Circuit Court for Prince George's County
Case No. CT15-0477A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2379

September Term, 2016

STEWART JOSHUA GONZALEZ

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: December 11, 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 Prince George's County convicted Stewart Joshua Gonzalez, appellant, of second-degree assault.[1] The court sentenced appellant to a prison term of ten years, with all but thirty months suspended, to be followed by a period of supervised probation of three years. Appellant noted this appeal, challenging two of the court's evidentiary rulings at trial. For the reasons stated below, we affirm.

At approximately 4:00 A.M. on February 17, 2015, 17-year-old Francisco Rivera received a phone call from a man he knew as "Sergio."[2] After "accept[ing] the proposal that [Sergio] had made," Rivera went outside his Riverdale home to meet Sergio and appellant.[3] Appellant was sitting in the driver's seat of a parked truck, and Sergio was standing next to the driver's door. Rivera testified that Sergio invited him to get into the truck, and, when he declined, Sergio grabbed him and attempted to force him to get into the vehicle. Appellant got out and assisted Sergio in this endeavor. Sergio and appellant started punching Rivera about the face and body. Then, appellant grabbed Rivera around the neck and forced him into the truck.

Once inside the vehicle, Sergio proceeded to punch and slap Rivera in the face and ribs. Appellant got into the driver's seat and proceeded to drive. Rivera stated that at one

[1] In his brief, appellant states that his name has been misspelled throughout the prosecution and is actually spelled "Stuart Josue Gonzalez." We note, however, that throughout the record, including in the indictment, his name is spelled "Stewart Joshua Gonzalez."

[2] The record does not indicate Sergio's surname.

[3] At trial, Rivera testified that there was a "ton" of snow on the ground, but he had dressed as if he was going to be outside for only a short time, in shoes, pants, a shirt, and a jacket.

point, appellant turned and grabbed him and asked, "You know what you told me over the phone, do you want to tell me now?" Rivera testified that appellant was referring to a picture of Rivera's penis that he had sent to appellant's girlfriend. When Rivera did not say anything, appellant asked Rivera again and then headbutted him before turning back to driving. Rivera testified that he slipped into unconsciousness briefly. Approximately five or ten minutes later, after "driving all around Bladensburg," appellant stopped the car. He turned to Rivera and said, "Get out, you jerk, and if you're going to complain to anyone, to the police, I'm going to kill you." Then, Sergio kicked Rivera out of the truck, and the vehicle drove away.

Rivera ran from the truck and hid until around 6:00 A.M. when he went home. Rivera testified that he slept for ten hours and then went to the Alamo Restaurant, where he worked part-time, upon waking. Staff at the restaurant convinced Rivera to call police and report the attack. Police later arrested appellant.

Prior to trial, the State made a motion *in limine* to exclude a picture of Rivera, which was taken from his Facebook page, making what appellant proffered to be a gang sign indicating membership in the MS-13 gang. The court reserved on ruling on the admissibility of the picture.

During the direct examination of Riverdale Police Department Sergeant German Garcia, the State inquired as to Sergeant Garcia's dealings and experience with the MS-13 gang. Sergeant Garcia then testified that Rivera is not a member of MS-13, nor was he involved with or associated with that gang. On cross-examination, defense counsel asked permission of the court to show Sergeant Garcia the picture of Rivera and ask if he

recognized a gang sign. The prosecutor objected, contending that Sergeant Garcia had not been designated as an expert on the MS-13 gang and also that permitting the use of the picture constituted a discovery violation. The court sustained the objection, ruling that appellant had violated Rule 4-263. The court, however, noted that its ruling was limited to "this line of questioning."

On appeal, appellant contends that the court erred in restricting his ability to cross-examine both Sergeant Garcia and Rivera. Appellant argues that the State "opened the door" to Rivera's membership in MS-13 by questioning Sergeant Garcia extensively about his dealings with the gang. Appellant posits that permitting Sergeant Garcia to answer the question about the picture would have impeached Rivera's credibility, which was central to the State's case. As such, appellant maintains, the error was not harmless.

Rule 4-263(e) governs defense counsel's discovery obligations in a criminal case. Relevant to this case, the rule provides, in part, that the defense must provide to the State the "opportunity to inspect, copy, and photograph any documents, computer-generated evidence . . ., recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial." Rule 4-263(e)(7). Rule 4-263(n) provides that a court may sanction a party for a failure to provide discovery as mandated in the rule, which sanctions could include "prohibit[ing] the party from introducing in evidence the matter not disclosed[.]" We review a court's decision as to a discovery sanction for an abuse of discretion. *See Howard v. State*, 440 Md. 427, 444 (2014). A court abuses its discretion where the ruling "'is well removed from any center mark imagined by the reviewing court

and beyond the fringe of what that court deems minimally acceptable.'" *Smith v. State*, 232 Md. App. 583, 599 (2017) (quoting *Norwood v. State*, 222 Md. App. 620, 643 (2015)).

We do not perceive an abuse of discretion in this case. Defense counsel admitted that he first showed the prosecutor the picture on the morning of trial. Rule 4-263(h)(2) provides that "the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date," with an exception inapplicable to this case. Accordingly, the trial court acted within its authority in prohibiting defense counsel from using the picture.

Appellant also contends that the court erred in permitting Rivera to testify that he witnessed appellant and Sergio share and inhale some substance, which Rivera believed was a powder. Appellant argues that this testimony was irrelevant, overly prejudicial, and inadmissible as "other crimes" evidence pursuant to Rule 5-404(b).[4]

At trial, defense counsel's only basis for the objection to this evidence, however, was its relevancy. Accordingly, appellant's arguments as to the prejudicial effect of the evidence and its admissibility pursuant to Rule 5-404(b) have not been preserved. *See Addison v. State*, 188 Md. App. 165, 176 (2009) (holding that "when grounds [of an objection] are articulated, appellate review 'is limited to the ground assigned'" (quoting *Colvin-el v. State*, 332 Md. 144, 169 (1993))).

[4] Rule 5-404(b) provides: "Evidence of other crimes, wrongs, or acts including delinquent acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith." The rule goes on to list exceptions to the general rule. *See* Rule 5-404(b).

Turning to the question of relevancy of this evidence, 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." We review a court's determination as to the relevancy of evidence *de novo* as a question of law. *See Wash. Metro. Area Transit Auth. v. Washington*, 210 Md. App. 439, 451 (2013).

Appellant maintains that this testimony was irrelevant because he was not charged with any drug offenses. Indeed, appellant had not been charged with a drug offense, but he was charged with conspiracy to kidnap. We conclude that the evidence that Sergio and appellant shared in the act of inhaling a substance was relevant to the jury's consideration of whether appellant was acting in concert with Sergio to accomplish the goal of the conspiracy. As such, the court did not err in admitting this testimony.

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