

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 781

September Term, 2016

ZACHARIAH ADAMS

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 31, 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.

Convicted of illegal possession of a regulated firearm following a jury trial in the Circuit Court for Baltimore City, Zachariah Adams, appellant, raises a single question on appeal: “Did the court err in allowing the State’s expert in ‘firearms identification’ to testify . . . regarding the reasons why guns may or may not be tested for fingerprints or DNA?” For the reasons that follow, we affirm.

On December 8, 2015, Baltimore City Police Officers Norman Rogers, Jr. and Kenneth Sanchez were traveling in a vehicle in the 1000 block of North Luzerne Avenue. Officer Sanchez observed Adams “walking with a stiff right arm close to his right hip,” and stated that “he believed that [Adams] had a handgun.” When the officers entered the avenue’s 900 block, Officer Rogers saw Adams “walking southbound with his right arm close to his body.” The officers exited the vehicle, and Adams “started running.” Officer Rogers chased Adams, and “noticed that he was holding his right side of his waistband.” When Adams “turned onto . . . East Eager Street,” Officer Rogers saw him “take out a silver handgun from his right side waistband and throw it over [some] garages.” After Officer Rogers apprehended Adams, Officer Sanchez approached the garages and discovered a handgun.

Adams stipulated that he “has been previously convicted of a crime that would prohibit his possession of a regulated firearm.” His defense was that, for numerous reasons, the State was unable to prove beyond a reasonable doubt that he possessed the handgun discovered by Officer Sanchez. During opening statement, defense counsel stated: “[T]here’s a lot of evidence you should hear that you won’t. You won’t hear any evidence

of DNA or fingerprints and if the State wanted to know who touched that gun, they would have gotten DNA testing and fingerprint testing.”

At trial, the State called Officer Rogers, who identified the handgun discovered by Officer Sanchez as the handgun thrown by Adams. The State also called Karin Sullivan, a “firearms and tool mark examiner” for the Baltimore City Police Department. Sullivan, whose “testimony [was] received as that of an expert in the field of firearms identification,” testified that the handgun discovered by Officer Sanchez was operable, but “not processed for fingerprints.” During cross-examination, Sullivan testified that her “[u]nit does not do DNA on handgun violations,” and “[s]ometimes . . . look[s] for fingerprints” on a firearm, “if there’s a reason for it to be done.”

During redirect examination, the following colloquy occurred:

[PROSECUTOR:] [W]hy . . . doesn’t the Police Department generally check for DNA on handgun violations, if you know?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

SULLIVAN: Well, the reason we can’t do it is because, No. 1, DNA is very, very expensive to do and I don’t want to use it as money is the reason, but we get a lot of handgun violations. So we cannot be doing DNA on every handgun violation that there is.

* * *

[PROSECUTOR:] Are there any other reasons as to why DNA is not checked as far as handgun violations that you’re aware of?

SULLIVAN: The DNA Unit says that they don’t get a very good DNA profile from these handgun violations. So they used to them, . . . they were doing it, doing it and then A) they came out with we’re not getting a

DNA profile and cost-effectiveness. So if we're doing something that we're not getting results on, not going to do it.

[DEFENSE COUNSEL]: Objection. Motion to [s]trike.

THE COURT: Overruled.

* * *

[PROSECUTOR:] And you said that only sometimes latent prints are done on firearms. If you know, why only sometimes? Why wouldn't it be done in every case?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

SULLIVAN: If they get the gun off of a person's body, why are we going to dust it for fingerprints and all the firearms that I've dusted, we don't get fingerprints off of guns. Less than one percent of time do we get fingerprints off of a firearm because, Number 1; all that bumpily area on grips, on the areas that you're touching and you're moving all have a surface to them that are not conducive to getting fingerprints.

When the gun is fired, heat. It's heat. Fingerprints are oil and perspiration, so water. So when we're discharging these firearms, what happens to water when you boil it at 100 degrees? So that's why we aren't getting fingerprints off of these firearms.

[DEFENSE COUNSEL]: Objection. Motion to [s]trike.

THE COURT: Overruled.

On appeal, Adams contends that the court erred in overruling defense counsel's objections. He claims that the "testimony was completely outside of the witness's expertise and was highly prejudicial in that it allowed the prosecutor to invalidate [Adams's] theory of the case: that without scientific evidence such as fingerprint or DNA evidence linking [Adams] to the gun, there was reasonable doubt that he possessed it."

Fullbright v. State, 168 Md. App. 168 (2006), is instructive. Fullbright was charged with first degree assault and related offenses. *Id.* at 170. “In her opening statement to the jury, defense counsel claimed that the knife used in the assault was never fingerprinted,” and “that ‘[t]here’s absolutely no evidence you’re going to hear corroborate that [Fullbright] is the one [who] cut [the victim’s] hands.’” *Id.* at 183. The investigating police officer subsequently testified that “it was hard to get good prints off of wet objects, based on his ‘experience and training in the Police Academy.’” *Id.* Fullbright was subsequently convicted of second degree assault and related offenses. *Id.* at 170.

On appeal, Fullbright contended that the court “erred or abused its discretion by admitting the [officer’s] opinion.” *Id.* at 171. This Court disagreed for three reasons. First, “the State did not offer [the officer’s] testimony for its truth.” *Id.* at 181. “Second, [the officer’s] opinion . . . was not introduced to prove an essential element of the offenses for which [Fullbright] was charged.” *Id.* at 182. Finally,

the opening statement of defense counsel set forth in detail the alleged deficiencies in the police investigation of the charges against [Fullbright], and predicted a lack of corroborating evidence due to that inadequate investigation. Consequently, the trial court had the discretion to permit the State to obtain . . . an explanation from [the investigating police officer] for his conduct[.] Without such explanation, [Fullbright] would have an unwarranted advantage in impeaching a witness with an assurance that his credibility would remain impaired.

Id. at 185 (internal citations and quotations omitted).

We reach a similar conclusion. The State did not offer Sullivan’s opinion for its truth or to prove an essential element of the offense with which Adams was charged. Also, defense counsel’s opening statement set forth in detail alleged deficiencies in the police’s

investigation, and predicted a lack of corroborating evidence due to that inadequate investigation. Without an explanation from Sullivan, Adams would have had an unwarranted advantage in impeaching her with an assurance that her credibility would remain impaired. The court did not abuse its discretion in permitting the State to obtain an explanation from her for her conduct.

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