrant.
>
> That doesn't mean it is evidence of his consciousness of his guilt of the offense of the possession of the handgun five months before.
>
> So, I am not satisfied that there is a sufficient nexus between the alleged flight [in November] and the commission of this crime [in June] and what you want to show consciousness of guilt for. And as a result, I am not going to let in the evidence of flight . . . [.]

[2] In opening statement, the prosecutor had first discussed in detail, and without objection, Poteat's flight, both in the initial incident in June and from the time of his arrest in November.

[3] Counsel's arguments were based on relevancy, undue prejudice, other bad acts evidence, and a discovery violation. As we shall see, Poteat's appellate argument rests primarily on his other bad acts assertions.

On this record, we concur in the court's ruling.

Poteat subsequently testified in the defense case and was asked, on cross examination: "Are you the kind of person that would run from the police?" Defense counsel's objection was sustained, followed by an extended bench conference and discussion. Ultimately, the court permitted the State, over objection, to ask Poteat, "Have you ever run from the police?" to which he answered, "Yes, Sir." It is that exchange that gives rise to Poteat's first issue in this appeal.

DISCUSSION

1. Have you ever run from the police?

Poteat asserts two bases in his challenge to the court's ruling: (1) that the answer to the question was other crimes or bad acts evidence, contrary to Md. Rule 5-404(b), and (2) that, even assuming relevance, the prejudice of the evidence significantly outweighed its probative value.

Other bad acts – relevance, prejudice

Poteat posits that:

> The court failed to find that this alleged bad act was "substantially relevant to some contested issue in the case." [*State v. Faulkner*, 314 Md. 634, 634 (1989)]. Nor could it, having previously ruled that evidence of the November flight lacked a nexus to the June crime for which Mr. Poteat was on trial. . . . Even more, the record shows that the court failed to exercise any discretion in this regard. This failure constitutes an error independent of the underlying merits.[4]

[4] The record belies the assertion that the trial court failed to exercise discretion in its ruling. The ruling was made only after considerable discussion with counsel, the court's research, and full explanation of the ruling.

Poteat argues that by having to answer whether he had ever run from police imposed upon him a "Sophie's Choice", that is to either "admit fleeing from the police or perjure himself and be impeached[.]" Even overlooking the hyperbole of a Sophie's choice, we recognize his dilemma. Whether that dilemma placed him in an unduly prejudicial position is another matter.

The State's essential response to Poteat's arguments is that, assuming error, the error is harmless considering the weight of the evidence offered by the State during a three-day trial.[5]

The focus of this issue is the trial court's allowance of the question, "Have you ever run from the police?" after having previously sustained a defense objection to testimony regarding his attempt to flee from arrest in November. While we are satisfied that the court's rulings were inconsistent, we are not satisfied that Poteat was unduly prejudiced by answering the question, "Yes, Sir."

The State points out that, despite the question and answer, no evidence regarding his November flight was presented to the jury. Nor, the State observes, did his counsel move to strike the initial question about "running from police" or object to the prosecutor's closing argument. Finally, the State posits that the error was harmless.

Harmless error exists when "a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict[.]" *Dorsey v. State*, 276 Md. 638, 659 (1976). Not every error during

[5] The State raises an initial argument that the issue presented by Poteat on appeal has not been preserved. We are satisfied that his appellate issues have been preserved for review.

a trial is grounds for a new trial. "'Reversible error will be found and a new trial warranted *only* if the error was likely to have affected the verdict below. . . . If [the error] is merely harmless error, [then] the judgment will stand.'" *Davis v. State*, 207 Md. App. 298, 317 (2012) (quoting *Conyers v. State*, 354 Md. 132, 160 (1999)).

We cannot conclude that a single concession from Poteat that he had, at some time in his life, run from police produced a likelihood that the jury would have inferred guilt. As Poteat himself conceded, he had "some" prior drug related offenses. However, Poteat also reiterated on at least three occasions during the course of his testimony that he had stopped "drug dealing" in 2008. Any prejudice that the question and answer produced was, in our view, substantially outweighed by the evidence of guilt. In what the record reveals to have been a three-day trial, the State produced evidence sufficient to support the verdicts.

The parties agree that the only evidence at issue is the identification of Poteat as the driver of the Dodge Magnum, that contained the loaded 9mm handgun, and who fled on foot after the officer attempted to pull the Magnum over on June 13, 2015. At trial, it was stipulated that Poteat, by virtue of an earlier felony conviction, was precluded from firearm possession. As to the identification of the driver, the State produced ample evidence relating Poteat as the driver of the Dodge Magnum, which included supporting testimony elicited from the defense witnesses, for the jury to conclude beyond a reasonable doubt that Poteat was in fact the driver of the Dodge Magnum who had fled the scene.

Identity Evidence Produced at Trial

The officer who had attempted to stop Poteat during the June incident identified him, having had "[n]o less than 10 feet" between his marked police car and the Dodge

Magnum when, in his own words, "I was looking directly at the person. . . . [t]hey exited the vehicle[,] . . . [b]egan to ran [sic], turned, looked directly at my patrol car[,]" with "[j]ust the windshield" between them, "I got a good luck [sic] at his face[.]" The officer detailed a description composite of the suspect as "a 6 foot Black male, medium build wearing a white tank top, blue jean shorts and white sneakers[,]" with a weight of "anywhere from 170 to 175 pounds."[6] He further explained that during the course of the investigation he was shown a photograph of Poteat, whom he recognized, "as to [sic] the subject that was driving the vehicle that fled from the vehicle." Poteat was also identified as a "known associate[]" of the owner of the vehicle, Karl Smith, Jr., who had been in the hospital at the time of the incident.

The officer also testified that, when he had first located the vehicle, there was a female who was engaging with the driver and who had then returned to the scene immediately following the attempted traffic stop incident. On cross-examination, the officer read into the record from his police report his first impression of the female, noting that: "The subject that fled from the vehicle looks strikingly similar to [the female]." Also read from his report, he described their interaction as, she "walked toward the abandoned vehicle. . . . [and] stated that's my brother. I asked the woman, what is your [sic] name? The woman replied, I forgot. . . . [and] walked off." He explained that she was later identified as Poteat's biological sister, which corroborated his initial observations of their similar appearance as well as her initial statements at the scene.

[6] This composite physical description of Poteat was corroborated by the MVA record for Poteat that was later admitted into evidence for the jury's consideration.

Further corroboration came later when Poteat's sister testified at trial, saying that "[i]f you look at me, you look at him, we look just alike[,]" and that "[w]e could be twins."

In order to backtrack on her statement at the scene, "that's my brother," at trial, Poteat's sister attempted to insert an alternative meaning that it did not mean her biological brother, explaining that, "[i]n the hood, you call everybody brothers and sis." She provided the court with the example, "if I could pick someone out of this room, if I know your name, instead of me saying your name, I would be like, hi, sis." However, on cross-examination, the reliability of that explanation came into question when she was attempting to explain why she "never called him (Smith) brother[,]" despite stating that they "grew up as childhood friends" and that he was her brother's friend. She variously changed the parameters of the terms' usage from "everybody[,]" to "if I know your name," to only those who "really deal with each other on an everyday basis[.]"

Her credibility also came into question with respect to her identifying the driver of the vehicle as Kejuan Butler, her "God son's [sic] father[,]" pointing the finger at him, so to speak, despite referring to him as her "brother" and stating, "I knew him for a long period of time . . . we were real close." This exchange left the jury to resolve the issue of her motivation for why now would she place the blame on her godson's father. To assist in resolving that issue, the jury also heard testimony from her as well as the officers on the scene that she had repeatedly "kept saying that's my brother[,]" but then either refused to give the police information as to who "her brother" was or she stated, "I forgot" when asked what his name was.

The owner of the Dodge Magnum, Smith, had been quickly eliminated from the police investigation for being in the hospital at the time. During Smith's testimony at trial, he agreed that Poteat was a "pretty good friend" whom he had known "[m]aybe 10/15 years," and that he would let Poteat use his car, "[i]f he needed it." He testified that he would commonly leave his car parked "on the side of his mom's house on the side of the road[.]" Smith also conceded that he was not at the scene on the day of the incident and that he wouldn't want to see a friend of his get into trouble.

Poteat's own testimony also yielded conflicting information. He testified that, in reference to his friend Smith being in the hospital, "I was there by his side every day. . . . every day he had a visit, I was there." Smith had previously provided the timeframe for Poteat's visits, testifying that "[e]very night around between [sic] -- he usually would show up around 6 or 7 o'clock." However, Poteat also testified that his "driving things is . . . not right right now[,]" and that he "was on probation for a driving ticket recently[.]" In fact, at the time of the incident, Poteat did not possess a driver's license, which was reflected in the MVA record admitted into evidence for the jury's consideration. The MVA record reflects that Poteat had only a Maryland Duplicate Identification Card that had been issued on March 9, 2012, with an expiration of September 30, 2016. He also testified that his only charges following his 2008 drug charge were, "working history [sic] and driving on suspended tickets." Poteat's concession that: "I didn't have to use Mr. Smith's car, even though, if I needed it, he would let me use it[,]" because "I had my own vehicle to drive if I needed to go somewhere[,]" coupled with his definitive statement that he visited Smith in the hospital every day, provided the jury with sufficient evidence to support the inference

that Poteat would drive without a license, knowing he didn't have a license, and in disregard of the laws prohibiting such conduct. This conduct also provided the jury with a motive for Poteat to run from police when he was pulled over in June 2015, so that he would not get caught driving without a license.

The essential question for the jury to determine was the sufficiency of the identity of Poteat as the operator of the vehicle from which the operator fled. The jury resolved that essential question in favor of the State. When that question was answered, it was but a short step to conclude that Poteat was in possession of the handgun recovered from the passenger seat. It is clear, when "'determining whether an error prejudiced the defendant, that is, whether the error was harmless, the determinative factor . . . has been whether or not the [error], in relation to the totality of the evidence, played a significant role in influencing the rendition of the verdict, to the prejudice of the [defendant].'" *Sivells v. State*, 196 Md. App. 254, 288 (2010) (quoting *Degren v. State*, 352 Md. 400, 432 (1999)). Indeed, as even the trial court conceded with respect to the jury's findings of guilt, "[t]here is clearly enough evidence upon which they could find [him] guilty[.]"

2. Do drug dealing and guns go hand in hand?

Poteat testified in his defense, admitting that he had "some convictions" for possession with intent to distribute crack cocaine.[7] He allowed that he was "very familiar" with the world of drug distribution, which he described as a "very dangerous job."

Following that exchange, the prosecutor asked the objected-to question – "is it fair

[7] The record reveals two previous distribution convictions.

to say that drug dealing and guns go hand in hand?" Poteat responded, "Not necessarily," explaining that he had "never indulged in guns[,]" and added that he knew "plenty of drug dealers that didn't play with guns." He then emphasized that he had "stopped [drug dealing] in 2008" and hadn't "had a drug charge since 2008." Far from harmful, the response was exculpatory. As we note, Poteat was not charged with any drug related offenses in connection with this case. Again, applying our harmless error review standard, we find any error in permitting the question to be asked, over objection, was harmless beyond a reasonable doubt.

Finding no reversible error, we shall affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED;
COSTS ASSESSED TO APPELLANT.