

Circuit Court for Montgomery County
Case No. 135488C

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1558

September Term, 2022

BRYAN DONTÉ BYRD

v.

STATE OF MARYLAND

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

JJ.

Opinion by Arthur, J.

Filed: May 14, 2024

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited as persuasive authority only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On September 9, 2022, following a trial in the Circuit Court for Montgomery County, a jury found Bryan Donte Byrd guilty of first-degree felony murder, first-degree burglary, attempted armed robbery, use of a firearm in a violent crime, and related conspiracy charges. The court sentenced Byrd to life imprisonment, with all but 40 years suspended.

Byrd filed this timely appeal. For the reasons stated herein, we shall affirm the convictions.

BACKGROUND

In 2013, Alexander Buie was living in a group home for persons recovering from addiction. He attended classes at Montgomery College and worked as the lead lifeguard for a local community center. He was also responsible for making sure that members of the group home remained sober.

Buie’s bedroom had previously been occupied by Lawrence Watkins. Watkins had been asked to leave the group home because he had threatened another roommate and was suspected of dealing drugs.

At some point, Watkins had worked at a grocery store with Vaughn Bellamy. Bellamy devised a plan to steal money and drugs from Watkins. He enlisted two other men in the plan—Travon Davis and appellant Bryan Donte Byrd.

On the evening of November 6, 2013, Bellamy told Davis that they would commit the robbery that night. Dressed in dark clothing and armed with handguns, Bellamy,

Davis, and Byrd traveled in a car to the group home with a plan to rob Watkins. The trio did not know that Watkins had moved out of the home.

Shortly after 10:30 p.m., one roommate heard a knock and went to open the door. He was greeted by three men brandishing handguns.

The first man—Davis—was described as a “black male [with] lighter skin[,]” holding what appeared to be “a nine millimeter pistol.” The second, alleged to be Byrd, was a “slightly taller” “black male” with “[c]lose cropped hair[,]” and was also armed with a handgun. The third, alleged to be Bellamy, was “about as a tall as the second guy,” wore dark clothes and a mask, and was “also [armed with] a handgun.”

When the roommate tried to run away, Davis apprehended him and told him to get down on the ground. He complied. Meanwhile, Byrd and Bellamy entered the home. Davis remained with the roommate.

Another roommate was in the kitchen doing dishes, when he turned sideways to find a gun pointed at his face. “The second guy”—alleged to be Byrd—was tall, skinny, and light-skinned. He entered the kitchen and ordered the roommate to get down on the ground. The third intruder—Bellamy—advanced towards the back bedroom, once claimed by Watkins, but now occupied by Alexander Buie.

The roommates heard arguing and fighting, followed by gunshots, coming from Buie’s room. The three intruders quickly left.

The roommates hurried to Buie’s room, where they found him suffering from a gunshot wound and lying in a pool of blood. EMTs, the police, and fire and rescue

personnel arrived on the scene, but Buie succumbed to his injuries and died from a gunshot wound to the torso.

Meanwhile, Bellamy, Davis, and Byrd got into their car and fled. At some point, Byrd realized that he did not have his white iPhone. To locate the phone, Davis called Byrd twice. Byrd did not find his phone.

The Montgomery County Police Department recovered a white iPhone in the hallway of the group home. A call log report of the iPhone revealed two sequential calls from a phone number registered to Davis at 10:49 p.m. on the evening of the murder. The iPhone contained photographs and text messages that showed that Byrd was friends with Bellamy and Davis. At trial, the parties stipulated that the phone belonged to Byrd.

The Montgomery County police found a .40 caliber shell casing in Buie's closet and several bullets that had gone through the wall or ceiling of his room. In 2014, during an investigation into an unrelated homicide, the Prince George's County police seized a .40 caliber Smith & Wesson handgun from Bellamy. At trial, the State's expert testified that the projectiles that were found in the group home were .40 caliber Smith & Wesson bullets and that they were "consistent with" having been fired from Bellamy's gun.

Travon Davis, testifying for the State, confirmed that he, Bellamy, and Byrd were the intruders in the 2013 attack. Davis testified about the details of planning the robbery, the agreement to arrive at the group home armed with guns, Byrd's inability to find his phone after they fled the group home, and the unsuccessful attempts to locate Byrd's phone by making the two phone calls from Davis's phone. Like the roommates, Davis

also testified that Byrd displayed his weapon. Davis identified Byrd and Bellamy, in court, as the persons who perpetrated the crimes with him.

During Byrd’s trial, the State sought to introduce photographs that it had obtained from Byrd’s cellphone. The photographs included State’s Exhibit No. 35, a photo of Byrd holding two guns; and State’s Exhibit No. 34, a photo of a black gun. The photographs had been taken in January of 2013, about 11 months before Buie’s murder.

Byrd objected to the admission of the photographs, arguing that they were irrelevant and unfairly prejudicial and that they constituted inadmissible “other crimes evidence.” In responding to Byrd’s objection, the State asserted, incorrectly, that the two roommates had testified that Byrd had a black handgun. Byrd did not point out the State’s error. The court admitted the photographs.

During closing argument, the State again asserted, incorrectly, that the two roommates had testified that Byrd had a black handgun. Byrd did not object to the State’s erroneous statement.

The jury convicted Byrd of first-degree murder and other related offenses. He took this timely appeal.

QUESTIONS PRESENTED

Byrd raises the following issues on appeal, which we have rephrased for clarity and concision:

1. Did the circuit court err or abuse its discretion in admitting the photograph of Byrd holding two guns and the photograph of a gun?

2. Should this Court exercise its discretion to decide whether it was plain error for the circuit court to permit the State to assert, incorrectly, in closing argument, that two witnesses said that Byrd’s gun was black?¹

For the reasons stated below, we answer both questions in the negative. We shall therefore affirm the judgments of the circuit court.

DISCUSSION

I.

Byrd contends that the court erred or abused its discretion in admitting two photographs from the iPhone that he left at the scene of the crime: a photo of Byrd himself holding two handguns and a photo of a gun. He argues that the State failed to establish a “specific connection” between the photographs and the facts of the case. He contends that the photographs had a singular effect—“to portray Byrd as a dangerous lawbreaker.” We discern no error or abuse of discretion.

Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than

¹ Byrd phrases his question on appeal as follows:

1. Did the circuit court improperly admit photos of Byrd holding two handguns and a silencer, as well as a photo of a handgun found on Byrd’s phone, when they had no connection to the facts of this case?
2. Where no witnesses described the handgun Byrd allegedly used, was it plain error for the prosecutor to argue to the jury that two witnesses said the gun was black, which bolstered the witnesses’ credibility and made prejudicial photographs appear probative of guilt?

it would be without the evidence.” Md. Rule 5-401. “Having ‘any tendency’ to make ‘any fact’ more or less probable is a very low bar to meet.” *Williams v. State*, 457 Md. 551, 564 (2018); *accord Montague v. State*, 471 Md. 657, 695 (2020). Although a court may admit relevant evidence, it has no discretion to admit evidence that is irrelevant. *Smith v. State*, 218 Md. App. 689, 704 (2014) (citing Md. Rule 5-402). A ruling that evidence is legally relevant is a conclusion of law, which we review de novo. *Id.*

Even if evidence is relevant, however, a court may exclude it “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]” Md. Rule 5-403. We review that decision for abuse of discretion. *See, e.g., State v. Simms*, 420 Md. 705, 725 (2011). In the context of Rule 5-403, “[a]n abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court.” *Montague v. State*, 471 Md. at 674 (quoting *Williams v. State*, 457 Md. at 563).

The circuit court did not err in concluding that the photographs were relevant. As Byrd himself recognizes in his brief, “[i]t is always relevant to show that the defendant before the date of the crime had in his possession the means for its commission.” *Hayes v. State*, 3 Md. App. 4, 8 (1968).

Thus, for example, in *Hayes*, the appellant challenged the introduction of a witness’s testimony that, four days before the victim was shot to death, the appellant had possessed a gun like the one used in the shooting. *Id.* This Court rejected the challenge, holding that the evidence was “a proper showing of possession of the means of

committing the crime.” *Id.* at 9. “[Although] not conclusive evidence of guilt[,]” we wrote, “possession of the means of committing the crime” “may be considered as a link in the chain of circumstantial evidence showing guilt[.]” *Id.*

Similarly, in *Reed v. State*, 68 Md. App. 320, 330 (1986), the appellant challenged a witness’s testimony that, “either a year and a half or two years before [the victim] was shot, he saw the appellant with a handgun in his possession.” The appellant argued that the testimony had no relevance other than “to show a probability that he committed the crime on trial because he was a man of criminal character.” *Id.* In rejecting that challenge, this Court held that “[t]he evidence was probative to show that the appellant possessed the type of weapon employed in killing [the victim].” *Id.* “The remoteness of that possession from the date of the homicide went to the weight of that evidence[,]” not to its admissibility. *Id.*

In this case, the photographs showed that Byrd possessed handguns—the type of weapon employed in the crime. As in *Hayes* and *Reed*, the photographs had at least some relevance, because they showed that Byrd had the means of committing the crime. The photographs enhanced the probability of the State’s theory that Byrd had access to a gun or had the means of acquiring a gun, and thus that he used a gun in the commission of the crime. Although the photographs predated the crime by 11 months, the jury was entitled to decide what weight to assign them, considering their age in concert with the other

evidence submitted at trial. The court, therefore, did not err in concluding that the photographs were relevant.

We turn to the question of whether the court abused its discretion in concluding that the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice.

The parties debate the prejudicial effect of the photographs. The State points out that gun possession itself is not illegal. Byrd responds that, in a murder trial, few things could be more inflammatory than evidence that the defendant kept a photograph of himself brandishing firearms on his iPhone.²

The record reflects that the circuit court carefully considered the question of whether the probative value of the two photographs was substantially outweighed by their prejudicial effect. For example, the court offered to give a cautionary instruction to the effect that the photographs were to be used only “to show the State’s theory that [Byrd] is a person that had a gun, as witnesses have testified[.]” In other words, the court offered to instruct the jury that it could use the photographs for the sole purpose of finding that Byrd had the means of committing the offense, and not for any other purpose. Moreover, the court declined to admit a number of unredacted photographs showing Byrd and others holding up and fanning out large quantities of cash. In view of the court’s thoughtful

² In his brief, Byrd repeatedly asserts that one of the guns is equipped with a silencer. At Byrd’s trial, however, no one seems to have made that observation. We have no idea whether an ordinary person would notice that the gun appears to have a silencer.

approach to the potential prejudice associated with the photographs on Byrd’s phone, we cannot say that no reasonable person would take the view adopted by the circuit court. Therefore, the court did not abuse its discretion in allowing the introduction of the photographs of the guns. *Montague v. State*, 471 Md. at 674.

In arguing for a contrary conclusion, Byrd relies on *Smith v. State*, 218 Md. App. 689 (2014). In *Smith*, the central issue was whether the decedent shot himself or whether Smith had shot him. *Id.* at 696-97. There appears to have been no question that Smith owned the gun that was used in the shooting. *Id.* at 697.

A jury convicted Smith of involuntary manslaughter and a handgun offense after the court admitted evidence that he owned eight other guns and ammunition. *Id.* at 703. We reversed the convictions on other grounds, but went on to address the admissibility of the evidence of Smith’s arsenal of guns and ammunition because it was likely to arise on remand. *Id.* We concluded that Smith’s “ownership of unrelated firearms and ammunition was minimally relevant, at best, and highly prejudicial, and should have been excluded from the trial of these charges.” *Id.* at 705. We stressed that “[n]either the State nor the trial judge articulated how this evidence was relevant to whether Mr. Smith committed the alleged crimes.” *Id.*

This case is a bit different from *Smith*. In *Smith*, no one could explain how Smith’s ownership of numerous other weapons had any bearing on whether the decedent used Smith’s gun to shoot himself or whether Smith had shot him with that gun. Here, by contrast, the State argued, and the court found, that Byrd’s possession of handguns—as

evidenced by the photographs on his phone—had some bearing on whether Byrd had the means to commit an armed home invasion that resulted in a death. It is at least debatable whether the probative value of those two photographs was *substantially* outweighed by the danger that they would *unfairly* prejudice the jury against Byrd. Md. Rule 5-403. Therefore, *Smith* does not compel the conclusion that the court abused its considerable discretion in admitting the photographs.³

In summary, the court did not err in concluding that the photographs were relevant, and it did not abuse its discretion in concluding that the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice.

³ Byrd also cites *Dobson v. State*, 24 Md. App. 644 (1975). In *Dobson*, we held that the circuit court erred in allowing the State to admit “rebuttal” evidence to the effect that a witness saw the defendant in possession of a gun four months before the crime in question. *Id.* at 657. *Dobson* has no bearing on Byrd’s case because the photographs of Byrd were submitted as part of the State’s case, not as rebuttal evidence to explain or contradict previous testimony. Furthermore, in *Dobson* the revolver seen by the witness could not have been the same revolver used in the armed robbery. *Id.* at 660. By contrast, in this case, the State argued (and the defense did not dispute) that the weapon shown in the photograph could have been the same weapon used in the crime.

II.

In closing argument, the State asserted, incorrectly, that the two roommates had testified that Byrd had been armed with a black handgun. Then the State pointed to the photographs on Byrd’s phone of Byrd holding two black handguns.

In fact, no witness had testified that Byrd had been armed with a black gun. Byrd, however, did not object to the State’s erroneous assertion.

Byrd contends that the State’s misstatement gave the jury the false impression that the photographs of the guns were probative of Byrd’s guilt. He suggests the misstatement “boosted” the roommates’ testimony by “creating the impression that” it was “backed by physical evidence.” He acknowledges that he failed to object to the statement and, thus, that he did not preserve the issue for appellate review. Nonetheless, he asks us to review the issue for plain error. We decline to do so.

This Court reserves plain error review for issues that are ““compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.”” *Savoy v. State*, 420 Md. 232, 243 (2011) (quoting *State v. Hutchinson*, 287 Md. 198, 203 (1980)).

Before an appellate court will reverse for plain error, four conditions must be met:

1. There must be a legal error that has not been intentionally relinquished or abandoned by the appellant.
2. The error must be clear or obvious, and not subject to reasonable dispute.
3. The error must have affected the appellant’s substantial rights, which in the ordinary case means that it affected the outcome of the proceedings.

4. If the previous three parts are satisfied, the appellate court has discretion to remedy the error, but it should exercise that discretion only if the error affects the fairness, integrity or reputation of judicial proceedings.

Winston v. State, 235 Md. App. 540, 567 (2018).

“Meeting all four conditions is, and should be, difficult.” *Id.* at 568. “[T]he appellate court may not review the unpreserved error if any one of the four [conditions] has not been met.” *Id.*

We decline to exercise plain error review because we are unpersuaded that the error affected the fairness, integrity, or reputation of the judicial proceedings. Both of the roommates testified that Byrd was armed with a handgun. Davis, Byrd’s co-conspirator, also testified that Byrd was armed with a handgun—and that he, Bellamy, and Byrd perpetrated the botched robbery that led to Buie’s death. The State’s only error was a single comment in which it described Byrd’s handgun as black—the color of the gun in the photograph from Byrd’s phone—when, in fact, none of the witnesses specified the exact color of Byrd’s gun.

The error may have bolstered the roommates’ testimony to some extent; however, the impact of the error, if any, was insignificant in light of the other evidence of Byrd’s involvement in the crime, including the roommates’ identification of Byrd by build, complexion, and hair style; the testimony of Byrd’s co-conspirator, Davis, about the planning and execution of the crime; and the discovery of Byrd’s iPhone, which he lost while fleeing from the scene of the crime. The error in this case is not the kind of “blockbuster error[.]” for which plain error review is reserved. *Martin v. State*, 165 Md.

App. 189, 196 (2005); *accord Wright v. State*, 247 Md. App. 216, 225-26, 228-29 (2020) (declining to exercise plain error review even though the State allegedly mischaracterized testimony in closing argument); *see also Rubin v. State*, 325 Md. 552, 587, 588-89 (1992) (declining to exercise plain error review despite an “improper” closing argument in which the State asserted, with “no basis in the evidence, or in any legitimate inference from the evidence,” that a murder defendant had killed another person).

CONCLUSION

For the reasons set forth above, we hold that the trial court did not err or abuse its discretion in admitting the photographs. We decline to exercise plain error review over Byrd’s challenge to the State’s closing argument.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**