UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1142

September Term, 2014

BRYAN ANTHONY ADAMS

v.

STATE OF MARYLAND

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*Zarnoch,
Leahy,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: February 5, 2016

*Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this court.

Bryan Adams, appellant, was convicted by a jury sitting in the Circuit Court for Montgomery County of armed carjacking, robbery with a dangerous weapon, and use of a handgun in the commission of a felony or crime of violence.[1],[2]

Adams presents two questions for our review, which as recast, are:

I. Did the trial court err in admitting into evidence the victim's prior consistent statement?

II. Was the evidence sufficient to support the convictions?

For the reasons that follow, we shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

On August 7, 2013, Floyd Myers, accompanied by his friend, John Hamlett, was driving around Germantown, Montgomery County, looking at real estate. At some point, Myers mistakenly drove into a park, mistaking it for a cul-de-sac, so that he could "go use the bathroom," there being no public toilet facilities nearby. Myers' vehicle was a Mercedes-Benz S550 that he had purchased "a few weeks" prior. In the short time he had owned the car, he had been the only one to drive it, save for parking valets.

[1]*See* Md. Code Ann. (2012 Repl. Vol.), § 3-405(c)(2) of the Criminal Law Article ("C.L.") (Armed carjacking); C.L. § 3-403(a)(1) (Robbery with a dangerous weapon); C.L. § 4-204(b) (Use of a handgun in the commission of a felony or crime of violence).

[2]Adams was sentenced to consecutive sentences of 20 years' imprisonment for armed carjacking and 20 years' imprisonment, all but ten years suspended, for the use of a handgun in the commission of a felony or crime of violence, as well as a concurrent sentence of 15 years' imprisonment for the robbery with a dangerous weapon.

As Myers was, in his words, "using the bathroom," he heard a car come "screeching" into the park. When he turned around, a man carrying a gun asked him for his money, keys, and phone. Myers took the money from his pocket, threw it on the ground, and told the man that "everything was in the car" and that he could have it. Myers then ran toward the entrance of the park. As Myers was running away from the park, he heard both cars "speed off."

Myers encountered a nearby resident who called 9-1-1. He explained to the dispatcher that he and Hamlett had just been robbed by two black men with guns, who, subsequently, drove away in a maroon Honda and Myers' Mercedes-Benz. He told the dispatcher that one of the robbers was "a husky African guy" who was wearing a black shirt and camouflage pants, and the other was a "light-skinned" man, with a beard, who was wearing a white shirt and "black and purple Jordans." He noted that each of the men appeared to be approximately 25 to 30 years old.

Later that same day, Montgomery County Police located Myers' car about two miles from where it had been stolen.[3] "Drug paraphernalia" was found inside the vehicle. Forensic analysis of the interior of the car revealed the presence of Adams' fingerprints on the steering wheel. The only other identifiable fingerprints on the vehicle belonged to Myers and Hamlett.

[3]Because Myers' cell phone was inside his vehicle, police were able to locate the car by tracking the phone by use of the "find my iPhone" application.

On September 18, 2013, Adams was interviewed by Detective Caleb Garcia, of the Maryland National Capitol Park Police. Adams told Garcia that he had not been at the park on the day in question, had never been in Myers' vehicle, and, further, did not drive, as he did not have a license. When asked, Adams denied ever working at a car wash or as a parking valet. When Garcia told Adams that his fingerprints had been found on the steering wheel of Myers' vehicle and asked if Adams knew how that could have happened, Adams laughed and asked if he was free to go; he was, and he did. Subsequently, Adams was charged as we have noted.

At trial, Myers testified that he did not recognize Adams as the man who robbed him, nor had he seen the assailant who confronted Hamlett during the subject robbery.

At the close of the State's case, defense counsel moved for judgment of acquittal. The following ensued:

> [DEFENSE COUNSEL]: And I would move for [judgment as to] Count 4[4] [use of a handgun in the commission of a felony or crime of violence]. The witness testified he didn't see anything. He was very, very clear that he didn't see Mr. Adams with a firearm. He didn't even see Mr. Adams at the scene of the crime.
>
> [THE COURT]: So I recall he talked about a revolver with a long barrel and a hole at the end of it.

[4]In full, the charging document listed the charges against Adams as: Count 1, armed carjacking; Count 2, robbery with a dangerous weapon, as to the robbery of Hamlett;, Count 3, robbery with a dangerous weapon, as to the robbery of Myers; and Count 4, use of a handgun in the commission of a felony or crime of violence. At trial, the State nolle prossed Count 2.

[DEFENSE COUNSEL]: The long one, that was for suspect No. 1.

[STATE'S ATTORNEY]: Which was the man who approached [Myers].

[DEFENSE COUNSEL]: And suspect No. 2 was Mr. Adams.

[THE COURT]: State?

[STATE'S ATTORNEY]: Your Honor, I think that it's an evidence question at this point in time, that two guns were observed, testified to and that that would be a question for the jury to decide. . . . the two co-defendants would be equally responsible for one another's acts. The 9-1-1 call was –

[DEFENSE COUNSEL]: No, no witness put [Adams][5] at the scene of the crime.

[THE COURT]: So . . . under the State's theory, placed Mr. Adams, the other guy had a 9 millimeter is the testimony from Mr. Myers, and the one that dealt with [Myers] had the long barrel revolver.

[STATE'S ATTORNEY]: Yes.

[THE COURT]: So I think it gets the State past . . . it becomes a jury question. Okay. Anything else, Counts 1 [armed carjacking] and 3 [robbery with a dangerous weapon]?

[DEFENSE COUNSEL]: Yes, I would move to dismiss Count 1 [armed carjacking] for the same reason, that there is no evidence that Mr. Adams was involved in the carjacking or any (unintelligible).

[STATE'S ATTORNEY]: I'm going to state what I believe that the State has done its part in a prima facie case[] . . . that [Adams] was the individual who matched the description, his prints were found within the vehicle.

[5]The transcript reveals that defense counsel stated "no witness put Mr. Hamlet[t] at the scene of the crime." We assume that counsel was actually referring to Adams, given that Myers had been unable to identify Adams. Moreover, it was clear that Hamlett was present.

> [THE COURT]: Okay. There is sufficient evidence from which a jury could determine, even though that's not even the standard at this stage of the proceeding, that [Adams] participated in the carjacking given fingerprint evidence, and the fact that force was used at the scene at the alleged crime, and the vehicle was left running and then removed from the scene. So, motion for judgment of acquittal on Count 1 [armed carjacking] is denied and . . . motion as to Count 3 [robbery with a dangerous weapon], that's also denied.
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> [DEFENSE COUNSEL]: So we are not going to put on any witnesses.
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> [THE COURT]: Okay.
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> [DEFENSE COUNSEL]: So, we'll just rest and I guess we'll have to renew the same motions.
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> * * *
>
> [THE COURT]: Okay. I do believe that on all counts that a reasonable finder of fact could find guilt beyond a reasonable doubt. And for that reason, I'm denying the motion for judgment of acquittal. . . .

Additional facts will be provided below as our analysis requires.

DISCUSSION

I - Prior consistent statement

In Garcia's testimony, he recited, over objection, portions of the statement given by Myers on the day of the robbery. Adams contends that the court erred in allowing that testimony, asserting that "[t]he cross-examination of [Myers] did not imply that he had fabricated his testimony and therefore his prior consistent statement[s] could not be admissible to rebut an express or implied charge of fabrication under Md. Rule 5-802.1." Adams insists further that, even if the court had correctly found an express or implied charge

of fabrication, Myers' motive to fabricate would have existed before the statement given to Garcia and so that statement was inadmissible. Adams argues that the court's error of overruling defense counsel's objection to Garcia's testimony was prejudicial and warrants reversal.

"Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court." *Donati v. State*, 215 Md. App. 686, 708 (2014) (citation omitted). We review the court's evidentiary rulings under an abuse of discretion standard. *Id*. (citation omitted).

Specifically, with respect to the admission of prior consistent statements, we have explained:

> Although the decision whether to admit a prior consistent statement falls within the discretion of the trial court, there are certain limits to when such evidence is admissible. The Court of Appeals has made clear that, "[a]s a general rule, prior out-of-court statements by a witness that are consistent with the witness's trial testimony are not admissible to bolster the credibility of a witness." *Holmes* [*v. State*], 350 Md. [412,] 416-17 [(1998)]. *Accord Thomas v. State*, 202 Md. App. 386, 395 (2011) (general rule that prior consistent statements are not admissible merely as corroborative evidence). There are exceptions to this general rule, which are set forth in Md. Rule 5-802.1 and Md. Rule 5-616(c)(2), but there are specific requirements that must be met to fall within the ambit of these rules.

Hajireen v. State, 203 Md. App. 537, 552-53 (2012) (internal parallel citations and footnote omitted).

The relevant exception in Md. Rule 5-802.1(b) provides:

> **Rule 5-802.1. Hearsay exceptions – Prior statements by witnesses.**
>
> The following *statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement* are not excluded by the hearsay rule:
>
> * * *
>
> (b) A statement that is consistent with the declarant's testimony, if the statement is offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive[.]

(Emphasis added).

More pertinent to the question before us is the exception provided for in Md. Rule 5-616(c)(2):

> **Rule 5-616. Impeachment and rehabilitation – Generally.**
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> * * *
>
> (c) **Rehabilitation**. A witness whose credibility has been attacked may be rehabilitated by:
>
> * * *
>
> (2) Except as provided by statute, evidence of the witness's prior statements that are consistent with the witness's present testimony, when their having been made detracts from the impeachment[.]

In addition to the applicability requirements in the rules, the Court of Appeals has explained that Rules 5-802.1 and 5-616 "become applicable only if 'the defendant's opening statement and/or *cross-examination* of a State's witness has "opened the door" to evidence

that is relevant (and *now* admissible) for the purpose of . . . rehabilitation[.]'" *Anderson v. State*, 420 Md. 554, 567 (2011) (quoting *Johnson v. State*, 408 Md. 204, 225-26 (2009)) (emphasis in original).

Rule 5-802.1 does not further our inquiry, as Myers was not cross-examined with respect to the statement he gave to Garcia. Rather, our analysis shall focus on whether the testimony was admissible under Rule 5-616(c)(2).

"A review of Rule 5-616(c)(2) indicates that there are three prerequisites to admission of a prior statement as rehabilitation: (1) the witness' credibility must have been attacked; (2) the prior statement is consistent with the trial testimony; and (3) the prior statement detracts from the impeachment." *Hajireen*, 203 Md. App. at 555.

Notably, Adams' counsel observed in his opening statement:

> What [the jury] will hear this afternoon and tomorrow . . . *will be unbelievable testimony from unreliable witnesses*. The victim in this case is telling a remarkable story. He was just minding his own business, when all of a sudden, for no reason, out of nowhere, two guys come up, pull guns, steal his car, drive a few miles, cut. The car isn't stolen. They find the car. It doesn't make sense.
>
> You'll also hear from some police officers who are well intended, but they didn't see anything. There's no proof that a car was ever stolen. There's no proof that [Adams] was involved in any of it. The story doesn't make sense.
>
> Drugs were found in the car. Drug paraphernalia was found in the car. If you use your logic, I think you can see that this evidence could mean two different kind[s] of accounts. That [Myers] is the unluckiest guy who just happened to be there when two robbers, two maniacs, come in and jump out

> of a car, not knowing who he is, and decide to steal his car but only drive it a few miles and then vanish.
>
> Why would somebody steal a brand new Mercedes in broad daylight and then just park it and leave it? It doesn't make sense. I mean, do we even know that that car was in the park? Do we know that this car was ever stolen to begin with? I'm going to ask you to think about these facts logically and see if you can really eliminate every other explanation than that a crime occurred.
>
> Now, like how [the prosecutor] tells you that guns were involved. Where are the guns? I didn't see any guns. They didn't find any guns anywhere. They didn't recover any guns. They didn't recover any money.
>
> Is this a real neutral investigation, or are they just rounding up the usual suspects? There's not enough evidence, again, that you can say conclusively, beyond a reasonable doubt, what happened that day. For this reason, I'm going to ask if you can find [Adams] not guilty.

(Emphasis added).

Those comments provide the essential basis for the admissibility of the prior consistent statement. Moreover, on cross-examination defense counsel questioned Myers about: (1) whether he knew the gunmen involved in the subject incident or could identify Adams as one of them; (2) whether he made any appointments to see residences for sale, or walked through any such properties; (3) whether the grinder found in his car belonged to him; and (4) whether there had been any marijuana in his car. Myers, unable to identify Adams as the man who "robbed [him] that afternoon[,]" stated that he did not know the men who robbed him, but provided a description of Hamlett's robber that was reasonably accurate of Adams. He asserted that he had not made any appointments or "go[ne] through"

any particular residences, admitted that the grinder in question was his, and denied that any drugs were found in his car, although there was "probably" some marijuana residue on the grinder.

During direct examination of Garcia, the State elicited testimony about the details of the statement he took from Myers after the carjacking and robbery was reported. Those details included: that Myers had been in the area looking at apartments, that Hamlett was with him, that Myers went into the park to "go to the bathroom," and that, subsequently, a burgundy vehicle approached and two armed men, both black males, got out and demanded Myers' property. Garcia also testified as to Myers' descriptions of the offenders and their guns. Garcia's testimony was consistent with that already given by Myers. Defense counsel interposed timely objections.

In response to one such objection, the following colloquy occurred:

> [DEFENSE COUNSEL]: I'm also going to object to the duplicitous nature of the question and answer. We've already gone over all this directly with the witness himself. And now we're just hearing out-of-court statements. The truth of the matters asserted were already asked and answered by [Myers].
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> * * *
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> [STATE'S ATTORNEY]: Your Honor, this would be a prior –
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> * * *
>
> [STATE'S ATTORNEY]: – a prior consistent statement, a signed statement, made by [Myers] to Detective Garcia.
>
> * * *

(Bench conference follows:)

[THE COURT]: You're offering prior consistent statement [sic] for the truth of the matter.

[STATE'S ATTORNEY]: The truth of the matter because he was questioned about making this up.

[THE COURT]: So you contend he was impeached –

[STATE'S ATTORNEY]: Yes.

[THE COURT]: – on whether or not –

* * *

[THE COURT]: – he is consistent. Okay.

* * *

[THE COURT]: Okay. I mean, certainly the nature of the cross-examination of the alleged victim was that this – and the opening statement – but I'm really focusing on the cross-examination, ..., this was, the victim himself was up to some shenanigans and was impeached, at least implicitly, or attempted to be impeached. And this is a prior consistent statement being offered for the truth of the matter to show a consistent statement.

* * *

[THE COURT]: Okay. I think it fits within the exception of . . . prior consistent statements.

[STATE'S ATTORNEY]: Thank you.

(Bench conference concluded.)

[THE COURT]: The objection [is] overruled.

We consider whether Garcia's testimony satisfied the criteria for admissibility under Rule 5-616(c)(2). It is clear that defense counsel, through his opening statement and cross-examination of Myers, attempted to impeach Myers by inferring that his account of events was completely false and that Myers was implicated in the drug trade. Further, defense counsel asserted that the State was going to adduce "unbelievable testimony from unreliable witnesses." Second, the testimony showed that Myers' statement to Garcia was consistent with his trial testimony.

We are persuaded that testimony indicating consistency in Myers' accounts of relevant events, at trial and in his statement to Garcia, detracted from the attempted impeachment by defense counsel. Specifically, the demonstration of consistency in Myers' accounts countered the assertion that he would be an "unreliable witness" who would give "unbelievable testimony."

Accordingly, we hold that the court did not err by allowing the State to rehabilitate Myers' credibility through testimony related to the prior consistent statement he made to Garcia.

II - Sufficiency of the evidence

Adams argues that evidence of his fingerprints having been on the steering wheel of Myers' car, even when combined with "[Myers'] vague description of the two carjackers[,]" was insufficient to sustain his convictions.

He insists that "the presence of [a] defendant's fingerprints at the scene of a crime does not, standing alone, support an inference of guilt" and that "[t]he critical question is whether there is any other evidence in the case that could *reasonably* exclude the possibility that the fingerprint was left in some innocent manner." To that point, Adams contends that "the limited additional evidence in this case, the vague description of the robber, does not reasonably exclude the possibility that [Adams'] fingerprints were innocently placed on [Myers'] car." Accordingly, he requests reversal of his judgments of conviction.

In reviewing a claim of evidentiary insufficiency, we need only determine 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.'" *Stevenson v. State*, 222 Md. App. 118, 151 (2015) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). Our review, however, is not akin to a retrial of the case. *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted). Rather, "[t]his Court defers to the 'unique opportunity' of the fact-finder to 'view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses.'" *Steward v. State*, 218 Md. App. 550, 558-59 (2014) (quoting *Bordley v. State*, 205 Md. App. 692, 717 (2012)). "'If the evidence either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt, then we will affirm the conviction.'" *Jones v. State*, 213 Md. App. 483, 505 (2013) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)).

With specific regard to convictions supported by fingerprint evidence, the Court of Appeals explained, in *McNeil v. State*, 227 Md. 298, 300 (1961), that "finger print evidence found at the scene of a crime must be coupled with evidence of other circumstances tending to reasonably exclude the hypothesis that the print was impressed at a time other than that of the crime." (citations omitted). We have "construed the evidence of other circumstances required by *McNeil* to include 'circumstances such as the location of the print, the character of the place or premises where it was found and the accessibility of the general public to the object on which the print was impressed.'" *Colvin v. State*, 299 Md. 88, 110-11 (1984) (quoting *Lawless v. State*, 3 Md. App. 652, 659 (1968)).

Adams' fingerprints were found on the steering wheel of Myers' car. The vehicle had been purchased only a "few weeks" prior to the robbery and was ultimately recovered just two miles from the site where the incident occurred. Because the car was Myers' personal vehicle, there was no reason to believe that it would have been generally accessible to the public.

Further, forensic examination of the car yielded fingerprints matching only those of Myers, Hamlett, and Adams. The presence of Myers' and Hamlett's fingerprints was explained by Myers' testimony that, on the day in question, he had been driving and Hamlett had been his passenger. In contrast, the evidence adduced at trial did not allow for any explanation, benign or otherwise, for the presence of Adams' fingerprints. Although Myers was not able to identify Adams, he testified that he had been the only person, valets

excepted, to drive his car since he purchased it. Indeed, Adams confirmed to Garcia that he had never worked as a parking valet and had never been inside Myers' vehicle. These claims, however, could not be reconciled with the forensic evidence of Adams' fingerprints on the steering wheel.

On those facts, we are persuaded that the record simply did not support any reasonable conclusion with respect to how Adams' fingerprints came to be impressed upon Myers' vehicle at some time other than the carjacking. We conclude that the fingerprint evidence confirming Adams' presence in the stolen vehicle was sufficient for a rational jury to infer Adams' criminal agency. *See McCargo v. State*, 3 Md. App. 646, 652 (1968) (evidence sufficient to show accused's criminal agency in breaking and entering of a building where his fingerprints were found on two cabinets from which articles were stolen and he could not explain how his fingerprints got there).

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