Circuit Court for Baltimore City
Case No. 118270019

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1547

September Term, 2021

BRADFORD THOMPSON

v.

STATE OF MARYLAND

Zic,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: January 3, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** 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.

On June 11, 2019, a jury sitting in the Circuit Court for Baltimore City found the appellant, Bradford Thompson, guilty of two counts of reckless endangerment, one count of possession of a regulated firearm by a prohibited person, and one count of possession of ammunition by a prohibited person. In November 2019, the court sentenced Mr. Thompson to five years of incarceration for each of the reckless endangerment convictions to be served consecutively, a consecutive term of 15 years of incarceration for possession of a regulated firearm as a prohibited person (with the first five years to be served without parole), and a concurrent term of one year of incarceration for possession of ammunition as a prohibited person. In November 2021, the circuit court granted postconviction relief and awarded Mr. Thompson leave to file this belated appeal.

QUESTIONS PRESENTED

Mr. Thompson presents two questions for our review:

1. Did the trial court err in its handling of [Mr. Thompson's] complaint that the courtroom sheriff had acted inappropriately?

2. Was the evidence sufficient to support [Mr. Thompson's] conviction for possession of a regulated firearm as a prohibited person?

For the reasons to be discussed, we shall affirm the judgments of the circuit court.

BACKGROUND

On September 1, 2018, Howard Dorsey and Germaine Gross traveled from Kent County to Baltimore City, tried to purchase heroin from an individual known as "Gold," and "Gold" shot them. At trial, Mr. Gross testified that "Gold" is Mr. Thompson and that Mr. Thompson was the shooter. Mr. Dorsey testified during a pre-trial recorded deposition that was played for the jury at trial. During that testimony, Mr. Dorsey also

identified Mr. Thompson as the shooter. Police showed six-person photographic arrays to Mr. Gross and Mr. Dorsey. Mr. Gross and Mr. Dorsey both selected Mr. Thompson's photo as that of the man who shot them.

Mr. Thompson shot Mr. Dorsey in the neck, and Mr. Dorsey became a paraplegic as a result. Mr. Thompson shot Mr. Gross in the arm, and, as Mr. Gross testified: "The bullet went and hit my arm there and went through my hand." Mr. Dorsey and Mr. Gross testified about the circumstances surrounding the shooting. On one occasion before the shooting, Mr. Gross traveled to Baltimore without Mr. Dorsey to purchase drugs from Mr. Thompson. That previous transaction occurred without any conflict. On the day of the shooting, Mr. Dorsey and Mr. Gross traveled together from Kent County to Baltimore to purchase heroin from Mr. Thompson. Mr. Dorsey drove, and Mr. Gross rode in the front passenger seat. Together, Mr. Gross and Mr. Dorsey had about $700 with them: Mr. Gross had "a hundred and some dollars," and Mr. Dorsey had about $600. At about 10:00 p.m., Mr. Dorsey and Mr. Gross arrived at West Baltimore Street and North Catherine Street, where they planned to meet Mr. Thompson.

Shortly after Mr. Dorsey and Mr. Gross arrived at that intersection, Mr. Thompson appeared and entered the rear passenger seat of the car. Mr. Gross testified about the sequence of events that occurred around that time:

> [THE STATE]: Okay. And when [Mr. Thompson] got in the car, what happened at that time?
>
> [MR. GROSS]: We didn't really -- we didn't really do nothing. He started counting pills. And the next thing you know, he said "They not all there." The next thing, I heard

> gunshots. And I looked over to my -- looked over to my left, and I seen my uncle[1] shot.
>
> Then he -- then he shot at me, too. And then I think he went to shoot my uncle again. That's how I got shot in my arm. The bullet went and hit my arm there and went through my hand.
>
> And then next thing you know, I gave all my money. And then he took my uncle money. And then he took off running.

Mr. Gross testified that he could not see the gun. Mr. Dorsey testified that the gun "looked like a []9mm" because of its size and because he had previously owned a 9 millimeter handgun.

According to Mr. Gross, Mr. Thompson threatened to "shoot again if [Mr. Gross] didn't kick the money out." In response, Mr. Gross took money out of his pants pocket and gave that money to Mr. Thompson. Mr. Dorsey was unable to move after he was shot, and Mr. Thompson took Mr. Dorsey's money before Mr. Thompson ran away. Mr. Gross testified that another individual with a gun then appeared: "Then somebody else came on the other side. I couldn't see who it was, with a gun. I couldn't see his face at all." Mr. Dorsey did not remember if that unknown individual fired a gun before fleeing with Mr. Thompson. Mr. Gross then called 911 and reported the shooting. Mr. Gross was taken to Johns Hopkins Hospital, and Mr. Dorsey was taken to the University of Maryland Shock Trauma Center.

[1] Although Mr. Gross referred to Mr. Dorsey as his uncle, Mr. Gross testified that they were not related.

Crime scene technician Ikeana Ikpeama examined the rental car and noted the following damage: "So the observations I made was that the front driver's side window, the glass -- there was glass in the seat. There was also projectile damage to the front driver's side door as well as projectile damage to the front passenger side dashboard." In addition, "a []9 millimeter cartridge casing . . . was found on the front passenger side floorboard of the vehicle," and a "Black and Mild cigarette . . . was found in the rear passenger side floorboard of the vehicle." Crime lab technician Queenie Leung recovered two more 9 millimeter casings—one from the front passenger side seat and one from the rear passenger seat of the rental car. Forensic scientist Amanda Pasay swabbed the Black and Mild cigarette for epithelial cells. After that swab was submitted for DNA analysis, forensic scientist Michael Lawson compared that swab to an oral sample taken from Mr. Thompson. Lawson determined that Mr. Thompson was "the source of the major male profile" on the cigarette.

Detective Steven Fraser arrived at West Baltimore Street and North Catherine Street around 11:00 p.m. on the night of the shooting. Detective Fraser testified about the state of the rental car around that time:

> It was parked on the east side of the street. It was, like I said, the driver's front window was shattered out with glass outside of the vehicle.
>
> The -- there was also a bullet hole near -- just under . . . where the driver's window would have been, in the door frame or in the window frame.

> There was also a bullet strike near the dashboard area in the passenger side. There was two shell casings inside the vehicle that we were able to observe at that point . . . .

Detective Fraser went to Shock Trauma where he spoke to Mr. Dorsey "very briefly before they took [Mr. Dorsey] back to the surgery room." Detective Fraser testified that Mr. Dorsey "was losing feeling in his lower extremities, and he was being taken into surgery for a gunshot wound to the neck/back area." Detective Fraser then went to Johns Hopkins Hospital, spoke to Mr. Gross about the shooting, went back to his office, and then returned to Johns Hopkins where he spoke to Mr. Gross again. Mr. Gross gave Detective Fraser the telephone number that Mr. Gross used to contact Mr. Thompson. During the course of the investigation, Detective Fraser applied for a search warrant for a cell phone number associated with Mr. Thompson. FBI Special Agent Matthew Wilde analyzed historical cell site data of a cell phone associated with Mr. Thompson. That analysis placed Mr. Thompson's phone in the area of the shooting at the time of the shooting.

About four days after the shooting, on September 5, 2018, around 3:00 a.m., Mr. Thompson was transported to central booking. That morning, Mr. Thompson placed a call from jail to his mother and stated as follows:

> I need you to do stuff for me right now. Go -- listen, go in the front room. There's a Shoe City bag. Pooh clothes is in there, and if you listen to me, listen to me real well. Pooh clothes is in there. Pooh Jordans is on the floor. Please take them out the house and give them to Pooh, please, and give them to somebody. Just take them out the house really quick, because they not my clothes. They Pooh clothes, okay, and them Jordans too, okay?

Mr. Thompson also asked his mother to find an ID in the back room and give it to "Pooh." When his mother was unable to find the ID, Mr. Thompson told an unidentified speaker to look in a shoe box for the "silver ID . . . [i]n the blue bag . . . [w]ith the black." Mr. Thompson commanded the unidentified speaker: "Give all that shit to Pooh . . . I'm talking about, like -- yo, I'm talking about right, even now . . . or as soon as you get up . . . for real." Later that day, Detective Fraser executed a search warrant at Mr. Thompson's residence. No gun was ever found. In the front room of the residence, Detective Fraser found a "normal size" shoe box that contained an empty safe. Detective Fraser testified that, during his time as a police officer, he could not recall anyone showing him an ID that was silver.

Mr. Thompson was indicted on 22 counts related to this incident. At trial, a jury found him guilty of two counts of reckless endangerment (Counts 5 and 13), one count of possession of a regulated firearm by a prohibited person (Count 17), and one count of possession of ammunition by a prohibited person (Count 21). He was acquitted of two counts of attempted first-degree murder (Counts 1 and 9), two counts of attempted second-degree murder (Counts 2 and 10), two counts of first-degree assault (Counts 3 and 11), two counts of robbery with a dangerous weapon (Counts 6 and 14), one count of use of a handgun in the commission of a crime (Counts 8 and 16), and one count of firing and discharging a gun in Baltimore City (Count 22). The remaining counts were either not at issue at trial or were lesser-included offenses of the above.

We shall supply additional facts in our analysis as needed.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN ITS HANDLING OF MR. THOMPSON'S COMPLAINT THAT THE COURTROOM SHERIFF HAD ACTED INAPPROPRIATELY.

On the morning of the third day of trial, defense counsel told the court at the bench that, according to Mr. Thompson, Deputy Sheriff Frierson[2] had previously "made some comments to my client's girlfriend along the lines of, you know, 'What are you doing with him? He's going to be doing, you know, life in prison,' and stuff like that." Mr. Thompson now argues that the trial court abused its discretion in failing to investigate his complaint that Sheriff Frierson spoke to Mr. Thompson's girlfriend and expressed prejudice against Mr. Thompson. Mr. Thompson argues that the sheriff's alleged comments deprived Mr. Thompson of his right to a fair trial.

The State argues on appeal that Mr. Thompson has waived this argument because Mr. Thompson did not ask the court did not object when the court stated that Sheriff Frierson would remain in the court. The State also contends that even if this claim were preserved, the court's handling of Mr. Thompson's complaint did not amount to error.

A. We Assume, Without Deciding, that Mr. Thompson's Argument Is Preserved for Our Review.

This Court "will not ordinarily consider an issue that has not previously been raised." *Robeson v. State*, 285 Md. 498, 501 (1979). Maryland Rule 4-323(c), which addresses the method of making "Objections to Other Rulings or Orders," provides,

[2] The transcript spells the sheriff's last name as "Firerson" and "Frierson." The transcript does not reveal his first name.

> For purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court.

The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[3] has stated, "[e]ven errors of Constitutional dimension may be waived by failure to interpose a timely objection at trial." *Taylor v. State*, 381 Md. 602, 614 (2004) (quoting *Medley v. State*, 52 Md. App. 225, 231 (1982)).

In the present case, defense counsel approached the bench and stated Mr. Thompson's concerns about Sheriff Frierson's alleged comments to Mr. Thompson's girlfriend, who was a spectator of the trial:

> [DEFENSE COUNSEL]: Your Honor, there is something else I need to bring to your attention, which my client brought to my attention as we came up.
>
> And that is apparently the sheriff that's in here today . . . he was here last week. And he made some comments to my client's girlfriend along the lines of, you know, "What are you doing with him? He's going to be doing, you know, life in prison," and stuff like that.
>
> You know, I don't know how serious of a comment that really was, or if it was just sort of a flirtation, --
>
> THE COURT: [Or] if it was made at all.

[3] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also*, Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

> [DEFENSE COUNSEL]: Or if it was made at all; correct. But now my client is worried that the sheriff would -- would say something to the jury about -- about him . . . .

Mr. Thompson then joined the attorneys at the bench. The judge told Mr. Thompson that defense counsel "convey[ed] that the sheriff may have said something to your girlfriend, made a remark that you were made aware of and that made either you or her uncomfortable." The judge then stated to Mr. Thompson that "the sheriff doesn't talk to anyone" and "the sheriff doesn't have any contact with the jurors." Mr. Thompson spoke at length, making statements such as the following: "it's not his business why she's supporting me," "I don't . . . tolerate no disrespect," and "I don't feel safe in here with that man because why is that man even approaching my -- my family." Mr. Thompson also said, however, that the sheriff did not threaten his safety. Mr. Thompson did not assert that the jury may have heard the sheriff's comment to his girlfriend. During this exchange at the bench, the judge noted that Mr. Thompson was "being too loud," and the judge excused the jury from the courtroom.

The judge directed the attorneys and Mr. Thompson to return to the trial tables, and the transcript shows a "[p]ause" occurred at that point. After the pause noted on the transcript, the judge stated: "Okay. Now, we're going to go back on the record." The judge then summarized Mr. Thompson's complaint and said to Mr. Thompson, "you're claiming that my sheriff made a remark to your girlfriend, and my sheriff denies it." During the exchange, Mr. Thompson requested that the court review camera footage from the courtroom to confirm whether the sheriff had approached his girlfriend. The court responded, "I don't know whether the cameras pick[] up anything over there or not." The

judge ultimately determined that Sheriff Frierson would remain in the courtroom. The judge asked, "is there anything further, or may I bring this jury out?" Defense counsel responded, "Nothing further, Your Honor." After the judge addressed Mr. Thompson's concerns, defense counsel did not request further action by the court or object to the court's decision.

We assume, without deciding, that Mr. Thompson's appellate argument is preserved for our review.

B. The Trial Judge Did Not Err in Responding to Mr. Thompson's Complaint about Sheriff Frierson's Alleged Comments to Mr. Thompson's Girlfriend.

Mr. Thompson contends that the abuse of discretion standard of review applies to his claim that the court erred under these circumstances. Mr. Thompson argues, however, that this issue amounted to a due process violation under Article 24 of the Maryland Declaration of Rights. In support of this argument, Mr. Thompson states as follows: "The lack of neutrality of the court or its staff is inherently prejudicial to [the] right to a fair trial and the right to a trial that has the appearance of being impartial and disinterested." We review that constitutional claim *de novo*. *See, e.g.*, *Vigna v. State*, 470 Md. 418, 437 (2020).

"A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). When evaluating claims of inherent prejudice, though, "[t]he actual impact of a particular practice on the judgment of jurors cannot always be fully determined." *Estelle v. Williams*, 425 U.S. 501, 504 (1976). Therefore,

"[c]ourts must do the best they can to evaluate the likely effects of a particular procedure, based on reason, principle, and common human experience." *Id.* The question is whether "an unacceptable risk is presented of impermissible factors coming into play" to influence jurors. *Id.* at 505.

Here, Mr. Thompson did not assert at trial that jurors heard the sheriff's alleged comments but rather asserted that the sheriff would perhaps, in the future, improperly contact the jury. Based on the record, however, there is no indication of any improper contact between the sheriff and the jury.[4] The trial judge also assured Mr. Thompson that Sheriff Frierson would have no reason to speak to the jury. Additionally, contrary to Mr. Thompson's argument, the record suggests that the trial court did briefly investigate Sheriff Frierson's alleged conduct. After the judge excused the jury from the courtroom, the transcript shows a "[p]ause." After that un-transcribed pause, the judge said, "Now, we're going to go back on the record. . . . [Y]ou're claiming that my sheriff made a remark to your girlfriend, and my sheriff denies it." Mr. Thompson offered no other evidence to support his assertion as to Sheriff Frierson's alleged comments. Accordingly,

[4] We also note that the court instructed the jury before opening statements to notify the court if the court staff, or any outsider, contacted the jury:

> So until you deliberate, if anyone tries to talk to you about this case before I tell you it's time, I need you to let me know. I need you to tell me right away so that I know who is violating my rules.
>
> Everybody's heard me. Everybody knows [me]. I don't let people approach my jury. I don't let the lawyers talk to you. I don't talk to you. I wave at you maybe. But my staff will always give you that clipboard. They won't even talk. Not even when you ask, "When are we going to lunch," or "Can I use the bathroom," or something simple.

we hold that the court did not err in responding to Mr. Thompson's complaint about the sheriff's alleged comment.

II. The Evidence Was Sufficient to Sustain the Conviction of Possession of a Regulated Firearm by a Prohibited Person.

Mr. Thompson argues that the evidence was insufficient to sustain his conviction for possession of a regulated firearm as a prohibited person because, according to Mr. Thompson, there was no evidence that the weapon used was a regulated firearm. In contrast, the State argues that circumstantial evidence supported the jury's verdict.

The Supreme Court of Maryland has described the standard of review that applies when assessing the sufficiency of the evidence as follows:

> In determining whether the evidence is legally sufficient, we examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In examining the record, we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State.

State v. Wilson, 471 Md. 136, 159 (2020) (quoting *Fuentes v. State*, 454 Md. 296, 307 (2017)) (cleaned up).

Section 5-133(b)(1) of the Public Safety Article provides, "A person may not possess a regulated firearm if the person . . . has been convicted of a disqualifying crime . . . ." A "regulated firearm" is defined as, among other things, "a handgun," which is "a firearm with a barrel less than 16 inches in length" and "includes signal, starter, and blank pistols." Pub. Safety § 5-101(h), (n), (r). Accordingly, the court here instructed the jury as follows:

> The defendant is charged with possession of a firearm as a prohibited person. And please be advised, in order for the State to convict, the State must prove beyond a reasonable doubt, one; that the defendant knowingly possessed a regulated firearm, and two; that the defendant was previously convicted of a crime that disqualified him from possessing a regulated firearm.
>
> A regulated firearm means a handgun, which is a firearm with a barrel less than 16 inches in length, and includes a signal pistol, or starter pistol, or blank pistol.
>
> The State and the defense agree and stipulate that the defendant was previously convicted of a crime that disqualifies him from possessing a regulated firearm.

The weapon used in this case was not recovered. But when a challenge arises as to whether a weapon meets the statutory definition of a handgun, "tangible evidence in the form of the weapon is not necessary to sustain a conviction; the weapon's identity as a handgun can be established by testimony or by inference." *Brown v. State*, 182 Md. App. 138, 166 (2008). Here, there was substantial circumstantial evidence that Mr. Thompson possessed a handgun. At the deposition that was played for the jury at trial, the State asked Mr. Dorsey: "Was it a hand gun [sic], or was it, like, a rifle? Do you remember?" In response, Mr. Dorsey testified that the gun "[w]ent in the hand." Mr. Dorsey also testified that the gun looked like a 9 millimeter and that he was familiar with 9 millimeter handguns because he had owned one:

> [THE STATE]: Mr. Dorsey, do you remember anything about the size of the gun?
>
> [MR. DORSEY]: It looked like a []9mm.
>
> [THE STATE]: And Mr. Dorsey, why do you say that?

> [MR. DORSEY]: Well, because that's -- because of the size it was.
>
> [THE STATE]: Okay. And by that, do you mean -- what about the []9mm makes you -- what about a -- what you know a []9mm to be makes you think it was in this case?
>
> [MR. DORSEY]: Because I had one before.

This testimony was sufficient to sustain the conviction of possession of a regulated firearm. *See Manigault v. State*, 61 Md. App. 271, 287 (1985) ("[A witness] testified that the appellant's hand covered most of the gun during the shooting. That is enough to permit a reasonable inference that it was a handgun and not a full-fledged rifle or shotgun."). Moreover, firearms examiner Daniel Lamont testified that the three fired cartridge cases that were found at the scene of the shooting were "9 millimeter Luger[s]," and that all three recovered casings were "fired from the same" firearm.

We also note that Mr. Thompson's jail call that was played at trial provided additional circumstantial evidence of the gun's size. During that call, Mr. Thompson urgently told an unidentified speaker to look for the "silver ID" in a shoe box. Mr. Thompson commanded the unidentified speaker: "Give all that shit to Pooh . . . I'm talking about, like -- yo, I'm talking about right, even now . . . or as soon as you get up . . . for real." Later that day, Detective Fraser executed a search warrant at Mr. Thompson's residence, where no gun was found. There, Detective Fraser found a "normal size" shoe box that contained an empty safe. Detective Fraser testified that the shoe box was "about 14 inches or so by approximately, like, seven eight inches." Detective Fraser further testified that, during his time as a police officer, he could not

recall anyone showing him an ID that was silver. A juror could reasonably infer that Mr. Thompson was saying "ID" as a code word for "gun" during the recorded jail call, that the 14-inch-long shoe box once contained the gun used in the crime, and that the gun thus had a barrel less than 16 inches in length.

Viewing the evidence in the light most favorable to the State, we hold that the evidence was sufficient for the jury to conclude, beyond a reasonable doubt, that Mr. Thompson possessed a regulated firearm.

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