UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2193

September Term, 2014

D'JUAN RENAY HUNTER

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 30, 2016

D'Juan Hunter was tried before a jury in the Circuit Court for Prince George's County after he shot and killed his mother's boyfriend, Raymond Quattlebaum, then fled from the scene. His theory of the case was self-defense, and at trial he sought to testify about Mr. Quattlebaum's violent and non-violent criminal record. The court permitted him to testify that he knew Mr. Quattlebaum sold drugs, trafficked stolen cars, and had been convicted for assault with intent to kill, but prevented him from testifying about other, non-violent crimes Mr. Quattlebaum had committed. The jury acquitted Mr. Hunter of first- and second-degree murder, but convicted him of second-degree felony murder and use of a handgun in a crime of violence. He appeals and we affirm.

I. BACKGROUND

Mr. Hunter and his son both lived with Mr. Hunter's mother until her boyfriend, Mr. Quattlebaum, moved in. The two men did not get along, and Mr. Hunter was aware that Mr. Quattlebaum had been involved in trafficking stolen cars and selling drugs. He expressed his concerns to his mother, but when she refused to act, Mr. Hunter moved out of the house.

On New Year's Day 2014, Mr. Hunter went to his mother's house to pay her a visit and collect the rest of his belongings. When he arrived, he noticed that his mother's pickup truck was missing and that several other vehicles he didn't recognize were parked at the home. He went to his bedroom to pack, where he found a handgun he had purchased after being carjacked a few years earlier. He put the handgun in his pocket, and he decided to confront Mr. Quattlebaum one last time.

Mr. Hunter later testified that he went to the top floor bedroom and asked Mr. Quattlebaum what had happened to his mother's pickup truck. He threatened to report Mr. Quattlebaum's illegal activities to the police if he refused to leave Mr. Hunter's mother alone. Mr. Quattlebaum responded, "[i]f you will tell the police I can just kick your ass before you do it." Mr. Hunter testified that he was scared and drew the gun from his pocket. Mr. Quattlebaum responded that "if you pull that gun out on me you had better be prepared to use it," and he began to approach Mr. Hunter; Mr. Hunter stepped backwards and fell, accidentally firing the gun in the process. The shot missed and Mr. Quattlebaum continued his advance. Mr. Hunter blindly fired the weapon two more times, then fled after realizing he had shot Mr. Quattlebaum.

Before taking the stand in his own defense, defense counsel proffered that Mr. Hunter would testify that another individual had told him about Mr. Quattlebaum's criminal history, which included: (1) a 1980 conviction in South Carolina for grand larceny; (2) a 1982 conviction in South Carolina for forgery; (3) a 1984 conviction in South Carolina for housebreaking; (4) a 2000 conviction in Delaware for receiving stolen property valued over $1500; (5) a 2001 conviction in South Carolina for assault with the intent to kill; and (6) a 2012 conviction for unauthorized use of a vehicle. Counsel argued that Mr. Hunter was entitled to testify about these crimes because his knowledge of Mr. Quattlebaum's criminal history was relevant to his mental state and played a critical role in his decision to pull out the gun. The State objected on the ground that the testimony would constitute "other crimes" evidence prohibited by Md. Rule 5-404(b). The State conceded that the conviction for assault with intent to kill may be relevant to a claim of

self-defense, but contended that the other convictions should not be admitted. The court declined to decide the full range of crimes about which Mr. Hunter could testify, but agreed that Mr. Quattlebaum's criminal history bore on Mr. Hunter's state of mind:

> THE COURT: [Mr. Hunter] [b]ecame aware of [Mr. Quattlebaum's] entire criminal history, obviously illegally because it would be improper for him to receive that information and for someone to have given him that information. Then we don't even know if the information is in fact credible.
>
> [DEFENSE COUNSEL]: It would be immaterial, it is what is in his mind that matters.
>
> THE COURT: I do agree that it goes to his state of mind. So are we to allow the defendant to fabricate anything that he wants to say about a victim only because it is a matter of his state of mind?
>
> [DEFENSE COUNSEL]: I don't think it is necessarily fabrication. In the discovery the State gave me his record which verified what my client was told.

Ultimately, the court did not allow Mr. Hunter to testify regarding all of Mr. Quattlebaum's convictions. He was, however, allowed to testify that he had knowledge of Mr. Quattlebaum's "trouble with the law[,]" including the conviction for assault with intent to kill, and that he admitted to trafficking stolen cars and selling drugs, among other things.

Mr. Hunter was charged with first-degree premeditated murder, second-degree specific intent murder, second-degree felony murder, and the use of a handgun in the commission of a crime of violence. He also was charged with manslaughter, and the jury was instructed on perfect and imperfect self-defense. The jury found that Mr. Hunter neither premeditated the shooting nor intended to murder Mr. Quattlebaum—it acquitted

him of the first- and second-degree murder charges, as well as manslaughter. But the jury rejected Mr. Hunter's self-defense theory, and convicted him of second-degree felony murder and the handgun charge. Mr. Hunter filed a timely Notice of Appeal.

I. DISCUSSION

The sole issue on appeal is whether the trial court erred by restricting Mr. Hunter's testimony about his knowledge of Mr. Quattlebaum's criminal history.[1] He argues that he should have been able to testify to the full list of Mr. Quattlebaum's criminal convictions because it was relevant to his mental state at the time of the shooting, and because the testimony was not otherwise excludable as hearsay or other crimes evidence. Moreover, he argues, the court's error in refusing to admit this testimony was not harmless because it "could cause a reasonable juror to entertain doubts as to whether Mr. Hunter intended to harm Mr. Quattlebaum and, in turn, could cause a reasonable juror to consider whether Mr. Hunter was not guilty of the underlying felony of first degree murder." The State responds that the contested testimony, which consisted only of testimony from Mr. Hunter about Mr. Quattlebaum's non-violent criminal history, was irrelevant to his self-defense claim and inadmissible hearsay in any event. And even if the court erred by excluding the testimony, the State argues, the error was harmless. We agree with Mr. Hunter that the testimony at

[1] Mr. Hunter phrased the issue in his brief as follows:

> Where the defendant testified that he displayed a gun out of fear when the victim threatened to assault the defendant to prevent him from reporting suspected criminal activity to the police, did the lower court err in failing to allow the defendant to testify to his knowledge of the victim's criminal history?

issue was not hearsay (as the circuit court correctly noted, it was not offered for the truth of the matter, but rather to show Mr. Hunter's state of mind), but we agree with the State that it was irrelevant, and therefore properly excluded.

In order to be admissible at trial, evidence must be relevant—that is, it must have a tendency to make facts consequential to the determination of the action more or less probable than it would be without it. Md. Rule 5-401. And even if relevant, evidence may be excluded if its probative value is "substantially outweighed" by the danger of unfair prejudice. Md. Rule 5-403. The trial court determines whether evidence is relevant or not, and its ruling may not be disturbed on appeal without a clear abuse of discretion, although a trial judge does not have discretion to admit irrelevant evidence. *Conyers v. State*, 354 Md. 132, 176 (1999).

At trial, Mr. Hunter conceded that he shot Mr. Quattlebaum; the issue for the jury was his state of mind at the time, *i.e.*, whether he had intended to kill Mr. Quattlebaum, acted with a lesser *mens rea*, or acted in self-defense. Mr. Hunter testified that he pulled out the gun from his pocket because Mr. Quattlebaum had threatened to harm him and he was scared. When self-defense is raised in a homicide case, the character of the victim is admissible either to prove the defendant's state of mind when the victim was killed, or to corroborate evidence that the victim was the initial aggressor. *Thomas v. State*, 301 Md. 294, 306-07 (1984). That evidence may be used "to prove that defendant had reasonable grounds to believe that he was in danger." *Id.* at 306 (internal citations omitted). "To use character evidence in this way, the defendant first must prove: (1) his knowledge of the

victim's prior acts of violence; and (2) an overt act demonstrating the victim's deadly intent toward the defendant." *Id.* at 307 (internal citations omitted).

Mr. Quattlebaum's violent criminal history *was* relevant to the issue of whether Mr. Hunter believed he was in danger. This was never disputed, and the court permitted Mr. Hunter to testify that he knew that Mr. Quattlebaum sold drugs, trafficked stolen cars, and had a prior conviction for assault with intent to kill. But Mr. Quattlebaum's *non-violent* convictions were not relevant to the question of whether Mr. Hunter felt threatened, and allowing Mr. Hunter to testify about those convictions would only have confused the jury. Knowing about those convictions does not make it more or less likely that Mr. Hunter felt that he was in serious danger in his final confrontation with Mr. Quattlebaum. And although Mr. Hunter is right that these prior non-violent convictions were not precluded by Md. Rule 5-404(b), which excludes evidence of other crimes committed only by the defendant, *Sessoms v. State*, 357 Md. 274, 285 (2000), the rule does not permit other crimes evidence to be admitted if it is irrelevant.

Mr. Hunter further contends that the convictions were relevant because they demonstrate that Mr. Quattlebaum would have been fearful of going to prison due to his prior convictions, and in turn gave Mr. Hunter reason to believe he would resort to extreme violence to make sure Mr. Hunter did not call the police. Whether or not that was so, this argument was never raised at trial, even when the court asked Mr. Hunter what purpose his proffered testimony would serve, and we cannot consider it on appeal. Md. Rule 8-131.

Finally, Mr. Hunter argues that by excluding the testimony at issue, the circuit court deprived him of his Sixth Amendment right to present a complete defense. We disagree—

to the contrary, the circuit court struck a reasonable balance by allowing Mr. Hunter to testify about his knowledge of Mr. Quattlebaum's violent offenses. To the extent that Mr. Quattlebaum's non-violent convictions may have been relevant to show more generally that he engaged in criminal activities, the jury already had heard about his drug dealing and stolen car trafficking activities, and we discern no abuse of discretion in the court's decision to limit the testimony to those crimes.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.