Circuit Court for Montgomery County
Case No.: 138289C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1599

September Term, 2022

CHRISTIAN T. NORMAN

v.

STATE OF MARYLAND

Zic,
Ripken,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: November 21, 2023

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

On February 20, 2021, a person attacked Alemtsehay Feleke, the victim, with a knife outside of her car and in front of her children as she prepared to leave a music service associated with her church. On September 21, 2022, following trial in the Circuit Court for Montgomery County, a jury found Christian T. Norman, appellant, guilty of second-degree assault in relation to that attack.[1] On October 18, 2022, the court sentenced him to 10 years' imprisonment with one year suspended.

Thereafter appellant noted a direct appeal to this Court contending that the trial court erred in admitting into evidence certain audio recordings of appellant's telephone calls from jail made while he awaited trial. For the reasons stated below, we shall affirm the judgment of the circuit court.

BACKGROUND

The evidence introduced at trial shed the following light on the facts and circumstances surrounding the attack on the victim.

The victim testified that, on February 20, 2021, after she and her three children attended a music service at their church, she loaded her children and their belongings into their minivan.[2] As she approached the front door of the van, she saw a person who then immediately attacked her with what she thought were his hands, but later discovered was a knife. She yelled at, and fought with, her attacker until a friend of hers who was parked nearby heard the commotion and approached the fight, at which point her attacker left.

[1] The jury acquitted appellant of attempted first-degree murder, attempted second-degree murder, and first-degree assault.

[2] The victim testified through an interpreter.

The victim's daughter called 911. An ambulance and the police arrived about five minutes later. The emergency personnel transported the victim to a hospital where she spent three days being treated for multiple stab wounds.

An officer who heard the call about the incident, which included the fleeing assailant's direction of travel, went to a nearby 7-11 to look for the attacker who had been described as a tall skinny black man wearing a black jacket. After not finding anyone inside the store matching that description, the police officer went outside and encountered a person matching the description approaching the store on an adjacent footpath. That person, who police later determined to be appellant, turned around and began to walk away once he saw the police officer.

Upon seeing this, the police officer walked toward appellant and said "come here real quick." Appellant complied and approached the police officer. The police officer could see that appellant's hands were covered in blood, he had red stains on his pants, and "lacerations or gashes" to his face. The police officer then drew his gun, told the man to put both of his hands against the wall, and called for backup. Appellant put his right hand on the wall, and when directed to put his left hand on the wall responded, "[I]t's broke." While being placed under arrest, an officer asked appellant if he had "anything on [him] that's going to cut, stick, or poke us?" Appellant replied that he had a pocketknife in his right front pocket.[3] At that time, appellant gave the police a false name – Isiah Norman.

[3] The police report, however, does not show that the police recovered a knife from appellant.

The police collected evidence from the scene of the attack, including, among other things, a folding knife found in the snow near the driver's side door of the victim's car, and blood on the ground nearby. A police officer found a trail of blood drops on the road and sidewalk leading away from the victim's van. Following the blood trail, the officer found a bloody surgical facemask next to a stop sign, less than a quarter of a mile away. Later analysis would reveal that appellant's DNA profile matched blood found in the snow, blood found on his jacket, and blood found on the surgical mask.

Detective Veronica Boggs testified that she interviewed appellant a few days after the attack. When she asked appellant about what happened on the night of the attack, he said that he was under the influence and that he did not remember anything of that night.

At trial, over appellant's objection, the State introduced into evidence two recordings of portions of telephone calls from the Montgomery County Correctional Facility placed by appellant. The first recording played for the jury contained the following colloquy:

> Automated Recording: Hello. You have a call from?
>
> Mr. Norman: Christian Norman.
>
> Automated Recording: An inmate at Montgomery County Correctional Facility. To accept this call, press or say pound. To refuse this call, hang up now. To block this – this call will be recorded and subject to monitoring at any time. If someone you have spoken to sounds depressed and may be thinking or talking about harming themselves and you're concerned at the end of this call, please dial (240) 773-9704 and ask to speak with a shift supervisor immediately. Thank you for using IT Solutions. You may begin speaking now.

Mr. Norman: Hello?

Unidentified Speaker: What the hell happened?

Mr. Norman: I don't know. To be honest, I really don't remember everything that happened, so I don't want to say too much and incriminate myself. I was high as shit. I was unconscious for, for a couple seconds, and when I came back to, my shit was all busted up, like, I got stitches in my face, and my eye, both my eyes swollen, they got me in the infirmary. (Unintelligible).

Unidentified Speaker: You got to hold on because my mom want to talk to you and I told her I'd call if you called.

Mr. Norman: Okay. I thought you heard what they did.

Unidentified Speaker: Pardon?

Mr. Norman: Nothing. I just –

Unidentified Speaker: Hold on.

After that recording was played for the jury, the following telephone recording was played:

Unidentified Speaker: (Unintelligible) she could recognize you.

Mr. Norman: She couldn't, but I'm not going to talk about that shit on the phone, but it sounds like I don't want to tell you, but the case still open, so I can't really nobody that because (unintelligible).

Unidentified Speaker: Right. What [are] you doing at this time?

Mr. Norman: And I don't even know what the evidence was. They never (unintelligible) actual –

Unidentified Speaker: (Unintelligible).

Mr. Norman: Oh, I had[.]

Additional facts may be included as they become germane to the Discussion.

DISCUSSION

As noted earlier, appellant claims that he is entitled to have his convictions vacated because, in his view, the trial court erred in admitting the recordings of the phone calls from the jail into evidence at trial. According to appellant, the recordings were inadmissible because they were irrelevant and, even if relevant, were unfairly prejudicial.

Standard of Review

Maryland Rule 5-401 defines "relevant evidence" as "evidence having 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 it would be without the evidence." Maryland Rule 5-402 states that, except as otherwise provided, "all relevant evidence is admissible[,]" and "[e]vidence that is not relevant is not admissible." Maryland Rule 5-403 states that otherwise relevant evidence "may be excluded if its probative value is substantially outweighed by [*inter alia*] the danger of unfair prejudice[.]"

The determination of whether evidence is relevant is a legal question that is reviewed *de novo*. *State v. Simms*, 420 Md. 705, 725 (2011). The determination of whether relevant evidence should be excluded under Maryland Rule 5-403 is left to the discretion of the trial court. *Id*. To demonstrate an abuse of discretion, a decision must be "well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *McLennan v. State*, 418 Md. 335, 353-54 (2011) (quotation marks and citation omitted).

The Admissibility of the Recordings

Appellant, while acknowledging the relevance and admissibility of post-crime behavior that demonstrates a consciousness of guilt for the crime charged, asserts that none of the statements he made in the recordings demonstrated such a consciousness of guilt and were therefore irrelevant. Although appellant broadly claims that the recordings, which contain multiple different statements, were inadmissible, on appeal he sharpens his focus onto the statements he made indicating that he did not want to talk about the case out of fear that he would incriminate himself. As such, we, in turn, narrow our focus to a discussion of the admissibility of those aspects of the recordings.

Appellant cites to *Thomas v. State*, 372 Md. 342 (2002) in support of his theory of inadmissibility. In that case, the State sought to utilize evidence that the defendant had refused to submit to a blood test as evidence of his guilt for a murder. The Supreme Court of Maryland outlined the logical inferences that needed to be made to get from evidence of Thomas's actions, to evidence of consciousness of guilt, and then to evidence of his guilt for the murder. According to the Court, the relevancy of the evidence in *Thomas* depended on whether a fact-finder could reasonably infer:

> (1) from his resistance to the blood test, a desire to conceal evidence; (2) from a desire to conceal evidence, a consciousness of guilt; (3) from a consciousness of guilt, a consciousness of guilt of the murder [of the victim]; and (4) from a consciousness of guilt of the murder of [the victim], actual guilt of the murder.

Id. at 356.

In this case, appellant claims that the evidence did not reasonably permit the first two inferences, *i.e.*, the evidence did not reasonably permit either the inference "1) from

appellant's statements [to] a desire to conceal evidence; [or] 2) from a desire to conceal evidence [to] consciousness of guilt[.]" Appellant explains that, when arguing for the inadmissibility of the evidence at trial, trial counsel explained to the court that he "regularly advises each of his clients not to discuss even seemingly innocent matters on the phone from jail[.]" According to appellant, rather than demonstrating his consciousness of guilt, the fact that appellant did not want to discuss his case for fear of saying something that could be used against him at his upcoming trial was merely the product of appellant "following the advice of his lawyer, who told him not to discuss the case on the recorded jail phones."[4]

From that standpoint, appellant asserts that there was no evidence connecting his statements that he could not recall what happened and that he did not want to say anything to incriminate himself to a consciousness of guilt for the crimes charged. As a result, according to appellant, the recordings were therefore inadmissible. We disagree.

Consciousness of guilt comes in different forms, including flight from justice, concealment of evidence, assumption of a false name, and related conduct after commission of a crime. *Decker v. State*, 408 Md. 631, 640-41 (2009). Moreover, "[a] tacit

[4] The record reflects that appellant was arrested on the date of the offense, February 20, 2021. Over a year later, on April 27, 2022, the lawyer, Michael Beach, Esq., who represented him at trial, and who made statements about regularly advising his clients about speaking on the telephone from jail, filed a line entering his appearance in the case and striking the appearance of two other lawyers who had previously entered their appearances in the case. It is unclear from the record when the telephone calls that are the subject of this appeal were made, but it can be inferred that the first call, which was made when appellant was still in the infirmary, was made prior to the date Mr. Beach entered his appearance in this case.

or adoptive admission occurs when one remains silent in the face of an accusation that, if untrue, would naturally rouse the accused to speak in his or her defense." *Darvish v. Gohari*, 130 Md. App. 265, 277-78 (2000).

Not all post-crime statements and/or conduct of a criminal defendant need be analyzed under the *Thomas* framework outlined above as not all such statements necessarily imply a desire to conceal evidence. In this case, when read in context, appellant's statements about not wanting to incriminate himself were part of a broader set of relevant comments from which a fact-finder could infer that appellant was present at the crime scene and involved in the offense without resorting to evidence of consciousness of guilt.

In our view, when read in context, appellant's statements that he didn't "remember everything that happened;" didn't "want to say too much and incriminate" himself; that he "was high as shit;" and that "[*s*]*he* couldn't" recognize him were all relevant in establishing his presence at the crime scene and his involvement in the crimes for which he was on trial. (emphasis added).

For example, from his statement that he was "high as shit" and could not "remember *everything* that happened," a fact-finder could draw the inference that he remembered *something* that had happened. (emphasis added). From the evidence that appellant remembered something that had happened, a fact-finder could draw the inference that appellant was present at the crime scene. Obviously, from evidence that appellant was present at the crime scene, a fact-finder could infer appellant's involvement in the crime.

From his statement that "[*s*]*he* couldn't" recognize him, a fact finder could plainly infer that appellant was aware the victim was a woman and that the woman could not recognize him. (emphasis added). From that, a fact-finder could infer that appellant was present at the crime scene and involved in the crime. In short, from that statement a jury could infer the functional equivalent of a confession.

In light of all of that, in our view, it would take no stretch of the imagination for a fact-finder to infer from appellant's statement that he did not "want to say too much and incriminate" himself, a desire to conceal evidence; and from a desire to conceal evidence, a consciousness of guilt for the crime charged.

Thus, all of those statements had some tendency to make his involvement in the offense more probable than not, which made them relevant under Maryland Rule 5-401.

Appellant also very briefly claims that, even if the recordings were relevant, they should have been excluded under Maryland Rule 5-403 because their probative value is substantially outweighed by the "obvious" danger of unfair prejudice. That danger, according to appellant, was that the jury would consider appellant's reluctance to discuss the details of the case as evidence of guilt. He equates that so-called "reluctance" to silence and from that standpoint asserts, quoting from *Zemo v. State*, 101 Md. App. 303, 316 (1994) that "[i]t is a common lay perception that those who won't talk frequently have something to hide." Referring to *Jamsa v. State*, 248 Md. App. 285, 312 (2020), he then notes the "highly prejudicial nature" of evidence commenting on a person's exercise of the right to remain silent.

We are unpersuaded by appellant's endeavor to equate his so-called "reluctance" with "silence." Appellant did not merely express his reluctance to discuss the details of his case. Significantly, rather than deny any involvement in the attack on the victim, he said that he could not remember everything that happened. It is also significant that appellant made his statements to a private citizen outside the presence of law enforcement or any other governmental actor. *C.f. Weitzel v. State*, 384 Md. 451, 452 (2004) (holding that pre-arrest silence in the presence of a law enforcement officer is irrelevant and inadmissible as direct evidence of guilt as a "tacit-admission.") Moreover, rather than deny responsibility for the attack, he said that the victim could not identify him.

In addition, that appellant's statements were possibly susceptible to more than one inference – admissible and inadmissible – is of no moment. We agree with the State that appellant was free to argue at trial that the jury should not adopt the State's interpretation of his statements, and was free to advance alternative interpretations of the statements in an effort to persuade the jury that the statements did not constitute admissions or adoptive admissions of guilt.

Thus, we discern no error or abuse of discretion in the trial court's decision to admit the recorded telephone calls into evidence.

Harmlessness

In this case, even if the trial court had erred in admitting the recordings of the telephone calls into evidence, we would still affirm the judgment of the circuit court because any such error would have been harmless beyond a reasonable doubt.

An error is deemed harmless if "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).

As noted earlier, appellant's only substantive complaint of error with respect to the recorded telephone calls is focused on the portion of those recordings where he states that he does not want to talk about the case out of fear that he might incriminate himself. It is the admission into evidence of those statements that we believe, beyond a reasonable doubt, were harmless.

The evidence of appellant's guilt, absent the evidence as to what he said in the phone calls, was overwhelming. DNA evidence linked both blood found at the scene of the attack and a blood-soaked face mask located along a trail of blood drops to appellant who was located, injured, nearby. When found, appellant stated that he had a knife in his pocket and gave the police a false name. His hands were covered with blood and he matched the physical description of the victim's attacker. He also told the police that he had no memory of the night owing to being under the influence.[5] Moreover, in portions of the recorded

[5] The court instructed the jury on the defense of voluntary intoxication. That defense, if successful, negates the specific intent element of any offense otherwise requiring a specific intent. It is noteworthy in this case that, although appellant did not argue a voluntary intoxication defense to the jury in closing argument, the jury acquitted appellant of all crimes he was charged with that required a specific intent (attempted first-degree murder, attempted second-degree murder, and first-degree assault), and found him guilty of the only offense that did not require a specific intent (second-degree assault).

Thus, we agree with the State that the jury's verdict can be explained by the voluntary intoxication defense. Assuming that is the situation, it all the more supports the (continued)

telephone calls that appellant does not complain about, as outlined earlier, he all but admits his participation in the offense.

In our view, in light of the foregoing, appellant's comments to the effect that he did not want to discuss the case out of fear that he would incriminate himself, added very little to the State's case and their admission into evidence was therefore harmless.

Conclusion.

Consequently, we affirm the judgment of the circuit court.

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

notion that the admission of the recordings of the telephone calls did not contribute in any meaningful way to the verdicts in this case.