Circuit Court for Baltimore City
Case No. 116103015

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2014

September Term, 2017

DEVIN EDMONDS

v.

STATE OF MARYLAND

Meredith,
Kehoe,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: October 30, 2018

Devin Edmonds was convicted in the Circuit Court for Baltimore City of attempted second degree murder, first degree assault, reckless endangerment, conspiracy to commit first degree assault, conspiracy to commit second degree assault, and various firearm offenses. He presents the following questions for our review:

> "1. Did the lower court err in failing to grant [appellant's] Motion for Judgment of Acquittal where there was a variance between the allegations of the indictment and the proof at trial concerning the location of the offenses?
>
> 2. Did the lower court err in admitting recorded telephone calls to show asserted consciousness of guilt where there was no showing that the statements in those calls were made concerning this offense?"

We shall hold that the trial court did not err and affirm.

I.

On March 15, 2016, the Grand Jury for Baltimore City indicted appellant with three counts of attempted first degree murder, three counts of attempted second degree murder, three counts conspiracy to commit murder, three counts of first degree assault, three counts conspiracy to commit first degree assault, three counts of second degree assault, three counts conspiracy to commit second degree assault, three counts of reckless endangerment, and ten counts of various firearm offenses. The indictment alleged that each count occurred "on or about March 13, 2016, at 1200 Rossiter Ave. Baltimore, MD."

In August 2017, appellant was convicted by a jury in the Circuit Court for Baltimore City of attempted second degree murder, first degree assault, reckless endangerment, conspiracy to commit first degree assault, conspiracy to commit second degree assault, and

a variety of firearm offenses. The circuit court sentenced appellant to an aggregate term of eighty years incarceration with all but sixty years suspended. Commencing upon appellant's release from physical incarceration, appellant will be placed on probation for a period of three years.

We set out the relevant facts as presented at trial. At around 3:00 a.m. on March 13, 2016, shots were fired at the home of Ms. Shaundra Burton. Later that morning, around 6:00 a.m., Mr. Kelvin Armstead, Ms. Burton's son's father, returned home with a bruise to his head. The couple then left the home to go to the hospital to treat that injury.

In the mid-afternoon, they left the hospital to return home. In the car at the time were Ms. Burton, Mr. Armstead, and Dawan Bellon, a friend of Mr. Armstead's. Although Ms. Burton did not recall the precise route she took, she remembered "hitting The Alameda by Cold Spring." During the drive, the driver of a burgundy SUV fired gunshots at the trio. Ms. Burton stated that this incident occurred as she was driving "behind the houses . . . off The Alameda." When asked if this incident occurred on the 1200 block of Rossiter Avenue, she responded that she believed so, although she wasn't completely sure as she "wasn't really good with direction."

After the shooting, Mr. Armstead and Mr. Bellon exited the vehicle, and Ms. Burton continued driving. She continued to drive for about five minutes and was then fired upon again from a gold or brown sedan. She was shot in the back. She crashed her car into a fence, and a man wearing a mask and carrying a gun approached her. After Ms. Burton begged for her life, the masked man ran off and fled in the sedan. Ms. Burton sought help

from a neighbor, who called for an ambulance to take her to the hospital. This second shooting happened in the vicinity of the 1300 block of Stonewood Road.

Prior to trial, the State moved *in limine* to permit the introduction of three recorded jail telephone calls to establish consciousness of guilt. The first call, which took place on March 25, 2016, was between appellant and a woman named Brianna. In the call, appellant instructs Brianna to tell "Mox" to "not let her come to court." Appellant objected to the admission of the March 25th call, arguing that there was a lack of specific evidence present in the call to tie it concretely to this case. The second call, which took place on March 26, 2016, again contained a statement to the effect of requesting someone to contact Mox to "make sure she don't come to court." The March 26th call also contained a description of a shooting from a Jeep, a statement that the victim received an injury to the back, and a reference to attempts to contact the speaker's grandmother so that she would give him an alibi for Sundays at 3:30. The third call took place on April 8, 2016 and is not relevant here. At trial, the state introduced the jail calls, and appellant's counsel noted that he "could make an objection about calls coming in in general just for our records . . . and I know it will be overruled." The circuit court admitted the calls "[b]ased on and consistent with the Court's previous rulings and conversations up here at the bench."

At the close of the evidence, appellant moved for judgment of acquittal, arguing that the indictment alleged specifically that the event in question occurred at 1200 Rossiter Avenue, Baltimore and that the Rossiter Avenue address was not mentioned in any testimony at trial. The court denied the motion, ruling that there was no defect in terms of fair or adequate notice and that the court was satisfied that there was evidence in the record

"to satisfy any sort of venue issue and that it's not a separate element that must be established for any crime charged."

As noted above, the jury convicted appellant, and the court sentenced him accordingly. This timely appeal followed.

II.

Before this Court, appellant argues that his conviction must be reversed based on a material and prejudicial variance between the allegations of the indictment and the proof at trial concerning the location of the alleged offenses. Specifically, appellant argues that the State failed to offer sufficient evidence showing that crimes occurred at 1200 Rossiter Avenue in Baltimore, Maryland. He claims that because the State offered insufficient evidence, and given the evidence of multiple shootings in multiple locations, he was hampered in his ability to defend against the charges and to raise a shield against double jeopardy in as much as the State charged multiple and serial assaults on the same day. Appellant argues also that the trial court erred in admitting the recorded jail call on March 25, 2016 because there was no showing that the statements in that call pertained to the allegations at issue at trial. He argues that because the evidence was offered to show consciousness of guilt, there must be evidence linking the call to the particular crime alleged.

The State argues that there was sufficient evidence offered at trial to support a finding that criminal acts occurred at the area alleged at the address noted in the indictment. The State points to Ms. Burton's testimony that she believed that the first afternoon

shooting occurred in the area of 1200 Rossiter Avenue. Therefore, the State argues, there was no variance. Furthermore, the State argues that even if there was a variance, such a variance would not affect the validity or sufficiency of Edmonds's convictions because reversal is only required where there is a variance between the proof and matters essential to the offense charged. As the location of the criminal conduct was not an essential or material element of any of the offenses with which the State charged appellant, any variance as to the location would not render the evidence insufficient or warrant reversal.

As to appellant's arguments related to the telephone calls, the State argues that appellant failed to preserve his claim regarding the March 25th call for appellate review. Alternatively, the State maintains that even if the claim were preserved, the circuit court properly admitted the call into evidence because it was relevant and was not substantially more unfairly prejudicial than probative. The State argues that the call can be connected to the particular crimes alleged here when viewed in the context of the other jail calls. In the light of this other evidence, the jury could reasonably infer consciousness of guilt, making the evidence sufficiently probative. Alternatively, the State argues, any error was harmless, as appellant does not challenge the call from March 26, 2016, which contained all the same information as the March 25th call.

III.

We review the sufficiency of evidence supporting a criminal conviction by determining whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime

beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *State v. Albrecht*, 336 Md. 475, 478–79 (1994). Our concern is not whether the verdict is in accordance with the weight of the evidence, but rather whether there is evidence which could fairly convince a trier of fact beyond a reasonable doubt. *Albrecht*, 336 Md. at 479.

At trial, Ms. Burton testified that she believed that the first afternoon shooting occurred at 1200 Rossiter Avenue. She also testified that the shooting occurred as she was driving "behind the houses … off The Alameda" and "over off of the Alameda and Cold Spring." A rational trier of fact could construe each of these statements to refer to 1200 Rossiter Avenue, as the 1200 block of Rossiter Avenue intersects with The Alameda and is within a few blocks of the intersection of The Alameda and East Cold Spring Avenue. The fact that Ms. Burton testified that she "wasn't very good with direction" and that she "believed," rather than was certain, that the shooting occurred at 1200 Rossiter Avenue, does not mean that her testimony was not sufficient evidence. It is "within the province of the jury to weigh the evidence and judge the credibility of the witnesses." *Davis v. State*, 229 Md. 139, 141 (1962). A rational juror could have believed Ms. Burton's testimony and been convinced that, based on this direct testimony, the shooting occurred at 1200 Rossiter Avenue. Thus, the State provided sufficient evidence.

Therefore, because the State provided sufficient evidence to find that the alleged acts occurred at 1200 Rossiter Avenue, there was no variance between what was alleged in the indictment and what was proven at trial. Thus, the trial court did not err in failing to grant appellant's Motion for Judgment of Acquittal.

IV.

We turn now to the phone calls from the jail. We do not agree with the State that the issue of the admissibility of the March 25th jail call is not preserved for appellate review. Generally, "when a court rules in an *in limine* proceeding that evidence is admissible, Rule 4-323(a) requires that the party opposed to admission object at the time the evidence is actually offered in order to preserve the issue for appellant review." *Washington v. State*, 191 Md. App. 48, 89 (2010). If counsel had merely sat silently and failed to object at trial, the issue would not be preserved for review. That was not the case here. Counsel did alert the judge to the issue of the admissibility of the evidence when he said that he "could make an objection about the calls coming in in general just for our record . . . [w]hich I can do, and I know it will be overruled." While he did not formally declare "I object" when the evidence was offered, there is no requirement in Rule 4-323 for such a formality. Counsel here saw the issue, alerted the judge, and merely did not want to waste the court's time with a formal objection which would just be overruled. Therefore, we hold that appellant preserved the issue of the admissibility of the March 25th jail call for appellate review.

Although we disagree with the State that the issue is preserved for appellate review, we nevertheless hold that the trial court did not err in admitting the evidence. In reviewing whether the court improperly admitted consciousness of guilt evidence, i.e., the March 25th jail call, this court reviews whether the evidence could support an inference that the defendant's conduct demonstrated a consciousness of guilt, and if so, the evidence is relevant and generally admissible. *State v. Simms*, 420 Md. 705, 727 (2011). The court reviews the legal relevancy determination under a *de novo* standard. *Id*. at 725. We then

review the trial court's decision to admit relevant evidence under an abuse of discretion standard. *Id.*

Consciousness of guilt evidence consists of any post-crime act from which "the fact that the accused behaved in a particular way renders more probable the fact of their guilt." *Thomas v. State*, 372 Md. 342, 351 (2002) (quoting Andrew Palmer, *Guilt and the Consciousness of Guilt: The Use of Lies, Flight and Other 'Guilty Behaviour' in the Investigation and Prosecution of Crime*, 21 Melb. U.L. Rev. 95, 98 (1997)). Furthermore, "[e]vidence of threats to a witness or attempts to induce a witness not to testify or to testify falsely, is generally admissible as substantive evidence of guilt when the threats or attempts can be linked to the defendant[.]" *Washington v. State*, 293 Md. 465, 468 n.1 (1982). In the March 25th call, Appellant instructs a woman named Brianna to tell "Mox" to "not let her come to court." Appellant argues that this call lacked specific details which tie it to this case and that the State therefore could not use it to show consciousness of guilt for these crimes. Appellant's argument fails to consider the call in the context of other admitted evidence. The March 25th call at issue was one of three jail calls before the jury. The call from March 26, 2016 contained largely the same statements as the March 25th call, but with even greater specificity. In that call, appellant again instructed the listener to contact "Mox" and "make sure she don't come to court." Appellant referenced a shooting from a Jeep, attempting to get an alibi for Sundays at 3:30, and the fact that the victim was a woman whose back was injured. All of these facts refer to the instant case, as there was testimony that there was a shooting from a vehicle, that the shooting occurred in the mid-afternoon on a Sunday, and that Ms. Burton was shot in the back. Therefore, given the

context, we can reasonably infer that the March 25th call also referred to the charged offenses, as in both calls, appellant instructs the other person on the phone to contact Mox to make sure that someone does not come to court. The March 25th call is relevant to consciousness of guilt and was admissible on that basis. We hold that the trial court did not err or abuse its discretion in admitting the phone call into evidence.

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