UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1063

September Term, 2016

KAELIN JERMAINE MILLER

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: August 1, 2017

A jury sitting in the Circuit Court for Prince George's County convicted appellant, Kaelin Jermaine Miller, of first-degree assault. On appeal, appellant claims error in the prosecutor's objection to a question posed to him by defense counsel during his direct-examination. We affirm.

Appellant and his co-defendant, Chris Smith, encountered two men outside a 7-11 store in the early morning hours of January 26, 2014, that ended in the brutal beating by appellant of one of the men. The incident was recorded by the store's surveillance camera.

Appellant testified at trial that during the incident, he was afraid that the victims were going to rob Smith and him, and that as a result of that belief, he had gotten physical with the victim. During the direct-examination of appellant, defense counsel asked the following question:

> Had you ever in your life, have you ever been approached by individuals and get [sic] the sense that you are being robbed?

The court sustained the State's objection to this question. Defense counsel then asked a different question without proffering what he believed appellant's answer to the first question would have been and its relevance.

On appeal, appellant argues that "whether [he] believed he was being robbed, and the reasonableness of that belief, were facts of immeasurable consequence to his criminal liability." He maintains that his "state of mind, based on his past experience with robbery, directly informed the reasonableness of his belief" that he and Smith were being robbed.

As an initial matter, because defense counsel never proffered what the answer to the subject question would have been, this issue is not preserved for our review. "The question

of whether the exclusion of evidence is erroneous and constitutes prejudicial error is not properly preserved for appellate review unless there has been a formal proffer of what the contents and relevance of the excluded testimony would have been." *Mack v. State*, 300 Md. 583, 603 (1984).

Nevertheless, even had this issue been preserved for appellate review, we would not hold that the court's ruling was in error. 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." Relevant evidence is generally admissible. *Decker v. State*, 408 Md. 631, 640 (2009).

Appellant argues that his "state of mind, based on his past experience with robbery, directly informed the reasonableness of his belief" that he was being robbed. He argues that defense counsel's question was "aimed to communicate to the jury whether [he] had been traumatized before; and, whether that trauma primed him to react to his present situation." Defense counsel's question however, was not whether appellant had been robbed or traumatized previously, but rather whether he had ever gotten the "sense" that he was being robbed. The question was vague, and even had appellant's answer been yes, the jury would not have learned whether appellant had actually been robbed previously, and therefore would not have been able to judge the "reasonableness of his belief that [the victims] were robbing him." Consequently, the question was not relevant.

Finally, even had the trial court's exclusion of appellant's testimony been in error, such error was harmless. We determine an error to be harmless where "'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.'" *Bellamy v. State*, 403 Md. 308, 332-33 (2008) (quoting *Dorsey v. State*, 276 Md. 638, 678 (1976)).

The jury was instructed on self-defense – "complete" and "partial" self-defense of oneself, as well as of another person. Appellant argues that had he been able to answer the question presented, the jury could have gained insight into his "state of mind," and "could have found a successful perfect self-defense or defense of others theory applicable to the case."[1] The jury heard significant testimony from appellant, however, that he was fearful because he believed he was being robbed, and therefore there is no reasonable possibility that the exclusion of testimony, regarding whether he had ever previously "sensed" he was being robbed, contributed to the verdict.

For instance, appellant testified that he heard Smith say that they were being robbed. He also testified that, although he did not remember what was said by the victims prior to the assault, he remembered that it was aggressive. He further testified that he saw one of the victims pat Smith's pocket, and he did not feel that it was safe to turn his back and walk away. Additionally, he testified that he did not know if either of the victims had weapons, and that during the assault he remained fearful that one of the victims would enter their vehicle, which was parked nearby, to retrieve a weapon. In short, he testified a number of times that he believed that he and Smith were being robbed by the victims.

[1] "Maryland recognizes two varieties of self-defense – the traditional one, which we have sometimes termed 'perfect' or 'complete' self-defense, and a lesser form, sometimes called 'imperfect' or 'partial' self-defense." *State v. Marr,* 362 Md. 467, 472 (2001).

Finally, we note that the jury viewed the surveillance video of the assault multiple times, and were able to observe the circumstances under which appellant testified that he felt he was being robbed. In light of appellant's extensive testimony regarding his belief that he was being robbed, and the basis for that belief, any error in excluding testimony that he had previously "sensed" that he was being robbed was harmless.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.