Circuit Court for Baltimore City
Case No. 115287016

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2337

September Term, 2016

DELONTE LANG

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 7, 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.

A jury in the Circuit Court for Baltimore City convicted Delonte Lang, appellant, of attempted second-degree murder, first-degree assault, second-degree assault, reckless endangerment, use of a firearm in a crime of violence, wearing or carrying a handgun, possession of a firearm by a prohibited person, and discharging a firearm within city limits. The court merged the assault and reckless endangerment convictions into attempted murder and sentenced appellant to a prison term of thirty years, with fifteen suspended, to be followed by a five-year period of probation, and merged the firearm convictions into use of a firearm in a crime of violence, imposing a concurrent fifteen-year sentence. Appellant noted this appeal, contending that the court erred in admitting evidence of his post-arrest silence and also erred in limiting cross-examination of a witness. For the reasons stated below, we find no error and affirm.

On the evening of July 10, 2015, Marissa Thorne was sitting on the porch of 2021 Ridgehill Avenue in Baltimore, conversing with friends. She testified that a car double-parked in front of a nearby residence, while the driver went inside. Another vehicle stopped behind the double-parked car, and the driver started honking the horn. Thorne stated that a bystander said "smart curse words" to the woman driving the blocked vehicle, before the driver of the double-parked car returned and moved. The previously-blocked car turned the corner and stopped. The driver of that vehicle walked back toward the man who cursed at her, and they argued. More people gathered, including Dana Burton, appellant, and Coley Keith, and a fight ensued.

Keith testified that appellant approached him, brandishing two handguns – Keith thought one was a .38 pistol and the other a 9 mm handgun. Keith backed away, but Burton

pursued him and tried to punch him. Keith punched Burton, knocking him down. Keith testified that as soon as Burton fell, either appellant gave Burton a gun, and he started shooting, or appellant started shooting. In any event, Keith sustained six gunshot wounds – one to the face, two to the left arm, and three to the back. He was transported to the hospital.

At the hospital, Keith identified Burton in a photo array as the shooter. At trial, Keith explained that he learned from people in the neighborhood that "Little Tay" was the shooter, and he later identified appellant in a photo array as the shooter. Thorne also identified appellant in a photo array and stated that she saw appellant grab a gun. Police recovered two surveillance videos from the scene, which were played for the jury at trial. The jury convicted appellant as indicated above.

Appellant first contends on appeal that Baltimore City Police Department Detective Theodore Sebekos informed jurors that appellant had invoked his right to silence, which is impermissible. *See Coleman v. State*, 434 Md. 320, 343 & n.6 (2013) (noting that evidence of a defendant's post-arrest silence is, generally, inadmissible). Detective Sebekos, however, did not testify as to appellant's silence or even imply that appellant had invoked his right to remain silent. Instead, on direct examination, the following occurred:

> [PROSECUTOR]: Did you ever speak to Mr. Lang?
>
> [DETECTIVE SEBEKOS]: Yes.
>
> [Q]: I'm sorry. Did you ever speak to Mr. Lang?
>
> [A]: Mr. Lang, yes.

At that point, the State claimed that she could ask Detective Sebekos further questions about what appellant did or did not say, but defense counsel objected, and the circuit court ruled: "That's as far as it can go. The objection is sustained."

Appellant argues that Detective Sebekos testified as to appellant's silence or implied that appellant had invoked his right to remain silent. We disagree. Detective Sebekos only testified that he spoke with appellant at the time of his arrest. Detective Sebekos did not testify or imply that appellant refused to speak to him. Additionally, the court sustained appellant's objection to the State's request to question the detective further as to what appellant said, and defense counsel did not request any further relief. *See Imes v. State*, 158 Md. App. 176, 185 (2004) (holding that where the trial court sustained the objection and granted the relief requested, there was no error).

Appellant next contends that the court erred in limiting defense counsel's cross-examination of Thorne. During cross-examination, Thorne stated that she had a "background" in drug trafficking and "did some time." Defense counsel then questioned her about her previous convictions, and the following ensued:

> [DEFENSE COUNSEL]: So do you have convictions for the following types of crimes, thefts, robbery, felony drugs, things of that nature?
>
> [THORNE]: Felony drugs.
>
> [Q]: How many convictions for felony drugs?
>
> [A]: I couldn't tell you.
>
> [Q]: More than five?
>
> [A]: Yeah.

[Q]: More than ten?

[A]: Yeah.

[Q]: So should I keep going? I mean, more than 15?

[A]: Yeah.

At that point, the court sustained the prosecutor's objection. Defense counsel moved on to another line of inquiry.

On appeal, appellant contends that the court improperly limited his cross-examination of Thorne. Specifically, appellant maintains that the court should have given defense counsel time to research Thorne's background to ascertain the nature and number of her convictions in order to impeach her pursuant to Rule 5-609.[1] Furthermore, appellant contends that he should have been able to continue questioning Thorne to determine how many felony drug convictions she had.

We give "'great deference'" to a court's discretion in considering Rule 5-609 impeachment evidence. *Cure v. State*, 195 Md. App. 557, 576 (2010) (quoting *Jackson v. State*, 340 Md. 705, 719 (1995)), *aff'd*, 421 Md. 300 (2011). *See also Myer v. State*, 403 Md. 463, 475-76 (2008) (noting that the court has discretion in controlling the interrogation of witnesses and cross-examination). We do not perceive an abuse of discretion in this

[1] Rule 5-609(a) provides: "For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness," if the crime was "infamous" or "relevant to the witness's credibility and" "the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party."

instance. Although appellant questions the State's compliance with Rule 4-262(d)(1) in his brief, defense counsel failed to raise this issue at trial.[2] *See Givens v. State*, 449 Md. 433, 473 (2016) (noting that "one of the purposes of the requirement that a defendant preserve issues for review is to give a trial court the opportunity to correct any error in the proceedings"). As to defense counsel's request to be given an opportunity to research Thorne's records, we perceive no abuse of discretion. In denying defense counsel's request, the court stated: "We're in the here and now." Defense counsel did not raise the subject again. *See Smith v. State*, 196 Md. App. 494, 562 (2010) (holding that a defendant can acquiesce to a court's ruling and waive review), *rev'd on other grounds*, 423 Md. 573 (2011). The court permitted defense counsel to question Thorne as to her convictions for drug trafficking, and Thorne admitted that she had more than ten convictions. We also do not perceive an abuse of discretion in restricting defense counsel from continuing to inquire as to the exact number of drug convictions Thorne had. Whether Thorne had twenty drug convictions or ten is a distinction without a difference. Appellant maintains that a witness with twenty convictions has been "impeached more" than one with ten. It is not a matter of quantity, however. The jury had that information to be able to properly weigh Thorne's credibility, and we perceive no abuse of discretion in the court's ruling.

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

[2] Rule 4-262(d)(1) mandates, in part, that the State turn over to the defense, without the necessity of a request, "all material or information in any form, whether or not admissible, that tends to impeach a State's witness."