

Circuit Court for Somerset County
Case No. 19-K-15-010630
The Honorable Daniel M. Long

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 841

September Term, 2016

PAUL VIRTIS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: June 26, 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.

Following a trial in the Circuit Court for Somerset County, a jury convicted Appellant, Paul Virts, of second-degree assault of a Division of Corrections officer and making a false statement to a law enforcement officer.¹ The trial court sentenced Virts to a total of five years in prison, consecutive to the sentence he was then serving.

Virts presents the following questions for our consideration, which we have consolidated and rephrased:

1. Did the trial court err in precluding Virts from offering evidence from the administrative proceedings that previously occurred in this matter?
2. Was the evidence sufficient to sustain Virts's convictions?

For the reasons that follow, we shall affirm the trial court's judgments.

BACKGROUND

A. Events of July 14, 2015

On the afternoon of July 14, 2015, Correctional Officer Ronnie Carman was on duty in the segregation unit of the Eastern Correctional Institute ("ECI"). When Carman cuffed Paul Virts, an inmate on "Bravo Tier," and opened his cell door to lead him to the recreation room, Carman discovered that Virts had something in his hand. Carman asked what it was, and Virts responded, "[I]t's my fishing line, [b]itch, and you're not going to get it."²

¹ The trial court granted Virts's motion for judgment of acquittal on a charge of possession of contraband in a place of confinement.

² Carman described the "fishing line" as a thin strip of a bed sheet weighted at the end. Inmates throw fishing lines from cell to cell, he said, to reel in newspapers, food, or the like from other inmates. Carman explained that fishing lines are considered contraband,

Informed by Carman that he could not take the fishing line into the recreation room, Virts asked to be taken back to his cell, where Carman uncuffed him. As soon as he returned to his cell, Virts went on a “rant,” jumping up and down, beating on the door, calling Carman names, and saying he was going to “shit [him] down, piss [him] down” and call his brother, who was reportedly a gang member, to have Carman killed.

Approximately 20 minutes later, when Carman opened Virts’s door slot and set his food tray on the shelf, Virts grabbed the tray and said, “[Y]ou’re not getting this tray back bitch.” Virts continued to curse Carman and exclaim he was going to “piss [him] down and shit [him] down,” so Carman closed the food slot. As Carman turned away from Virts’s door, a liquid that had a strong smell of urine hit him on the leg and splashed across the floor. Virts held up a half-full shampoo bottle and said, “I got some more for you bitch.”

The lieutenant on duty informed Virts he would receive an infraction and be placed on “Staff Alert Level One” for assaulting an officer. A crew was called to clean up the liquid, which it verified was urine, and Carman changed into a fresh uniform but did not seek medical treatment.

ECI Nurse Kimberly Carroll assessed Virts the same day to determine if he had any bruises in light of his claim that Carman had pulled the fishing line he had wrapped around his wrist. Carroll did not observe any bruising, ligature marks, or other injuries on his person. Virts claimed no other medical problems and received no further treatment.

but the correctional officers do not normally confiscate them unless the inmates are abusing them.

B. Investigation

Detective Horace Pepper of the Department of Public Safety and Correctional Services, Internal Investigative Division, was assigned to investigate the matter. Pepper took Virts's statement on July 23, 2015, after advising him of his *Miranda* rights. Pepper questioned Virts about the charges of his assault upon Carman and the possession of contraband. During Pepper's investigation into those infractions, Virts accused Carman of assaulting him by grabbing his handcuffs, which Carman later denied doing. As a result of Virts's complaint, Pepper obtained a complete statement from Virts, interviewed another inmate, and reviewed the video footage from a camera on Bravo Tier. After further investigation, Pepper determined that Virts's accusation against Carman was unfounded. Pepper made no finding regarding Carman's claims against Virts.

C. Administrative hearing

As a result of the events of July 14, 2015, Carman filed administrative charges against Virts for: (1) assault or battery on staff; (2) use of threatening, coercive, or intimidating language; and (3) profanity, disrespect, or insolence. On July 27, 2015, Correctional Hearing Officer Peter Juknelis conducted a hearing on those charges. At the conclusion of the hearing, Juknelis found that there was insufficient evidence to support the charged offenses against Virts. Specifically, Juknelis noted the absence of: (1) the filing of a Serious Incident Report relating to an assault on staff, which was standard protocol; (2) photographs showing Carman covered with the liquid alleged to be urine; and (3) attachments from other ECI staff members regarding the assault on staff. Moreover,

Juknelis found Virts's testimony, and that of another inmate who corroborated his story, credible. Therefore, presented with nothing more than Carman's written report, Juknelis concluded that the evidence was insufficient to support the administrative charges against Virts.

D. Pretrial motion

The State then filed criminal charges against Virts for second-degree assault of a Division of Corrections officer, making a false statement to a law enforcement officer, and possession of contraband in a place of confinement.

Virts submitted a pretrial motion to have the trial court admit Juknelis's findings from the administrative hearing during the upcoming trial. At a hearing on the motion, Juknelis testified that he had found that the administrative charges against Virts were not supported by sufficient evidence. Defense counsel argued, therefore, that Virts was entitled to dismissal of the pending criminal charges because a trial would amount to double jeopardy after his acquittal of all charges at the administrative hearing. The State countered that the administrative hearing had no bearing on the criminal trial because the State was not a party to the administrative hearing and Virts was not subject to any criminal consequences.

The trial court pointed out that the pending criminal charges of possession of contraband and making a false statement to a correctional officer had not even been addressed at the administrative hearing. With regard to the charge of assault, the administrative hearing—in which the State was not a participant—was not the type of

proceeding that would give rise to a finding of double jeopardy, *res judicata*, or collateral estoppel. The trial court, therefore, denied Virts's motion.

E. Trial

The case was tried in the Circuit Court for Dorchester County on May 25, 2016. At the close of the State's case-in-chief, the trial court granted Virts's motion for judgment of acquittal on the charge of possession of contraband in a place of confinement, but denied his motion on the charges of assault and making a false statement to a correctional officer. Virts again requested that the trial court permit both the testimony of Correctional Hearing Officer Peter Juknelis, and a transcript of the administrative hearing, to show that Carman's testimony was not credible and that the evidence had been insufficient to support the administrative charges against Virts. The prosecutor argued that the testimony and the transcript were not relevant to the charged criminal offenses and would confuse the jury. The prosecutor further argued that the testimony and the transcript of the hearing comprised hearsay, and the trial court agreed.

The trial court ruled that Juknelis's testimony and the transcript were not admissible. After considering Maryland Rules 5-608,³ governing the impeachment and rehabilitation

³ Rule 5-608(a)(1) relates to impeachment and rehabilitation by a character witness and states: "[T]o attack the credibility of a witness, a character witness may testify (A) that the witness has a reputation for untruthfulness, or (B) that, in the character witness's opinion, the witness is an untruthful person."

Although Juknelis, in his ruling at the administrative hearing, suggested that Carman's credibility was called into question by the lack of evidence he presented at the hearing, he later revised that statement, saying that he had misspoken and did not "call the

of witnesses, and 5-403,⁴ allowing a court to exclude evidence that is otherwise relevant, the trial court stated it was unpersuaded that either Juknelis's testimony or the transcript of the administrative hearing should be permitted into evidence because the administrative hearing was an entirely different proceeding, with different rules of evidence and different witnesses, some of whom were not present at trial. Therefore, the trial court declined to permit testimony or the transcript pertaining to the administrative ruling.

Virts did not put on any evidence, and the trial court denied his renewed motion for judgment of acquittal at the close of the case. The jury convicted Virts of the assault and false statement, and this timely appeal followed.

DISCUSSION

Virts argues that the trial court erred when it: (1) refused to allow him to offer evidence at trial from a previous administrative proceeding; and (2) allowed the case to go to the jury without sufficient evidence. We disagree with Virts and affirm the trial court.

officer[']s credibility into question. ... There was just no other supporting evidence." It is unlikely, therefore, that he would have testified regarding Carman's credibility at Virts's criminal trial, and in the absence of an attack on Carman's credibility, Rule 5-608 would not have been applicable.

⁴ Rule 5-403 states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

I. Evidence from the administrative hearing

Virts contends that the trial court erred in refusing to let Peter Juknelis—the Correctional Hearing Officer who conducted the administrative hearing on the charges against Virts relating to the July 14, 2015 incident—testify, and also in refusing to allow a transcript of that administrative hearing at trial. As the favorable outcome of the administrative hearing was relevant and potentially exculpatory—Juknelis found that there was not sufficient evidence to support the charges against Virts—Virts argues that the trial court’s decision denied him his constitutional right to mount a defense.

Virts, however, is incorrect for three reasons:

- (1) two of the three criminal charges filed against Virts in the trial court were not previously adjudicated at the administrative hearing;
- (2) the administrative hearing was conducted with a different burden of proof, different rules of evidence, and different witnesses than the trial; and
- (3) Juknelis’s proposed testimony, and the accompanying exhibit from the administrative hearing was hearsay.

We explain.

“[T]he issue of whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court” *State v. Simms*, 420 Md. 705, 724 (2011) (citations omitted). “The fundamental test in assessing admissibility is relevance.” *Thomas v. State*, 372 Md. 342, 350 (2002). The trial court “do[es] not have discretion to admit irrelevant evidence.” *Simms*, 420 Md. at 724 (citation omitted). And, even if evidence is legally relevant, the trial court must consider whether

the evidence is nonetheless inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other concerns set forth in Rule 5-403. *Id.* at 725. We test the trial court’s balancing evaluation for an abuse of discretion. *Id.*

First, the transcript of Virts’s administrative hearing and the live testimony of the hearing officer, Juknelis, was, at least in part, irrelevant to his criminal trial because the charges were different. Juknelis adjudicated the administrative charges of: (1) assault or battery on staff; (2) use of threatening, coercive, or intimidating language; and (3) profanity, disrespect, or insolence. Virts was charged criminally with possession of contraband, second-degree assault upon a Division of Correction Officer, and making a false claim to a law enforcement officer. The administrative hearing result, therefore, would have had no bearing on any criminal charge other than assault.

Second, as the trial court noted, the administrative hearing was conducted with a different burden of proof, different rules of evidence, and different witnesses, so that any relevance of the administrative officer’s findings to the criminal trial was tenuous at best. The admission of the evidence also may have misled the jury into erroneously believing an acquittal was warranted solely because an administrative tribunal had found that the evidence had been insufficient to support the administrative charges against Virts.

Third, Juknelis’s finding that Virts’s story relating to the incident was credible and that the evidence was insufficient to support the administrative charges against Virts, and his expected similar testimony, was hearsay. Hearsay is defined by Rule 5-801 as “a statement, other than one made by the declarant while testifying at the trial or hearing,

offered in evidence to prove the truth of the matter asserted.” “Hearsay, under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is permitted by applicable constitutional provisions or statutes. Thus, a [trial] court has no discretion to admit hearsay in the absence of a provision providing for its admissibility.” *Dulyx v. State*, 425 Md. 273, 285 (2012) (emphasis in original) (citation omitted). Virts offered no exception to the hearsay rule that would permit the admission of the transcript or Juknelis’s testimony at Virts’s criminal trial. Moreover, it was for the jury to decide Virts’s credibility, not Juknelis’s opinion about Virts’s credibility.

For the foregoing reasons, the trial court did not abuse its discretion in declining to permit Juknelis to testify or to admit the transcript of Virts’s administrative hearing into evidence.

II. Sufficiency of the evidence

Virts also argues that the evidence adduced by the State was insufficient to sustain his convictions for making a false statement and second-degree assault. With regard to the charge of making a false statement to a law enforcement office, Virts claims that the evidence did not support a finding that he made a false statement with the intent to deceive and to cause an investigation or other action to be taken as a result thereof, as required by the applicable statute, Section 9-501 of the Criminal Law Article (“CR”). As to the charge of second-degree assault on a Division of Corrections officer, Virts avers that there was no physical evidence of assault upon Carman to support the conviction.

We have explained the applicable standard for reviewing challenges to the sufficiency of the evidence:

In reviewing the sufficiency of the evidence, an appellate court determines 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.

The appellate court thus must defer to the factfinder's opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence. Circumstantial evidence, moreover, is entirely sufficient to support a conviction, provided that the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.

Benton v. State, 224 Md. App. 612, 629-30 (2015) (emphasis in original) (citations omitted).

Section 9-501(a) of the Criminal Law Article prohibits the making of a false statement to a law enforcement officer and states:

- (a) A person may not make, or cause to be made, a statement, report, or complaint that the person knows to be false as a whole or in material part, to a law enforcement officer of the State, of a county, municipal corporation, or other political subdivision of the State, or of the Maryland-National Capital Park and Planning Police with intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint.

CR § 9-501(a).

In interpreting Art. 27, § 150, the predecessor statute to CR § 9-501, the Court of Appeals explained:

Clearly, in enacting this statute, the General Assembly intended to proscribe false reports of crimes and other statements which instigate totally unnecessary police investigations. The statute, however, does not expressly proscribe a false response to police questioning *after* an investigation has already begun.

Choi v. State, 316 Md. 529, 547 (1989) (emphasis added); *see also Jones v. State*, 362 Md. 331, 335 (2001) (“In general, [Art. 27, § 150], prohibits the making of false statements to police officers with the intent to cause an investigation or other action to be taken.”). Thus, the critical question is whether the false statement was made before or after an investigation was opened.

Virts claims that his statement to Detective Pepper, that “Carman had assaulted him by grabbing his cuffs,” was made in the course of an ongoing investigation and did not cause an investigation or other action to be taken. We disagree.

Pepper questioned Virts about the charges of his assault upon Carman and the possession of contraband. During Pepper’s investigation into those infractions, Virts complained that “Carman had assaulted him by grabbing his cuffs.” Pepper said he then instituted a new investigation as a result of the complaint, to include obtaining statements from Virts and another inmate, and viewing the camera footage from Bravo Tier. There was no evidence of any investigation of Carman’s alleged assault upon Virts until Virts made his accusation against Carman to Pepper. It would, therefore, appear that the *new* investigation undertaken by Pepper into that offense was indeed a result of the statement, report, or complaint made by Virts.

Virts also contends that there was no evidence that his statement that “Carman had assaulted him by grabbing his cuffs,” was false. Pepper’s inability to substantiate the assault upon him, Virts says, is not the equivalent of proving it to have been a falsehood. While that may be true, the jury inferred from the evidence that Virts’s statement to Pepper was false, and in light of our role of determining only whether the evidence *possibly could have* persuaded a rational jury of Virts’s guilt, we cannot say that the evidence, taken in a light most favorable to the State, was insufficient to support the jury’s decision.

Virts’s claim that the dearth of physical evidence of Carman’s claim of assault—urine stained clothes, DNA, and photographs—requires a reversal based on insufficiency of the evidence fares no better.⁵ Carman testified that, after hearing Virts yell that he was going to “piss [Carman] down and shit [him] down,” he felt liquid, which had a strong smell of urine and was later verified by the cleaning crew to be urine, splash onto his leg.⁶ As he turned back to Virts, Carman observed Virts holding a shampoo bottle and heard him say, “I got some more for you bitch.” It is, of course, “the role of the jury to resolve any conflicts in the evidence and assess the credibility of the witnesses.” *Gupta v. State*,

⁵ We are unpersuaded by the State’s preservation argument relating to this charge. Virts clearly argued to the trial court, as he does on appeal, that acquittal was warranted because the State had presented “no photographs, no video, no physical evidence that any of this occurred. No physical evidence that any of this existed.” That was enough.

⁶ Virts makes no argument, nor could he, that throwing urine at a person does not meet the definition of assault, *i.e.*, “causing offensive physical contact with another person.” *Nicolas v. State*, 426 Md. 385, 403 (2012). It does.

227 Md. App. 718, 746 (2016) (citations omitted). In doing so, the jury is free to “accept all, some, or none” of a witness’s testimony. *Correll v. State*, 215 Md. App. 483, 502 (2013). If the jury believed Carman’s testimony, the evidence was legally sufficient to support the conviction of second-degree assault upon a Division of Corrections officer, even in the absence of physical evidence.

**JUDGMENTS OF THE CIRCUIT COURT
FOR SOMERSET COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**