UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0294

September Term, 2015

AWA DULLEH

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: June 30, 2016

Convicted by a jury, sitting in the Circuit Court for Montgomery County, of multiple counts of armed robbery and of conspiracy to commit armed robbery, as well as first-degree assault, and conspiracy to commit first-degree assault, Awa Dulleh poses the following question on appeal: "Did the trial court err in allowing the admission of irrelevant, prejudicial and/or otherwise impermissible 'other crimes, wrongs or acts' evidence?" For reasons that follow, we shall affirm the judgments of the circuit court.

FACTS

The crimes in this case stem from a home invasion and robbery that occurred on May 1, 2014, at the home of William and Denise Winterburn in Germantown, Maryland. At the time of the robbery, the Winterburn's and their two teenage children, Mia and Michael, were at home in the two story house, when three individuals entered the foyer of the Winterburn's house, apparently gaining entry through an open garage door. They were, as described at trial, a thin black man with a long gun, a heavier black man with a small gun, and a young white girl with long blond hair.

The thin black man asked Mrs. Winterburn: "Where's the drugs, where's the safe, and where's the money?" When she responded: "What are you talking about?" he shouted: "Shut the fuck up or I'm going to blow your fucking head off." She then screamed, "Oh, my God."

Hearing her mother scream, Mia, who was in her bedroom, grabbed her phone and started down the stairs, calling her mother's name out. But her mother did not respond.

Then, about halfway down the stairs, she encountered a thin black man wearing a ski mask and holding a long gun. The intruder grabbed Mia's phone and pushed her ahead of him toward the sitting room. Inside that room, she saw a heavier set man, holding a silver pistol and her mother lying on the floor of the room. She was then directed to lie on the floor as well, which she did. The two male intruders then repeatedly asked both mother and daughter where the drugs were. They both responded that they did not know what the two men were talking about.

During this time, William Winterburn and his son, Michael, were in the basement. When the family dog began barking and scratching at the basement door to be let out, Michael tried to open the door, but it was locked. As the door could only be locked from the first floor, Michael yelled for his mother to unlock the door. When the door opened, he was met, not by his mother, but by two men wearing masks and standing in the doorway with guns. One of the men was heavyset; the other was thinner and had a tattoo on his right bicep.

Michael then punched the heavier man, who, in turn, shot Michael in the lip with what turned out to be an air pellet gun. As Michael ran down the steps with the two men behind him, his father shouted, "What's going on?" The robbers responded, "Where's the money? Where's the drugs?"

Father and son were subsequently ordered to lie on the floor, which they did. When the men threatened to shoot Michael, if his father did not give them either drugs or money, Mr. Winterburn responded that he had several hundred dollars upstairs. As the heavier man led him up the stairs with the gun held to his head, Mr. Winterburn saw his wife and daughter lying on the floor of the sitting room. Taking $400 from his closet, Mr. Winterburn gave that money to the heavier man. That individual then grabbed, from a dresser, Mr. Winterburn's wallet, which contained a couple of hundred dollars. Then, after ordering Michael and his father to again lay down on the floor and instructing the Winterburns, "Don't move, don't say a word[,]" the robbers departed.

Moments later, the Winterburns called "911." When the police arrived and secured the area, they found Mia's piggy bank lying on the floor of the foyer. A dusting of the piggy bank disclosed one of appellant's fingerprints.

Two weeks later, appellant was arrested, and his residence, which was the first floor of a townhouse in Frederick, Maryland, was searched. The police recovered a black ski mask from his bathroom, and appellant was found to have a tattoo on his right arm, as did one of the robbers.

Melissa Lindquist, the owner of the townhouse where appellant resided, testified that appellant lived on the first floor of her townhouse, that she knew appellant before he moved into her house, and that she had had an intimate relationship with him. She stated that she

had visited him at his previous residence, where she had seen a handgun under his pillow. Appellant, who looked after her children while she worked, had access to her van.

The police learned, from Melissa Lindquist, that Ashley McLane, appellant's girlfriend, had blond hair, and that she had been staying with appellant at the townhouse at the time that the Winterburn's home invasion had occurred but had since left for Oklahoma. The police then set up a "phone sting." That is, they had Lindquist call McLane, and, while the two were speaking with each other over the phone, the police recorded their conversation. During that conversation, McLane said that she had been present during the home invasion, that appellant had planned it, and that appellant's friend, "Marvin" was involved. The police identified "Marvin," whom the lead officer described as "husky" at 5'8" tall and 200 pounds.

McLane further stated that, on May 1st, Marvin arrived at appellant's townhouse and spoke with appellant while the two men stood outside of the townhouse. The three then got into Lindquist's van. After appellant parked behind some townhouses, they got out of the van and the two men donned "masks and stuff" and drew their guns. She described one of the guns as a small pellet gun.

The men then entered a house through the garage door. McLane followed, but only after she heard a woman scream. She then heard appellant demanding money and drugs and

saw him pointing a gun at a woman and her daughter. At that point, McLane ran out of the house to the van.

DISCUSSION

Appellant contends on appeal that the trial court erred in admitting what he describes as the irrelevant and prejudicial "other crimes" testimony of Detective Jose Guzman and Ashley McLane, appellant's girlfriend. The State responds that appellant's contention was not preserved for appellate review because he asserted grounds for exclusion of that evidence at trial different from the grounds he now asserts on appeal. Moreover, his contention, asserts the State, is without merit, and, even if there was error, it amounted to no more than harmless error.

A. Detective Guzman's and Ashley McLane's Testimony

Detective Guzman testified, on direct examination, about the circumstances that led him to consider appellant a suspect in the instant case. Appellant directs our attention to the following exchange that occurred during the detective's testimony:

> THE STATE: Okay. Once you determined who he was, were you able to determine who the other individuals were?
>
> [DET. GUZMAN]: Yes. Once I determined who he was, I obtained the arrest warrant on the, on the 7th, May 7th, 2014. On May 13th, 2014, [appellant] was apprehended by our Repeat Offender Section detectives.
>
> [DEFENSE COUNSEL]: Objection.
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> THE COURT: Basis?

[DEFENSE COUNSEL]: To the designation. He was arrested by detectives, Your Honor. Whatever branch of their offices they're in for[,] their purposes is their purposes, not –

THE COURT: Overruled.

[THE STATE]: So once he – okay. So he was arrested, and then –

[DET. GUZMAN]: He was arrested. He lived in Frederick, Maryland, he said. We went to the residence where he was staying.

Then, during the cross-examination of appellant's girlfriend, Ashley McLane, defense counsel attempted to portray her unfavorably by stressing that, during that encounter, she had not alerted anyone in the neighborhood to the home invasion. That led to the following exchange during re-direct examination:

[THE STATE]: Okay. You were asked if you noticed other houses and why didn't you bang on the door. Why didn't you call the police?

[McLANE]: Because they could have done something to me.

THE STATE: Who could have done something to you?

[McLANE]: [Appellant] and Marvin. They could have hurt me. They could have killed me. They could have –

[DEFENSE COUNSEL]: Objection.

THE COURT: Basis?

[DEFENSE COUNSEL]: Again, it's just complete speculation on her part. She doesn't know. No one threatened her.

THE COURT: Overruled.

> [THE STATE]: Who could have done something to you?
>
> [McLANE]: Marvin, [appellant]. They could have done anything to me if I told somebody or called the cops. I wanted to.

B. Preservation of Issue

Maryland Rule 4-323(a) provides: "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Moreover, "when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999)(citations omitted). *See also Colvin-El v. State*, 332 Md. 144, 169 (1993)("Appellate review of an evidentiary ruling, when a specific objection was made, is limited to the ground assigned.")(citations omitted), *cert. denied*, 512 U.S. 1227 (1994).

The State contends that "[t]here can be no question that [appellant] did not present the same argument below that he now raises on appeal, *i.e.*, that the objectionable testimony of Detective Guzman and Ashley McLane was violative of Md. Rules 5-402." While defense counsel did not cite the relevant rules regarding the admissibility and inadmissibility of evidence that he now cites on appeal, clearly his objection went to the relevancy and prejudicial nature of the testimony at issue.

C. The Testimony was Inadmissible but Harmless

But, we agree with the State that, if there was error in admitting the testimony in question, the error was harmless because it "in no way influenced the verdict[.]" *Dorsey v. State*, 276 Md. 638, 659 (1976). 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." *State v. Simms*, 420 Md. 705, 727 (2011)(citations omitted). But, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

Moreover, "the admission of evidence is committed to the considerable discretion of the trial court." *Sifrit v. State*, 383 Md. 116, 128 (2004)(citing *Merzbacher v. State*, 346 Md. 391, 404 (1997). An abuse of discretion occurs, however, where "no reasonable person would take the view adopted by the [trial] court." *Fontaine v. State*, 134 Md. App. 275, 288, *cert. denied*, 362 Md. 188 (2000)(quotation marks and citations omitted) (brackets in original). "Thus, where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal." *Id*.

The evidence against appellant was, to say the least, substantial. McLane, appellant's girlfriend, was present during the robbery, and she later identified appellant as one of the assailants. Although a defendant may not be convicted on the uncorroborated testimony of an accomplice, only slight corroboration of an accomplice's testimony is necessary to support a conviction. *Spies v. State*, 8 Md. App. 160, 162 (1969). Here, the evidence corroborating McLane's identification was far greater than slight. Appellant's fingerprint was found on the piggy bank left in the middle of the foyer immediately after the home invasion. The victims, moreover, testified that they did not know appellant, that they had never seen him before, and that he had never been to their house prior to the home invasion. What is more, Michael observed a tattoo on the right bicep of one of the assailants, and appellant, at that time, had a tattoo on his right forearm. Finally, both Lindquist and McLane testified that appellant kept a handgun under his pillow. In sum, we are persuaded that there was no reasonable possibility that the testimony at issue contributed to the guilty verdict, and therefore, the admission of that testimony was harmless. Accordingly, we shall affirm the judgments of the circuit court.

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY APPELLANT.