Circuit Court for Baltimore City
Case No. 114324035

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 921

September Term, 2016

MARQUIS CURTIS

v.

STATE OF MARYLAND

Leahy,
Reed,
Shaw Geter,
JJ.

Opinion by Shaw Geter, J.

Filed: December 13, 2017

By indictment filed in the Circuit Court for Baltimore City on November 20, 2014, Marquis Curtis, appellant, was charged with first-degree murder, robbery with a deadly weapon, and related offenses. Following a jury trial, appellant was convicted of conspiracy to commit robbery with a dangerous weapon and conspiracy to commit first-degree burglary, and acquitted of all other charges. The court sentenced appellant to eighteen years imprisonment for conspiracy to commit robbery with a dangerous weapon, and the conviction for conspiracy to commit first-degree burglary merged for sentencing purposes. On appeal, appellant presents two questions for our review, which we have rephrased slightly:

1. Did the trial court err by admitting irrelevant excerpts of appellant's jail telephone calls?

2. Did the trial court abuse its discretion by refusing to order a pre-sentence investigation report?

For reasons to be discussed, we affirm the judgments of the circuit court.

BACKGROUND

In the early afternoon on October 5, 2014, Amber Murphy was awakened by two masked male intruders inside the apartment she shared with her fiancé, Jaleesa Brooks. The men were demanding money, drugs, and anything of value while pointing a gun at her three year-old daughter and an adult female friend. Ms. Murphy testified that there was nearly $50,000 in cash hidden in their apartment at 5001 Raintree Way in Baltimore City because Ms. Brooks sold drugs. At the time the break-in occurred, Ms. Brooks was asleep in the bedroom belonging to Ms. Murphy's daughter. After initially denying the presence of money in the house, Ms. Murphy led the men to her bedroom, where they

grabbed money, jewelry, clothes, and a gun and placed the stolen items in a Ferragamo bag and pillow cases they took from the bedroom. Among the items taken was a pair of blue and black suede Giuseppe Zanotti sneakers belonging to Ms. Brooks. The men left Ms. Murphy, her daughter, and her best friend in her bedroom and closed the door, and a few seconds later, Ms. Murphy heard a single gunshot. After barricading her daughter in a closet to protect her, Ms. Murphy triggered the alarm button in her bedroom, then left her room to help Ms. Brooks, who had called for help.

The apartment door was ajar when Officer Andrew Brown of the Baltimore City police department arrived, and as he entered, he first encountered Ms. Murphy, who pointed to Ms. Brooks lying face down on the floor. Officer Brown approached Ms. Brooks and, along with building security, rolled her over, at which point he observed a single gunshot wound to her left upper chest area. Officer Brown felt a "slight pulse" and initiated CPR, which was continued by paramedics when they arrived. Ms. Brooks was transported to Johns Hopkins Bayview Medical Center, where she was pronounced dead at 2:36 p.m. An autopsy revealed that the cause of death was a single gunshot wound to the upper left side of her chest, and the Office of the Chief Medical Examiner declared Ms. Brooks' death a homicide.

Detective Robert Ross, the lead detective assigned from the homicide unit, interviewed Ms. Murphy during the course of the investigation, and she reported that a man had visited the apartment the night before the robbery and that Ms. Brooks had shown him the money that was hidden there. This information led to Darius Baker being developed as a suspect in the case.

According to Mr. Baker, he had been close friends with Ms. Brooks for approximately six years, and spent October 4, 2014, the night before the robbery, playing cards and drinking at her residence. At some point during this visit, Baker and Brooks were in her bedroom, where she showed him a rubber band full of money that he estimated to be about $5,000. When Baker left the apartment on the morning of October 5th, he visited his cousin Tai, and told him that he knew where they could get some money. Baker's cousin said that he knew "somebody that do that," and arranged a meeting between himself, Baker, appellant, and two other men. Baker testified that he met appellant for the first time on October 5th, and that appellant was accompanied by an individual known as Little Tray, whom he had previously "been around … a couple times."[1]

Baker told appellant, Little Tray, and the third man Ms. Brooks' address, and in exchange, he expected to receive "a couple hundred" dollars for his role in the robbery. According to Baker, the plan the men discussed was for appellant and the other men to enter Ms. Brooks' apartment, demand the money, and leave. According to Baker, no one was supposed to be hurt during the robbery. Appellant left with the two men, and when they returned an hour later, shortly before noon, they told Baker that there was no money in the apartment. Baker testified that he did not observe any property stolen during the robbery in appellant's possession when the men returned. At this time, Little Tray told

[1] Little Tray had yet to be identified or apprehended at the time of appellant's trial, and is referenced throughout the record as "Little Tray" or "Little Trey," as well as the alias "Little Black."

Baker that "somebody" in the apartment was behaving in a "wild" manner, and that appellant had shot her. Baker was later interviewed by Detective Ross, at which time he identified appellant, from a photo array, as the gunman.

The information gathered from Baker caused Detective Ross to shift his investigation to locating an individual named Albert Johnson.[2] Detective Ross also learned that Ms. Brooks' Giuseppe Zanotti shoes had been located at a Baltimore City consignment store named B'more Betty's. Officers from the homicide investigation squad went to B'more Betty's in an effort to locate the shoes, and while there, observed surveillance footage filmed inside the store on October 5, 2014. Detective Ross reviewed the camera footage and was able to identify appellant and Johnson. The video showed appellant entering the store at approximately 3:50 p.m. on the afternoon that Ms. Brooks was robbed and killed, accompanied by a man believed to be Little Tray, who was carrying a dust bag with the stolen shoes inside. Hillary Tates, a B'more Betty employee, testified that the two men attempted to sell the shoes, but that she was unable to complete the sale because neither man was able to provide a photo ID in accordance with store policy. Appellant left the store with Little Tray at 3:59 p.m., and at 5:22 p.m., Little Tray returned to B'more Betty carrying the shoes and accompanied by Johnson, who provided identification and sold the shoes for $200. Johnson testified that appellant was the person who gave him the shoes and asked him to pawn them for him. Johnson received $20 in exchange for selling the shoes.

[2] Albert Johnson is referenced in the record as using the nicknames "Wink" and "Yo."

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Admission of Jail Telephone Recordings

Appellant argues that the trial court erred by admitting two excerpts from the telephone calls he made from jail, in which he discussed the State's evidence against him, because the recordings were irrelevant, and therefore, inadmissible. The State counters that appellant did not preserve this challenge for appellate review because he failed to renew his objection to the admission of the recordings when they were introduced at trial. Moreover, even if appellant's objection was not waived, the State contends that the excerpts from his telephone conversations were relevant because they implicated appellant in the robbery that resulted in Brooks' death.

The State's theory of the case at trial was that appellant and Little Tray were the masked intruders who forced their way into Brooks' home, took cash and designer clothing from the occupants at gunpoint, and shot Brooks during the course of the robbery. The defense filed a motion *in limine* to preclude introduction of three excerpts from appellant's jail telephone calls, which the court heard on March 25, 2016. The State sought to introduce excerpts from appellant's November 1, 2014 telephone call where appellant said that he did not have Brooks' shoes in his hands in the surveillance footage from B'More Betty, as well as an excerpt from a November 2, 2014 telephone call where appellant said that he encountered Johnson, whom he referred to as Yo, during a

bathroom break at the police station. The State argued that the recordings established that appellant was, in fact, the person in the surveillance footage from the consignment store with Little Tray attempting to sell Brooks' stolen shoes hours after she was killed, and also to establish a link between appellant and Johnson, the person who, also accompanied by Little Tray, ultimately sold the shoes to B'more Betty one and a half hours later. The trial court denied the defense motion *in limine* in part, and at trial, the State introduced the two excerpts from the calls.

A.

Preservation

The State moved the excerpts from appellant's telephone calls into evidence on the second day of trial, along with a stipulation that "the audio recordings…are excerpts from phone calls between Defendant and an unidentified person; the first one on November 1st, 2014, the second one on November 2nd, 2014." As the State introduced the recordings into evidence, the following colloquy occurred:

THE COURT: Any objection?

[DEFENSE]: No objection, Your Honor.

THE COURT: All right. So admitted.

Maryland Rule 4-323(a) provides that "[a]n 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." Moreover, "when a motion *in limine* to exclude evidence is denied, the issue of the admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a

contemporaneous objection is made at the time the evidence is later introduced at trial." *Klauenberg v. State*, 355 Md. 528, 539 (1999) (citing *Reed v. State*, 353 Md. 628, 638 (1999)).

Because appellant failed to object to the admission of the telephone call excerpts when they were introduced, his objection to the evidence is waived.

B.

The Merits

We conclude that even if we reached the merits of appellant's challenge, his objection to the admission of the evidence on relevance grounds is without merit.

Maryland Rule 5-401 defines "relevant evidence" as evidence having "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." "It is frequently stated that the 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,' and that the 'abuse of discretion' standard of review is applicable to 'the trial court's determination of relevancy.'" *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619 (2011). Relevant evidence is generally admissible, however, "trial judges do not have discretion to admit irrelevant evidence." *State v. Simms*, 420 Md. 705, 724 (2011); *See* Md. Rule 5-402. Whether evidence is relevant is a legal question, which we review de novo. *Simms,* 420 Md. at 725.

The trial court, in denying in part the motion to exclude appellant's recorded telephone conversations, ruled as follows:

> All right. As to the first call on November the 1st, 2014, at 5:05 to 6:08, the – of course as you know, [defense counsel], these are statements by a party opponent, therefore, they are an exception to the hearsay rule and they come into evidence. I will allow that one to come in because it's an admission by the defendant that he was in the store. It corroborates the evidence if anything that he was in that store, although I understand I haven't seen it, that the video clearly shows he's in there. But he himself admits that he's in there. So I will allow that.
>
> And I believe in that particular video [sic], there is some mention of Trey. I thought it said, now you correct me, I thought he was saying, Trey said wait to call you or something like that, speaking to his female.
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> ***
>
> As to the third call…
>
> The only relevant part I would see to that is the link to Mr. Johnson in that call. The other I just find him to be going over the discovery, you know, being ridiculous of course, but I don't think a person can be – the jury cannot convict him because he's laughing… But I do think if there's going to be testimony that when he was at the station, Mr. Johnson was there and he saw them, that's the link. So I'll only allow that portion of that tape.

Appellant asserts in particular that his "link" to Johnson was already established, and that evidence that they knew one another did not tend to establish his guilt. We find appellant's argument unpersuasive. To begin with, the first recording contains an admission from appellant that he was in B'more Betty on the same day that Brooks was killed in a home invasion by masked intruders who took her distinctive pair of designer shoes. The State had presented testimony from Darius Baker that he had conspired with appellant and Little Tray to rob Brooks at gunpoint, as well as testimony from Brooks' fiancé that the shoes were among the items taken during the robbery. Surveillance video from the store showed what appeared to be appellant entering and leaving the store a few hours after the robbery, accompanied by an individual who was carrying the shoes and attempting to sell them. The evidence supported the State's suggested inference that

appellant and Little Tray were the individuals who committed the robbery. The second recording is similarly probative to establish a link between appellant and Johnson, who successfully sold the shoes and testified that appellant was the person who gave him the shoes and asked him to pawn them. We conclude that the evidence had some relevance to the State's theory of the case, and that the trial court did not abuse its discretion in admitting the excerpts of the appellant's telephone calls.

II.

Appellant contends that the circuit court abused its discretion by refusing to order a presentence investigation report (PSI), which he argues was based upon a "hard-and-fast" rule relative to misdemeanor convictions. According to Section 6-112(b)(1) of the Correctional Services Article ("CS"), a presentence investigation report may be ordered by the circuit court, prior to sentencing a defendant convicted of a felony or misdemeanor that resulted in serious physical injury or death to the victim, "[i]f a circuit court is satisfied that a presentence investigation report would help the sentencing process." (Emphasis supplied).

Here, after the jury verdict was read, as the parties were scheduling appellant's sentencing hearing, the following exchange occurred:

> THE COURT: Can you do it on April 7th?
>
> [STATE]: April 7th?
>
> THE COURT: Yes. Is that too soon for you, [defense counsel]? Could you do it—
>
> [STATE]: Your Honor, I'm going to be – I'm starting trial Tuesday.

THE COURT: Okay, well –

[DEFENSE]: I'm going to request a – be requesting a PSI.

THE COURT: You want a later date? PSI?

[DEFENSE]: Yes.

THE COURT: On misdemeanors? No.

[DEFENSE]: Okay.

The State asserts that appellant's claim of error is not preserved for review because he did not clearly request a PSI, and then failed to object to the court's decision not to order a PSI. We disagree with the State's assertion that appellant did not request a PSI. The record reflects that appellant clearly sought a presentence investigation, and the trial court ruled on the request. We are inclined to agree, however, that appellant failed to preserve his challenge by conceding to the trial court's ruling. In instances where an appellant responds "okay" or otherwise acquiesces to the ruling of the trial court, his objection is waived on appeal. *Banks v. State*, 213 Md. App. 195, 203 (2013); *see also Green v. State*, 127 Md. App. 758, 769 (1999) ("[W]hen a party acquiesces in the court's ruling, there is no basis to appeal from that ruling.").

Moreover, we conclude that were we to reach the merits of appellant's challenge, his claim would fail because he did not meet his burden as the requesting party to show that a PSI should be ordered. CS section 6-112(b)(2) provides that "[t]he party that requests the report has the burden of establishing that the investigation should be ordered." The decision by the circuit court to order a PSI is discretionary, and the requesting party, the appellant in this case, has the burden of showing the need for the

investigation and report. *Somers v. State,* 156 Md. App. 279, 318 (2004); *see also* Md. Rule 4-341 ("Before imposing a sentence, the court in accordance with Code, Correctional Services Article § 6-112(c) and Code, Criminal Procedure Article, § 11-727 shall, and in other cases may, order a presentence investigation and report.").

Our decisions in *Somers*, *supra*, and *Armstead v. State*, 195 Md. App. 599 (2010), are instructive in this matter. In *Somers*, we held that there was nothing in the record that suggested that the trial court acted in a rote fashion where the defendant requested a presentence investigation and the trial court summarily denied the request. *Somers*, 156 Md. App. at 319. We noted that the defendant requested a presentence investigation, but did not attempt to give a reason why the PSI was needed, and therefore, he failed to meet his burden of showing the need for the report. *Id.* at 319-20. In *Armstead*, on the other hand, although we ultimately held that the error was harmless, we concluded that the trial court abused its discretion where the defendant's request for a presentence investigation was denied and the trial court stated that it "never" ordered a PSI unless it was mandatory. *Armstead*, 195 Md. App. at 611-12.

Here, the statements made by the trial court do not indicate that the denial of appellant's request for a presentence report was made based on any rule, or without consideration to the facts in his case. Instead, appellant made a generalized request for a presentence investigation without attempting to offer a reason why the report should be ordered. These facts do not reflect an abuse of discretion on the part of the trial court.

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