IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0762

SEPTEMBER TERM, 2016

ABRAHAM GARCIA-RAMOS

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Nazarian,
Salmon, James P.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Salmon, J.

Filed: March 31, 2017

A jury in the Circuit Court for Prince George's County convicted Abraham Garcia-Ramos of attempted robbery and assault in the second-degree. For purposes of sentencing, the court merged the assault conviction into the conviction for attempted robbery and sentenced Mr. Garcia-Ramos on the robbery charge to 15 years' incarceration, all suspended except ten years, in favor of three years' probation. The ten year sentence was to be served without the possibility of parole.

Mr. Garcia-Ramos filed a timely appeal in which he raises one question, which he phrases as follows: "Did the trial court err in permitting Corporal Edwin Flores to recount the complainant's narrative of the incident?" We shall answer that question in the negative and affirm the convictions.

I.

FACTS PROVEN AT TRIAL

Jaime Mendez, on the afternoon of August 17, 2015, was working at a grocery store called "Megamart," which is located in a shopping center on University Boulevard in Hyattsville, Maryland. On that same date, Corporal Edwin Flores, a member of the Prince George's County Police Department, was working, part-time, as a security officer for Megamart.

During daylight hours on August 17, 2015, Mr. Mendez was behind the store when a young man approached and asked "Are there cameras around here?" The person who asked that question was later identified at trial by Mr. Mendez as appellant, Abraham Garcia-Ramos. After Mr. Mendez responded that he did not know whether there were security cameras, appellant pulled out a knife, demanded money, and threatened to kill Mr.

Mendez if he did not give him his money. Mr. Mendez pretended to reach into his pocket for money, then ran back inside the store. The entire incident between Mr. Mendez and appellant lasted only about forty seconds.

Mr. Mendez immediately told his co-employee, Cpl. Flores, that someone had taken a knife out and demanded money. About fifteen minutes after the attempted robbery, Mr. Mendez saw appellant standing outside of the King Kong Restaurant, which was located in the same shopping center as Megamart. At trial, Mr. Mendez identified appellant as the person who had attempted to rob him at knife point.

The testimony of Mr. Mendez was corroborated by Cpl. Flores who testified that as he was broadcasting a report of the incident over his police radio, Mr. Mendez pointed out appellant who was standing in front of the King Kong Restaurant. Mr. Mendez said: "That's him." Cpl. Flores approached the front of the King Kong Restaurant and told appellant that he "needed to talk to him." Appellant then fled. As he did so, Cpl. Flores saw a knife fall from appellant's right side. Cpl. Flores chased appellant for a considerable distance before appellant stopped and was arrested.

Cpl. Joshua Scall, also a member of the Prince George's County Police Department, responded to the Megamart, after he heard a report of an attempted robbery on his police radio. Cpl. Scall found a knife in the parking lot of the restaurant where appellant had been spotted shortly before he fled.

At trial, appellant did not testify or introduce any evidence. In his closing argument, appellant's counsel challenged only the adequacy of the State's proof of his client's

criminal agency. Defense counsel did not contest the fact that someone had attempted to rob Mr. Mendez.

II.

DISCUSSION

The reversible error claimed by appellant (allegedly) took place during the italicized portion of the following colloquy between the prosecutor and Cpl. Flores, *viz.*:

> Q. Based on your conversation with [Mr. Mendez] what actions did you take?
>
> A. I broadcasted what was going on.
>
> Q. It was an attempt[ed] robbery that occurred where a person had -
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> THE WITNESS: A person had taken a knife out and requested - - demanded money.

Appellant makes the following argument:

> Cpl. Flores was allowed to repeat the complainant's claim, which he broadcasted over his police radio, that someone with a knife approached him and demanded money. This is error. Citing McCormick, this Court set forth the general rule in *Purvis* [*v. State*, 27 Md. App. 713 (1975)] as follows:
>
> > In criminal cases, the arresting or investigating officer will often explain his going to the scene of the crime or his interview with the defendant, or a search [or] seizure, by stating that he did so 'upon information received' and this of course will not be objectionable as hearsay, but *if he becomes more specific by repeating definite complaints of a particular crime by the accused, this is so likely to be misused by the jury as evidence of the fact asserted that it should be excluded as hearsay.*

> 27 Md. App. at 718-19 (quoting C. McCormick, Evidence § 248 at 587 (2ed. 1972)) (Emphasis added).

The legal proposition citied by McCormick and relied upon by us in *Purvis v. State*, 27 Md. App. 713 (1975), accurately sets forth the pertinent law. But the pertinent law in no way supports appellant's contention that the trial judge in this case should not have allowed Cpl. Flores to tell the jury, in effect, that Mr. Mendez had told him that a person had "demanded money" after displaying a knife. As can be seen, Cpl. Flores was not repeating definite complaints of a particular crime by the accused. When Cpl. Flores testified about what he broadcasted, he said nothing about the identity of the person who was alleged to have committed the crime.

The State argues, and we agree with the argument, that the testimony to which appellant objected was not hearsay because it was not introduced for the purpose of showing that a crime had been committed. In that regard, the State relied on the testimony of Mr. Mendez. Instead, the evidence to which appellant objected was introduced to show what Cpl. Flores did and said after he received the report of a crime.

Appellant argues:

> In sum, if the statement was offered for the purpose of proving the truth of the matter asserted by the complainant, it was clearly inadmissible hearsay. On the other hand, if it was offered for its limited probative value to show that the officer acted upon it in making his police broadcast, that probative value was greatly outweighed by its unfair prejudice to appellant because of the danger of misuse of the information by the jury.

The difficulty with the above argument is that there exists no possibility of "unfair prejudice." Here, unlike all the cases cited by appellant, the out-of-court statement, in no

way, identified appellant as the perpetrator of the crime. In this case, the objected to testimony identified no one.

In support of his position, appellant relies heavily on *Parker v. State*, 408 Md. 428 (2009). In *Parker*, a police officer received a tip from a confidential informant that a "black male wearing a blue baseball cap and a black hooded sweatshirt" was selling drugs at a particular location. *Id*. at 430-31. The officer went to the location and observed "a black male wearing a blue baseball cap and a black hooded sweatshirt." *Id*. at 431. When Parker was stopped, he was searched and several gel caps of heroin were recovered from his person. *Id*. at 432. Parker was ultimately convicted of possession of heroin. *Id*. at 434.

On appeal, Parker argued that the trial court erred in allowing the officer to testify regarding the hearsay information relayed to him by the informant. *Id*. The State claimed that the testimony was not hearsay, and thus was admissible, because it was not offered for the truth but rather to explain why the officer was there and the actions he took. *Id.* at 435. The Court of Appeals agreed with Parker and held that the trial judge committed reversible error in admitting the confidential informant's extrajudicial statement. *Id.*

The *Parker* Court explained that while an extrajudicial statement offered to prove that a police officer acted on the statement is generally admissible, such a statement may be excluded if the officer "becomes more specific by repeating definite complaints of a particular crime by the accused[]." *Id*. at 440 (citations omitted). In such instances, the extrajudicial statement should be excluded as hearsay because it "is so likely to be misused by the jury as evidence of the fact asserted[.]" *Id.* (citations omitted). In *Parker*, the Court, after setting forth the general rule, further explained, that "when the hearsay provides

contemporaneous and specific information about the defendant's clothing, location, and activity, it can be highly persuasive as to the defendant's actual guilt of the crime charged[.]" *Id.* at 443. The *Parker* Court concluded by saying that in the case before it the extrajudicial statement "contained too much specific information about [Parker] and his criminal activity to be justified by the proffered non-hearsay purpose of establishing why the [officer] was at the intersection." *Id.* at 431. Here, by contrast, the extrajudicial statement contained no information about appellant.

Besides *Parker*, appellant cites three other cases that concerned hearsay statements by police officers. Those cases are *Graves v. State*, 334 Md. 30, 43 (1994) (stating that the extrajudicial statement by an individual to a police officer naming defendant as his accomplice was not admissible for the limited purpose of showing that the officer acted upon it in arranging the photographic array, because that probative value was greatly outweighed by its unfair prejudice to Graves in light of the danger of misuse of the information by the jury); *Zemo v. State*, 101 Md. App. 303, 310 (1994) (a case in which this Court held that it was improper to allow a police officer to testify that information from a confidential informant lead him to the defendant in an investigation for armed robbery); *Purvis v. State*, 27 Md. App. at 725 (holding that the trial court erred in permitting officer to testify that he made undercover purchase of heroin from defendant based on informant's out-of-court statement that was so specific as to identify the defendant by his clothing). As can be seen, none of the cases cited by appellant support his position that the objected to evidence in this case constituted hearsay.

III.

CONCLUSION

The statement recounted by Cpl. Flores was in no way prejudicial to appellant nor did the statement either directly or indirectly identify appellant as the attempted robber. We therefore hold that the trial judge did not err in allowing a police officer to testify that, based on what Mendez told him, he sent out a police broadcast that "[a] person had taken a knife out and . . . demanded money" from the victim.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.