UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2709

September Term, 2015

WILLIAM AARON TEAT

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: June 21, 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.

After a jury trial in the Circuit Court for Anne Arundel County, William Aaron Teat, appellant, was convicted of four counts of second-degree assault and four counts of reckless endangerment. For the second-degree assault convictions, the court imposed four concurrent sentences of ten years' imprisonment. The convictions for reckless endangerment were merged for sentencing purposes. This timely appeal followed.

QUESTIONS PRESENTED

Teat presents the following questions for our consideration:

I. Did the trial court err in failing to poll the jury, as requested?

II. Was it error to instruct the jury that the fact that Teat once shot the same firearm into the air, eight months earlier, was evidence of his "intent," in this shooting?

For the reasons that follow, we shall affirm.

FACTUAL BACKGROUND

At trial, evidence was admitted concerning two separate shootings that occurred at or near the Timothy House apartment building in Annapolis. Evidence pertaining to the first shooting established that on June 4, 2014, at about 10:17 p.m., Annapolis police officers responded to a report for gunshots in the area of Clay and Pleasant Streets. The following day, seven spent shell casings were recovered on Pleasant Street behind the Timothy House apartments. As a result of that incident, Teat was convicted of various firearms offenses. In an unreported, *per curiam* opinion, we affirmed Teat's convictions in that case. *See Teat v. State*, Ct. of Spec. Appeals, No. 2016, Sept. Term 2015 (filed *per curiam* on July 22, 2016).

The second shooting occurred on February 5, 2015. On that date, at about 1:13 a.m., Annapolis Police Officer Andrew Koldeway was in the area of Clay Street and West Washington Street when he heard gunshots behind Timothy House. He requested additional units and responded to the Timothy House apartment building. Once at that location, Officer Koldeway and other officers observed glass in the roadway in front of the apartment building. They also recovered a bullet and bullet fragment from the street in front of the apartment building and five gold nine-millimeter Ruger shell casings from outside the front entrance to the building. Officer Koldeway entered the apartment building to see if anyone or anything had been hit. Shortly thereafter, he was advised via police radio that a gunshot victim had been dropped off at the Anne Arundel County Medical Center. When Officer Koldeway arrived at the medical center, he was advised that the victim was being transported to Shock Trauma.

At about 1:20 a.m. on the day of the shooting, Kevin Collins, a security officer at the Anne Arundel Medical Center, was called to respond to the emergency room because a gunshot victim had arrived in a silver Ford, the back window of which was shattered and appeared to have bullet holes in it. Collins obtained the license plate number of the Ford and relayed that information to a 911 operator. The Ford left the hospital immediately after dropping off the gunshot victim, who was later identified as Tony Hicks. Police officers eventually recovered the Ford and took it to an evidence bay at the police station where it was photographed and searched.

At the hospital, Dr. Samuel Long treated Hicks who suffered a single gunshot wound to "the right flank area." According to Dr. Long, the entry wound from the bullet was just below Hick's armpit, and the bullet lodged in Hicks's chest wall.

Hicks testified that on the day of the shooting, he got a ride to the Timothy House apartment building with three people, "Harvey," "D.C.," and "Skinner," whose real names he did not know. He went there for the purpose of returning some clothing he had borrowed from a resident of the apartment building. The person he went to see was not at home, so Hicks left the clothing with a neighbor. At some point while he was on the fifth floor of the apartment building, Hicks thought he heard Teat's voice, but did not see him. Eventually, Hicks returned to the three men he had arrived with and they all got back into the car to leave. As they drove off, Hicks, who was in the back passenger-side seat, heard gunshots. Bullets started hitting the car and Hicks was shot.

Hicks had been friends with Teat, whom he called "AJ," since they were children and considered him "like family." Hicks did not see "D.C.," "Skinner," or "Harvey" with Teat while they were at the apartment building and did not know if anything happened between them. Teat's grandmother, who lives in the Timothy House apartment building, acknowledged that Teat periodically stayed on her couch and had a key to her apartment.

Annapolis Police Detective Thomas Pyles conducted several interviews of Teat. Initially, Teat told Detective Pyles that at the time of the shooting, he was with his girlfriend, although he did not provide her address or telephone number. In a subsequent interview, Teat admitted that he was in the lobby of the Timothy House apartment building just prior to the shooting. He claimed that he was there to get two cans of ginger ale for his

grandmother. According to Detective Pyles, Teat gave several versions of where he was when he heard the gunshots.

Expert analysis of the seven spent shell casings found in the street after the June 2014 shooting and the five shell casings recovered after the February 2015 incident, showed that all of the casings were fired from the same firearm. That firearm was never found. During the course of the underlying trial for the 2015 shooting, the jury was presented with "other crimes" evidence, including a video recording of the June 2014 shooting and testimony from the lead detective and other police officers who worked on that case.

DISCUSSION

I.

Teat first contends that the trial court erred in failing to poll the jury, as requested. We disagree and explain.

During the course of deliberations, the jurors sent several notes to the judge, some of which indicated that they could not reach a unanimous decision. In one of those notes, the jury advised the court, "[w]e're deadlocked!" Shortly thereafter, the jury sent the judge another note advising the court to "[c]ancel deadlock note number ten." The jurors then took a break for lunch. After the lunch break, defense counsel advised the judge that she would "be asking polling of the jury, if it's appropriate." The judge replied, "[s]ure." Moments later, the jury returned its verdict.

After the jury announced its verdict acquitting Teat on all but four counts of second-degree assault and four counts of reckless endangerment, the following colloquy occurred:

THE COURT:	Thank you very much. If you would hand that to the bailiff, please. And you can have a seat. Would you like to have the jury polled, either of you?
[PROSECUTOR]:	No, Your Honor.
[DEFENSE COUNSEL]:	Yes, Your Honor.
THE COURT:	All right. Could you inquire for the verdict, please?
COURT CLERK:	Ladies and gentlemen of the jury, you have heard the verdict as the Court has recorded it. Your foreperson says you find the defendant, William Teat, Jr., guilty, attempted first degree murder –
THE COURT:	No, no, no.
COURT CLERK:	Or, excuse me. I'm sorry. I'm sorry.

The Court Clerk then recited the verdict as to all counts and asked the jurors, "[d]o you all agree on that verdict?" The jurors responded, in unison, "[y]es." Thereafter, the trial judge thanked the jurors for their service and released them.

Teat argues that he had an absolute right to a poll of individual jurors, that the trial court was required to comply with defense counsel's request for a poll, and that simply hearkening the jury was not sufficient to satisfy the request for a poll because the question of agreement with the verdict was not put to each juror individually.[1] We hold that this issue was not preserved properly for our consideration.

[1] Hearkening and polling the jury are related concepts both intended to ensure that a defendant is only convicted by the unanimous consent of the jury. Hearkening requires

The procedure for polling the jury is set forth in Maryland Rule 4-327(e), which provides:

> (e) **Poll of jury**. On request of a party or on the court's own initiative, the jury shall be polled after it has returned a verdict and before it is discharged. If the sworn jurors do not unanimously concur in the verdict, the court may direct the jury to retire for further deliberation, or may discharge the jury if satisfied that a unanimous verdict cannot be reached.

"Until the case is removed from the jury's province the verdict may be altered or withdrawn by the jurors, or by the dissent or non-concurrence of any one of them." *Smith v. State*, 299 Md. 158, 168 (1984). Further, "[w]hile the case is still within the province of the jury, the court may permit them to reconsider and correct the verdict provided, nothing be done amounting to coercion or tending to influence conviction or acquittal." *Id.*

Maryland Rule 4-323(c) requires that, " [f]or purposes of review by the trial court or on appeal," a party must "at the time the ruling or order is made or sought, make known to the court the action that the party desires the court to take[.]" Similarly, Maryland Rule 8-131(a) provides that "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" The purpose of these rules is to require counsel to call the error to the attention of the trial

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the trial court to inquire of the jury collectively, in open court, before the jurors are discharged, whether the jury agrees with the verdict announced by the jury foreperson. *State v. Santiago*, 412 Md. 28, 31, 41 (2009). Polling requires the trial court to ask each individual juror to declare his or her verdict. *Id.* at 32 (citing *Williams v. State*, 60 Md. 402, 403 (1883); *see also* Md. Rule 4-327(e) (discussing jury polling). The defendant has the right to polling. *Santiago*, 412 Md. at 32. If the defendant waives polling, hearkening is required for proper recordation of the verdict. *Id.* That is to say, polling and hearkening cannot both be waived in the same case. *Id.* Here, the record demonstrates that the jury was hearkened, but not polled.

judge and to allow the court an opportunity to correct any error that might have arisen. *Colvin v. State*, 450 Md. 718, 728 (2016) ("[P]rocedural challenges to a verdict ought to be done by contemporaneous objection[.]"); *Bazzle v. State*, 426 Md. 541, 562 (2012) (preservation requirement designed to prevent "sandbagging" and to give court an opportunity to correct possible mistakes); *State v. Bell*, 334 Md. 178, 189 (1994) (interests of fairness are furthered by requiring counsel to bring client's position to the attention of the trial court so that it can pass upon and possibly correct any errors).

As we have seen, Teat requested polling and the trial judge did not deny that request. But when the trial court failed to poll the jury, Teat failed to bring the issue to the attention of the court before the jury was discharged. Had he done so, the trial judge would have had an opportunity to conduct a poll of the jury. Because the issue was not raised before the jurors were discharged, and the court did not have any opportunity to correct the situation, any claim of error the defense might have had was waived. Md. Rule 8-131(a).

II.

Teat contends that the trial court erred in instructing the jury that it could consider evidence of his conviction arising from the June 2014 shooting in determining the issue of intent. We disagree.

Prior to trial, the State advised the defense and the court of its intent to introduce other crimes evidence pursuant to Md. Rule 5-404(b), which provides:

> **(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, § 3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation,

> common scheme or plan, knowledge, identity, or absence of mistake or accident.

The State argued that other crimes evidence, specifically Teat's conviction and evidence from the 2014 shooting, was admissible to prove both identity and intent, stating:

> Additionally, as analyzed in *Simms* [*v. State*, 39 Md. App. 658 (1978)], the evidence would be admissible as to intent. In the instant case, the Defendant is charged with Attempted First Degree Murder, Attempted Second Degree Murder, First Degree Assault, and Use of a Firearm. The trier of fact must therefore determine if the shooting was premeditated and deliberate and not accidental. The Defendant's actions in the prior case demonstrate his familiarity with the firearm and his knowledge of its use – which not only has a bearing on his identity, but also his intent, knowledge and absence of mistake.

Prior to trial, the prosecutor again argued that the prior shooting was relevant to the issue of intent, and the following discussion occurred:

PROSECUTOR:	I'm not using [evidence of the prior crime] to prove [Mr. Teat's] character. I'm using it to prove his identity.
THE COURT:	All right.
PROSECUTOR:	Potentially even absence of mistake. Because in this case, he is charged with attempted first and second degree murder.
THE COURT:	Right.
PROSECUTOR:	So there is an element of intent and not that I accidentally didn't know how to use a gun or it just went off.
THE COURT:	Okay.
PROSECUTOR:	Clearly, he's familiar enough with a gun because we know he has fired one in June.

THE COURT: Okay.

PROSECUTOR: That happens to match the casings.

During trial, after a hearing held outside the presence of the jury, the court granted the State's motion and allowed the State to produce evidence of the prior shooting, stating, in part, that:

> I don't think that in these circumstances, the evidence that the State proposes to put in front of the jury would be unfairly prejudicial. And the reason for that is because I think that – exactly for the reasons that counsel just said to me. Under the unique circumstances of this case, the evidence has particularly important relevance because the identity of the shooter in the current case is so much up in the air, and the testimony up to this point is rather uncertain, shall we say. And that is exactly why the 5-404(b) evidence becomes particularly relevant.

At that point, the defense did not raise, and the trial court did not specifically address, whether the evidence was also admissible to show Teat's intent. During the course of the trial, the parties stipulated that Teat had been "convicted of Possession of a Regulated Firearm After Being Convicted of a Disqualifying Crime, Wearing/Carrying a Handgun, and Discharging a Firearm for" the incident that occurred on Pleasant Street in Annapolis on June 4, 2014. (Tr. 12/11/15 at 110) The jurors also heard testimony from the lead detective and other officers involved in investigating the 2014 shooting case and viewed a video recording of the shooting.

After the close of all the evidence, the court instructed the jury, in part, as follows:

> You have also heard evidence that the defendant committed the crimes of possession of a regulated firearm after being convicted of a disqualifying crime; wearing and carrying

> a handgun; and discharging a firearm from an incident on June the 4th, 2014. You may consider this evidence only on the questions of intent and identity. However, you may not consider this evidence for any other purpose. Specifically, you may not consider it as evidence that the defendant is of bad character or has a tendency to commit crime.

Defense counsel objected to the instruction:

THE COURT:	Any exceptions from the defense?
[DEFENSE COUNSEL]:	My only exception is the other crimes' evidence and evidence only – the only questions are intent and identity and I objected to the use of the phrase intent.
THE COURT:	All right. And – and I appreciate that. I think the reason that I left it in was because there was a general intent that is required as an element (inaudible) offense and not a specific intent. So, for that reason, (inaudible) instruction.

Teat acknowledges that the court did not err in admitting evidence of his prior conviction for the purpose of establishing *identity*, but he maintains that the trial court erred in allowing the other crimes evidence to be offered as proof of his *intent*. According to Teat, the "limiting" part of the jury instruction that cautioned jurors not to take the other crimes evidence as proof of "bad character" or "a tendency to commit crime[s]" with a handgun, was "rendered largely ineffective, by an exception for 'intent' which was, under the particular circumstances of this case, patently illogical." We disagree.

Pursuant to Maryland Rule 5-404(b), a court may admit other crimes or prior bad acts evidence "if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his

character as a criminal." *State v. Faulkner*, 314 Md. 630, 634 (1989). In *Faulkner*, the Court of Appeals established a three-part test to determine the admissibility of "other crimes" evidence. *Id.* at 634-35. We explained that test in *Page v. State*:

> [F]or 'other crimes' evidence to be admissible, the circuit court – in its role as the evidentiary sentry – must conduct a threefold determination before permitting the evidence to be presented to the jury. First, the court must find that the evidence is relevant to the offense charged on some basis other than mere propensity to commit crime. In other words, the question is whether the evidence falls into one of the recognized exceptions. This determination does not involve discretion; on review by this Court, it is an exclusively legal question, with respect to which the trial judge will be found to have been either right or wrong. Second, the court must decide whether the accused's involvement in the other crimes is established by clear and convincing evidence, and we review this decision to determine whether the evidence was sufficient to support the trial judge's finding. Third, the necessity for and probative value of the 'other crimes' evidence is to be carefully weighed against any undue prejudice likely to result from its admission, and this is a determination that we review for abuse of discretion. Not until the court determines that the evidence can clear these hurdles may the court open the gates for the admission of 'other crimes' evidence. Indeed, these substantive and procedural protections are necessary to guard against the potential misuse of other crimes or bad acts evidence and avoid the risk that the evidence will be used improperly by the jury against a defendant.

222 Md. App. 648, 661-62 (2015) (internal quotation marks and citations omitted). In *Snyder v. State*, we held that in cases where the trial court does not specifically explain its ruling, we shall conduct the three-step balancing test *de novo*. 210 Md. App. 370, 394 (2013).

All three requirements were met in this case. Teat was charged with many crimes, including attempted first and second-degree murder, first-degree assault, and illegal use of

a firearm. As the trial judge recognized, the State was required to establish general intent for a number of the charges. Further, the jury had to determine whether the shooting was premeditated and deliberate or accidental and whether Teat intended to cause physical harm. Evidence of the June 2014 shooting established that Teat was tried for and convicted of discharging a firearm, illegal possession of a firearm, and wearing and carrying a firearm in the same general area as the 2015 shooting. In addition, it was established that the shell casings recovered in both the 2014 and 2015 shootings were fired from the same firearm. That evidence was highly probative because it suggested that Teat possessed the firearm on both occasions, knew how to discharge it, and did not mistakenly or accidentally fire it, but rather intended to fire it, in 2015.

As for the second requirement, the parties did not dispute that Teat committed the other crimes. The parties stipulated that Teat had been "convicted of Possession of a Regulated Firearm After Being Convicted of a Disqualifying Crime, Wearing/Carrying a Handgun, and Discharging a Firearm for" the incident that occurred on June 4, 2014.

Finally, as for the balancing of the probative value of the other crimes evidence and the potential for undue prejudice, we find no abuse of discretion in the trial court's explicit finding that the probative value of the other crimes evidence outweighed the danger of unfair prejudice to Teat. Notwithstanding the court's failure to specifically reference admission of the other crimes evidence for the purpose of establishing intent, we find no abuse of discretion in the trial court's implicit finding that the other crimes evidence was not unfairly prejudicial to Teat. The evidence of Teat's prior firearm's conviction was probative in establishing that he previously possessed and discharged the same firearm that

was used in the 2015 shooting, that he knew how to fire that weapon, and that he intended to fire it in 2015. Certainly, the other crimes evidence was prejudicial, as most evidence against a criminal defendant is, but the trial court was in the best position to determine if the other crimes evidence was *unfairly* prejudicial. Moreover, the jury was instructed to consider the other crimes evidence only on the questions of intent and identity, and not for any other purpose, including "that the defendant is of bad character or has a tendency to commit crime." For these reasons, we reject Teat's contention that the trial court erred in instructing the jury that it could consider evidence of the 2014 shooting with respect to the issue of intent.[2]

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[2] Having determined that the evidence was admissible to show intent, we need not reach the question of whether the evidence, if improperly admitted to show intent, but concededly proper to admit for identity, could be the basis for reversal.