

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0062

September Term, 2016

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DONATHAN ANTWION BOOTH

v.

STATE OF MARYLAND

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Wright,  
Berger,  
Shaw Geter,

JJ.

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Opinion by Shaw Geter, J.

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Filed: March 9, 2017

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

By indictment filed in the Circuit Court for Baltimore City on March 14, 2014, Donathan Antwion Booth, appellant, was charged with first and second-degree murder, theft of at least \$1,000 but less than \$10,000, unauthorized removal of a motor vehicle, and handgun offenses. Following a jury trial, appellant was convicted of theft of a motor vehicle worth more than \$1,000 and less than \$10,000, unauthorized removal of a motor vehicle, and wearing, carrying or transporting a handgun. The jury acquitted appellant of first-degree murder, but was unable to reach a verdict as to second-degree murder and the use of a handgun in the commission of a crime of violence, and a mistrial was declared as to those charges. On retrial, appellant was acquitted of the remaining charges. The court sentenced appellant to three years' incarceration for wearing, carrying or transporting a handgun and to a consecutive 10 year term for theft of property valued at more than \$1,000 and less than \$10,000. The conviction for unauthorized use of a motor vehicle merged for sentencing purposes.

On appeal, appellant presents two questions for our review, which we have rephrased slightly:

1. Did the trial court err and/or abuse its discretion in admitting evidence of a bank receipt and envelope located in the victim's bedroom?
2. Was the evidence sufficient to support appellant's conviction for theft of a motor vehicle valued at more than \$1,000 but less than \$10,000?

For reasons to be discussed, we affirm.

## **BACKGROUND**

On the morning of February 11, 2014, family members of Terry Davis found him on the floor of his bedroom, shot once in the head. Davis lived with his mother, Gracie Marshall, and her companion, James,<sup>1</sup> at 3910 The Alameda in Baltimore City. Mrs. Marshall last saw and spoke to Davis on the previous morning, before she left for a doctor’s appointment at 9:30 a.m. At that time, Mrs. Marshall heard her son talking to another male in his room, but she did not know who the other male was. Davis had a lock on his bedroom door that he used when he “had company,” but he left the door unlocked when he was not at home. Davis had two vehicles: a white BMW and a red car, and Mrs. Marshall had observed that both cars were parked in the driveway when she left.

When Mrs. Marshall returned home a short time later at approximately 11:00 a.m., she noticed that her son’s white BMW was no longer parked in the driveway, and the door to her son’s room was locked. Mrs. Marshall attempted to reach her son by calling his cell phone four to five times, but he did not answer. The following morning, Davis’ brother, Tyrone Davis, used a ladder to access Davis’ bedroom window from outside the house, and discovered Davis unresponsive on the floor of his bedroom.

The autopsy revealed that Davis had been shot in the head with a .40 caliber bullet. Appellant’s fingerprints were identified in multiple locations in Davis’ bedroom, including on the top drawer of the dresser. DNA testing could not exclude appellant as a possible minor contributor to DNA detected inside Davis’ undershorts.

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<sup>1</sup> James’ last name was not provided and he did not testify at trial.

Less than a week after Davis’ death, a Baltimore Police “CitiWatch” surveillance video recorded appellant, wearing a brown jacket, using a remote key fob to unlock Davis’ BMW in front of 804 N. Port Street in Baltimore. Inside that residence, police located appellant, along with a set of keys to the BMW, Davis’ home, and Davis’ other vehicle, as well as Davis’ debit card and the brown jacket that appellant was observed wearing on the surveillance video. A Glock .40 caliber handgun loaded with one magazine with 12 rounds was also discovered in the home. DNA testing could not exclude appellant as a possible contributor to DNA evidence found on the trigger of the handgun. That model of Glock handgun has a distinctive characteristic that no fired-bullet can ever be positively matched to it.

## **DISCUSSION**

### **I.**

#### **Admission of Bank Documents**

Appellant contends that it was prejudicial error for the trial court to admit evidence of a withdrawal receipt from Davis’ MECU credit union account in the amount of \$2,000 and MECU envelope (the “bank documents”) because the evidence was irrelevant, and even if relevant, it was unfairly prejudicial because appellant was not charged with stealing the money. The State responds that appellant waived his objection to the evidence of the bank documents because he failed to object to the admission of the evidence when it was introduced initially. Even if appellant’s objection was not waived, the State contends, the evidence was relevant as to motive and its probative value was not substantially outweighed by the danger of unfair prejudice.

Moreover, the State argues that any error in admitting the evidence was harmless beyond a reasonable doubt.

**A.**

**Preservation**

Tasha Aytes-Rogers, a mobile technician for the Baltimore City Police Department, testified that on February 11, 2014, she and Technician Figueroa were dispatched to a homicide at The Alameda. She and Technician Figueroa arrived at the Davis home and began processing the scene in the rear bedroom, including taking photographs of the scene. The State moved to introduce into evidence, as State’s Exhibits 14 through 43, photographs taken of the scene, and defense counsel indicated “no objection.” State’s Exhibit 33 was a close-up photograph of a MECU receipt marked with evidence marker “O”. Ms. Rogers identified evidence marker “O” as a bank receipt that was photographed “at the request of the detective. And it has the victim’s name on it.”

Detective Fuller testified that he was assigned to investigate Davis’ homicide. During his investigation of the scene, Detective Fuller observed that “[t]he drawer to the dresser was kind of open, and when we opened it up the rest of the way, you could see where it looked like the items in the drawer had all been shoved off to one side.” Detective Fuller identified State’s Exhibit No. 88<sup>2</sup> as the bank documents that were recovered from

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<sup>2</sup> The document marked in the record as State’s Exhibit 88 is not the MECU receipt and envelope. Although the MECU receipt and envelope are identified as State’s Exhibit 89 on the State’s list of exhibits, State’s Exhibit 89 is not included in the record. We note, however, that State’s Exhibit 33 is a close-up photograph of the MECU receipt in which  
*(continued...)*

the dresser located in Davis’ bedroom, which was marked for identification. The State moved to admit Exhibit No. 88 into evidence and defense counsel objected, citing a lack of relevance to the crimes charged. Following a bench conference, the court admitted Exhibit No. 88 into evidence over defense counsel’s objection.

Maryland Rule 4-323(a) provides that “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. *See also Benton v. State*, 224 Md. App. 612, 627 (2015)(quoting *DeLeon v. State*, 407 Md. 16, 31 (2008)) (“[o]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection”). “When evidence is received without objection, a defendant may not complain about the same evidence coming in on another occasion even over a then timely objection.” *Williams v. State*, 131 Md. App. 1, 26 (2000).

Because appellant failed to object to the evidence regarding the bank documents when it was first introduced during the testimony of Ms. Rogers, his objection to the evidence of the bank documents is waived. We observe that Exhibit 33 is a close-up photograph of the receipt. Mr. Davis’ name, the date, and the amount of the withdrawal are clearly visible in the photograph. As a practical matter, Exhibit 33, to which there was no objection, contained the same essential information as Exhibit 88, to which appellant

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Davis’ name and the withdrawal amount are clearly visible. Because the parties do not dispute that the MECU receipt and envelope were admitted into evidence, and because we were able to view a close-up photograph of the MECU receipt in State’s Exhibit 33, the absence of the actual MECU receipt and envelope did not preclude our review of the issue.

later objected.<sup>3</sup> ““This Court has long approved the proposition that we will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury *without objection* through the prior testimony of other witnesses.” *Yates v. State*, 429 Md. 112, 120 (2012)(citations omitted). Accordingly, appellant failed to preserve his challenge to the admissibility of the bank documents when he failed to object to the introduction of Exhibit 33, which depicted the bank receipt he later sought to exclude.

**B.**

**The Merits**

Even if appellant had preserved his objection, we are not persuaded that the trial court abused its discretion in admitting the evidence of the bank documents.

The State argued during a bench conference that the bank documents found on the dresser in Davis’ room were evidence that Davis withdrew \$2,000 from his credit union account three days prior to the day that he was last seen alive, and the receipt could be evidence that \$2,000 in cash was taken during the course of a robbery when Davis was shot. Additionally, the State argued that the bank documents were discovered in close proximity to the drawer of the same dresser that “was disturbed visibly where [appellant’s] fingerprints were” which could be evidence that “somebody was looking for items of

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<sup>3</sup> Although the bank envelope is not depicted in the photograph in Exhibit 33, we perceive the absence of the envelope to be of no consequence as the evidentiary value of the envelope in this case was dependent of the presence of the receipt.

value.”<sup>4</sup> Appellant objected to the admission of the bank documents, arguing that there was no robbery count in the case, and the theft count related only to the BMW, and further, that because the evidence lacked relevance to the case, it invited the jury to speculate that there was a theft when there was no evidence of it.

Evidence is relevant if it has “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.” Md. Rule 5–401. Trial courts do not have discretion to admit evidence that is not relevant. Md. Rule 5-402; *State v. Simms*, 420 Md. 705, 724-25 (2011). Whether evidence is relevant is a legal question, which we review *de novo*. *State v. Simms*, 420 Md. 705, 725 (2011).

Legally relevant evidence may still be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Rule 5-403. “We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors’ evaluation of the issues in the case.” *Smith v. State*, 218 Md. App. 689, 705 (2014). Generally, “[t]his final balancing between probative value and unfair prejudice is something that is entrusted to the wide discretion of the trial judge.” *Cousar v. State*, 198 Md. App. 486, 517 (2011) (citation omitted). Once the court has made a finding of relevancy, “we are generally loathe to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there

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<sup>4</sup> The State indicated that there were no fingerprints taken from either the receipt or the envelope.



is a clear showing of an abuse of discretion.” *Merzbacher v. State*, 346 Md. 391, 404-05 (1997)(citation omitted). A court abuses its discretion when it acts “without reference to any guiding rules or principles or when its ruling is “clearly against the logic and effect of facts and inferences before the court[ ]” or “violative of fact and logic.” *Gallagher Evelius & Jones, LLP v. Joppa Drive–Thru, Inc.*, 195 Md. App. 583, 597 (2010)(quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 198–99 (2005)).

In this case, the trial court determined that the bank documents were admissible and the jury was “allowed to give it whatever weight they want” because “the State wants to argue that after the murder, [appellant] disturbed items in search of property.” In closing argument, the prosecutor pointed to the bank documents as evidence that appellant had a motive to murder Davis: “Something happened after that physical encounter. I would argue to you that something happened that caused [appellant] to decide that he needed money and he needed to get out of there. Brought a gun with him. He shot [Davis], he rummaged through his property, and he took the keys to his car.”

Relevance is established if the evidence makes a fact that is of consequence more or less probable than it would be without the evidence. But the evidence need not be conclusive to be relevant:

An item of evidence, being but a single link in the chain of proof, need not prove conclusively the proposition for which it is offered. It need not even make that proposition appear more probable than not. Whether the entire body of one party's evidence is sufficient to go to the jury is one question. Whether a particular item of evidence is relevant to the case is quite another. It is enough if the item could reasonably show that a fact is slightly more probable than it would appear without that evidence. Even after the probative force of the evidence is spent, the proposition for which it is offered still can seem quite improbable. Thus, the common objection that the inference for

which the fact is offered “does not necessarily follow” is untenable. It poses a standard of conclusiveness that very few single items of circumstantial evidence ever could meet. A brick is not a wall.

1 George E. Dix et al., McCormick on Evidence § 185 (Kenneth S. Broun ed., 7th ed. 2013)(citations omitted).

In the instant case, the bank documents had some relevance to the State’s argument as to motive. Appellant’s fingerprints were found on the dresser where the bank documents were located and there was evidence that the top drawer had been disturbed. The evidence supported the State’s suggested inference that appellant disturbed items in search of items of value, which could include a search for the withdrawn funds that were evidenced by the receipt. We note that the State did not argue that the funds were missing or stolen, which certainly would have led to some confusion in the absence of a charge for theft of the money. We conclude that the evidence of the bank documents had some relevance to the State’s theory of the case, and the evidence was not unduly prejudicial.

Moreover, any error in admitting the bank documents was harmless beyond a reasonable doubt. *See Dionas v. State*, 436 Md. 97, 108 (2013)(an error is harmless when a reviewing court is “satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict”)(quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). Error for appellate purposes “may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling.” *Clark v. State*, 140 Md. App. 540, 564-65 (2001)(citing Md. Rule 5-103 (a)).

During deliberations, the jury sent a note to the court asking, “Theft over \$1,000, does this pertain to the car, cash, or both?” After conferring with the State and appellant, the court responded that the theft count concerned only the victim’s white BMW. Accordingly, we are persuaded that after receiving clarification from the court, there is no reasonable possibility that the bank documents may have contributed to the jury’s finding of appellant’s guilt as to the charges of theft of property valued between \$1,000 and \$10,000, possession of a handgun, and unauthorized use of a motor vehicle.

## II.

### **Sufficiency of the Evidence**

Appellant argues that the evidence was insufficient to prove theft of a motor vehicle worth between \$1,000 and \$10,000 where the State failed to prove the value of the 2004 BMW 530i that appellant was alleged to have stolen. The State responds that it introduced circumstantial evidence from which the jury could infer that the value of the 2004 BMW 530i was between \$1,000 and \$10,000.

Our task in reviewing the sufficiency of the evidence is to 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.” *Grimm v. State*, 447 Md. 482, 494–95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656–57 (2011)). It is the function of the jury to “choose among differing inferences that might possibly be made from a factual situation and [a reviewing court] must give deference to all reasonable inferences the fact-finder draws, regardless of whether we would have chosen a different reasonable inference.” *Williams v. State*, 231 Md. App. 156, 199–200

(2016) (quotation marks and citations omitted). “We give due regard to the [fact finder's] findings of facts, its resolution of conflicting evidence, and significantly, its opportunity to observe and assess the credibility of witnesses.” *State v. Suddith*, 379 Md. 425, 430 (2004) (alteration in original) (quoting *State v. Smith*, 374 Md. 527, 534 (2009)) (internal quotation marks omitted). A conviction may rest solely on circumstantial evidence since, “generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts.” *Id.*

The value of stolen property is determined by “(1) the market value of the property or service at the time and place of the crime; or (2) if the market value cannot satisfactorily be ascertained, the cost of the replacement of the property or service within a reasonable time after the crime.” Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article (“CL”), § 7–103(a). “The present market value of stolen property may be proven by direct or circumstantial evidence and any reasonable inferences drawn therefrom.” *Champagne v. State*, 199 Md. App. 671, 676 (2011) (citation omitted).

The State introduced no direct evidence of the value of the 2004 BMW 530i. Circumstantial evidence was introduced in the form of photographs of the 2004 BMW taken from still images of the surveillance video from the CitiWatch camera. One such photograph, Exhibit 50, is a close-up of the white 2004 BMW 530i. We observe from that photograph that the 2004 BMW 530i has a sunroof and appears to be in good condition with no damage or visible signs of wear. Additional close-up photographs of the vehicle

were also introduced during the testimony of Detective McMillion<sup>5</sup> which also showed the vehicle in good condition. In addition, the State introduced surveillance video from the CitiWatch camera showing the 2004 BMW 530i being driven down the street and parked in front of 804 N. Port Street in Baltimore in the days following Davis’ death. The State also points to a “look out flier” that was introduced into evidence, which contained a photograph of a white BMW. However, the photograph includes a notation that the image is a “stock image, not actual vehicle,” which may have diminished its evidentiary value.

In *Angulo–Gil v. State*, 198 Md. App. 124 (2011), we concluded that circumstantial evidence was sufficient to prove that a one year-old operable Ford Focus was worth at least \$500. *Id.* at 153. “Circumstantial evidence is entirely sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.” *Id.* (quoting *Hall v. State*, 119 Md. App. 377, 393 (1998)). *Accord, Painter v. State*, 157 Md. App. 1, 11 (2004) (holding that a theft conviction supported by circumstantial evidence was legally sufficient).

Here, the jury was able to assess the appearance and operability of the 10-year old luxury vehicle—a BMW 530i—in multiple photographs and on video footage introduced

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<sup>5</sup> The photographs are marked as State’s Exhibits 67, 68, and 69 in the record but in the transcript during the testimony of Detective McMillion, the photographs were admitted as State’s Exhibits 69-72.

into evidence. We conclude that evidence presented at trial was sufficient to permit a reasonable inference that the 2004 BMW 530i was valued between \$1,000 and \$10,000.

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