Circuit Court for Prince George's County
Case No.: 14-1332X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2270

September Term, 2015

IAN CHRISTOPHER MURDAUGH

v.

STATE OF MARYLAND

Meredith,
Leahy,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: April 27, 2018

At the conclusion of a jury trial in the Circuit Court for Prince George's County, Ian Christopher Murdaugh, appellant, was convicted of involuntary manslaughter, possession of a regulated firearm after being convicted of a disqualifying crime, possession of a regulated firearm after being convicted of a crime of violence, and wearing, carrying, and transporting a handgun. After sentencing, Murdaugh noted a timely appeal and presented us with the following two questions for review.

1. Was it error to admit the opinion of the lead detective that, "I know" State's witness Michael McQueen "wasn't at the location of the homicide," based upon McQueen's statement and corroborating his alibi?

2. Was the evidence insufficient to sustain the convictions?

Because we perceive no reversible error, we will affirm.

Facts and Procedural History

There was evidence at trial of the following. Donte Fung left work at around 9:00 p.m. on August 4, 2014. As Fung returned to his apartment at the Heritage Square Apartments in New Carrolton, Maryland, he ran into D'Amato Coates, who was on his way to visit the apartment complex. Coates and Fung walked behind the apartment complex and began shooting dice with a group of six to ten people at approximately 11:30 p.m. One of the people in that group was Murdaugh. That night, Murdaugh carried with him a black bag with a single strap. Earlier in the evening, Murdaugh showed his girlfriend, Brittany Mobley, that he was carrying a black handgun inside the bag.

The game continued into the early morning hours. By 3:00 a.m., only Murdaugh, Coates, Fung, and Mobley remained behind the apartment complex. At one point,

Murdaugh asked Fung if Mobley could use the bathroom inside Fung's nearby apartment. Fung agreed, and took Mobley back to his apartment to use the bathroom, leaving only Coates and Murdaugh outside. Inside the apartment, Mobley used the bathroom and Fung heated up food in the microwave as Fung's younger brother, Sean Manwaring, slept on a couch in the living room. Suddenly, Fung heard a bang and dropped to the floor.

Between three to five minutes later, Fung heard someone banging on the balcony of the ground-level apartment. Fung discovered that this banging was coming from Murdaugh, and he let Murdaugh inside the apartment. Murdaugh carried his black bag with him as he entered the apartment. Once inside, Murdaugh was "nervous," "frantic," and "sweating"; he told Fung that someone had just tried to rob him and Coates, and that he heard two shots as he started to run off. When Fung asked Murdaugh where Coates was, Murdaugh responded that Coates had "tried to fend them off."

Shortly thereafter, Fung asked Murdaugh and Mobley to leave the apartment. Murdaugh and Mobley called a taxi and left Fung's apartment; however, Murdaugh left his black bag in Fung's apartment. The police were already on-scene and blocking the entrance to the apartment complex when the taxi cab summoned by Murdaugh and Mobley arrived. As Murdaugh and Mobley entered the taxi cab, the cab driver asked them what was going on. Murdaugh stated in response: "I don't know. I think somebody got shot." Murdaugh and Mobley then left the area and headed to Largo for the night.

Meanwhile, Sergeant Kirk Banton of the City of New Carrolton Police Department responded to the apartment complex and discovered Coates deceased with one gunshot wound to the head. Two fired shell casings were found in close proximity to

Coates. The two fired shell casings were later determined to have been fired from the same firearm. A fired bullet, "consistent with a 9-millimeter luger caliber," was recovered from the back of Coates's neck. Over $200 in cash was found on Coates's person.

Later that morning, Fung and Manwaring noticed that Murdaugh had left his black bag in Fung's apartment. Inside the bag, Fung and Manwaring found a black 9-millimeter automatic handgun buried beneath several shirts. Manwaring called his neighbor, Michael McQueen, and asked him to come over and take the gun and the bag. McQueen arrived shortly thereafter and took the bag and its contents back to his apartment. McQueen then opened the bag, took out the gun, which he described as a "[G]lock 17," and used his phone to take several photographs of himself holding the gun. These photographs were eventually discovered by the police during a search of McQueen's phone. The gun depicted in the photographs was later described by Mobley as looking like one she had seen in Murdaugh's possession.

McQueen later gave Murdaugh's bag, with the gun still inside, to Arun Mansaray. Mansaray, who was also a person of interest in the investigation, was later questioned by investigators. Following questioning, Mansaray led detectives to an apartment building at 5442 85th Avenue. There, with Mansaray's assistance, the police located a black bag hidden inside the ceiling of the laundry room. Mobley later identified the bag as similar to the bag she had seen Murdaugh carrying on the evening of Coates's murder. No handgun was recovered from the bag.

During an interview with the police, Murdaugh initially claimed that two unknown persons had attempted to rob him and Coates, but that he had fled and had not seen any weapons or heard any gunshots. Murdaugh would later tell investigators, however, that he *did* hear one shot fired during the robbery. And, although Murdaugh initially claimed that he did not have a gun or a bag, he eventually admitted that he was carrying the black bag with the handgun inside. When asked if he ever checked on the well-being of Coates after the alleged robbery, Murdaugh could not "provide evidence . . . that he checked on him."

Murdaugh was acquitted of first degree murder, second degree murder, and use of a handgun in a crime of violence. He was convicted of involuntary manslaughter, illegal possession of a handgun, and carrying a handgun. After sentencing, he filed this direct appeal. Additional facts relevant to this appeal are discussed in greater detail below.

DISCUSSION

In his brief, Murdaugh contends that the trial court erred in admitting testimony given by the lead detective. He also argues that the evidence was insufficient to sustain the convictions of involuntary manslaughter or possession of a handgun.

I. The circuit court's admission of Detective Flores's testimony regarding McQueen.

At trial, the State called Detective Edwin Flores of the Prince George's County Police Department and elicited testimony on redirect examination regarding his interaction with McQueen, the witness who had retrieved the gun and bag from his

neighbor Fung on the morning following the homicide. The following exchange occurred:

> [THE STATE]: Were you able to in fact interview – were you able to, in the course of your investigation, discover where Mr. McQueen was at the time of this robbery – or at the time of this murder?
>
> [DETECTIVE FLORES]: I'm sorry. There is just so much in this case. I'm trying to recollect.
>
> [STATE]: If you can't recall, is there something that would help refresh your recollection?
>
> [FLORES]: Yes.
>
> [STATE]: What would that be?
>
> [FLORES]: His statement.
>
> [STATE]: If looking at Mr. McQueen's statement would help you refresh your recollection as to Mr. McQueen's location, please.
>
> [FLORES]: (Reviewing.) I'm sorry. Your question was again?
>
> [STATE]: **Were you able to determine where Mr. McQueen was at the time of the homicide?**
>
> [FLORES]: **I know he wasn't at the location of the homicide.**
>
> [DEFENSE COUNSEL]: **Objection.**
>
> [THE COURT]: **Overruled.**
>
> [STATE]: **How do you know he wasn't at the location of the homicide?**
>
> [FLORES]: **In the interview and corroborating the alibis.**
>
> [DEFENSE COUNSEL]: **Objection.**
>
> [THE COURT]: **Overruled.**

> [DEFENSE COUNSEL]: Your Honor, can we approach on that one?
>
> [THE COURT]: Sure.
>
> (Counsel approached the bench and the following ensued.)
>
> [DEFENSE COUNSEL]: Your Honor, **that is clearly being offered for the truth of the matter asserted. That's hearsay**, what he was told as far McQueen's alibis.
>
> [STATE]: He said corroborating the alibis.
>
> [DEFENSE COUNSEL]: That's essentially the substance of what they said.
>
> [THE COURT]: Okay. Overruled.

(Emphasis added.)

Murdaugh contends that the trial court improperly admitted Detective Flores's above-quoted testimony that he knew McQueen "wasn't at the location of the homicide" based upon "McQueen's statement and corroborating his alibi." Murdaugh first argues that the statement was inadmissible hearsay. In the alternative, Murdaugh asserts that the detective's "personal opinion of the credibility of a witness's hearsay alibi was patently irrelevant and inadmissible." He further argues that the "detective's personal opinion of the credibility of other hearsay statements allegedly 'corroborating the alibis' of the State's witnesses, including McQueen, was patently irrelevant and inadmissible." Finally, Murdaugh contends that "[t]he prejudice to the defense consists of using hearsay to improperly bolster the credibility of State's witness McQueen – whom police wanted the jury to rule out as a possible suspect in the killing – and improperly invading the province of the jury."

The State, on the other hand, contends that the detective's testimony was admissible non-hearsay, and further asserts that Murdaugh's additional arguments regarding the relevancy and prejudicial nature of Detective Flores's statements "corroborating" McQueen's alibi were waived as they were not argued below. Finally, the State argues that, even if preserved, Murdaugh's arguments are without merit, as the detective "did not comment upon anything McQueen had testified to at trial, and nor did he comment upon the credibility of McQueen generally."

Ordinarily, we review rulings on the admissibility of evidence using an abuse of discretion standard. *Gordon v. State*, 431 Md. 527, 533 (2013). Our review of "[w]hether evidence is hearsay," however "is an issue of law reviewed de novo." *Bernadyn v. State*, 390 Md. 1, 8 (2005). Hearsay is defined as "a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Maryland Rule 5-801(c). Hearsay is not admissible "[e]xcept as otherwise provided by [the Maryland R]ules or permitted by applicable constitutional provisions or statutes." Maryland Rule 5-802. In *Stoddard v. State*, 389 Md. 681, 689 (2005), the Court of Appeals held: "If the declaration is not a statement, or if it is not offered for the truth of the matter asserted, it is not hearsay and it will not be excluded under the hearsay rule."

"[A] relevant extrajudicial statement is admissible as nonhearsay when it is offered for the purpose of showing that a person relied on and acted upon the statement and is not introduced for the purpose of showing that the facts asserted in the statement are true." *Graves v. State*, 334 Md. 30, 38 (1994); *see also Daniel v. State*, 132 Md. App.

576, 590 (2000) ("[A]s long as the officer is able to provide the basis for his testimony, and the testimony is not inadmissible for other evidentiary reasons, an investigating police officer may properly testify about the conclusions he draws in the context of an investigation."). The Court of Appeals has held, however, that "extrajudicial statements which explain police conduct, but nonetheless *directly implicate* the defendants, are excluded typically as overly prejudicial." *Morris v. State*, 418 Md. 194, 226 (2011) (emphasis added).

In the present case, even if we assume that the detective's testimony was an implied assertion that McQueen stated he was elsewhere, the disputed testimony was not offered to prove the truth of the matter asserted (that McQueen was not present at the time of the homicide), but rather that the police had investigated the alibi and had completed a thorough investigation of the possibility that McQueen was present. *See Daniel*, *supra*, 132 Md. App. at 590. The objected-to statements occurred on redirect after defense counsel had elicited testimony during the cross-examination of Detective Flores that a black face mask was found during a consent search of McQueen's apartment, suggesting that McQueen was possibly the murderer. Further, defense counsel had inquired whether McQueen or Fung had ever been charged with a crime in connection with this case. On redirect, the State asked Detective Flores a brief series of questions regarding his investigation of McQueen as a potential suspect in response to defense counsel's earlier line of questioning. The objected-to responses, that Detective Flores knew McQueen "wasn't at the location of the homicide" based upon "the interview and corroborating the alibis," do not constitute an attempt to introduce any of McQueen's

statements into evidence. Finally, the testimony in question did not directly implicate Murdaugh and was brief in nature. *See Morris, supra,* 418 Md. at 226.

Murdaugh's remaining arguments as to Detective Flores's statements were waived and are not preserved for our review. Maryland Rule 8-131(a) states: "Ordinarily, the appellate court will not decide any other issue [*i.e.*, other than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court." In order to preserve an objection to the admission of evidence, a party is required to object "at the time the evidence is offered . . . . [o]therwise, the objection is waived." Maryland Rule 4-323. In *Hall v. State*, 225 Md. App. 72, 84 (2015) (quoting *von Lusch v. State*, 279 Md. 255, 261 (1977)), this Court explained that an appellant is limited to arguing error with respect the specific grounds for the objection stated at trial:

> While a party need not state the specific grounds for objection unless directed to do so by the court, the Court of Appeals has nonetheless held that "**where a party voluntarily states his grounds for objection even though not asked, he must state all grounds and waives any not so stated.**" *von Lusch v. State,* 279 Md. 255, 261 (1977).

(Emphasis added.)

In the present case, after objecting to Detective Flores's testimony, defense counsel argued to the court that he was objecting to the detective's statement on the basis of hearsay, and stated: "Your Honor, that is clearly being offered for the truth of the matter asserted. That's hearsay, what [Detective Flores] was told as far McQueen's alibis." The trial judge overruled that objection and defense counsel made no further argument with respect to the disputed testimony. As a result, Murdaugh's arguments other than hearsay were waived and not preserved for appeal.

II. Sufficiency of the evidence

Murdaugh next alleges that the evidence was legally insufficient to "prove that [Murdaugh] 'acted in a grossly negligent manner,' making this involuntary manslaughter." Murdaugh did not make this argument in the circuit court, and therefore, it is waived.

Murdaugh further argues that the "evidence was insufficient as to possession of a handgun." We disagree.

The standard for our review of the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This deferential standard of review requires us to "review the evidence in the light most favorable to the State, giving due regard to the trial court's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *State v. Albrecht*, 336 Md. 475, 478 (1994) (internal citations omitted). We recognize "that 'it is not the function or duty of the appellate court to undertake a review of the record that would amount to, in essence, a retrial of the case.'" *McDonald v. State*, 347 Md. 452, 474 (1995) (quoting *State v. Albrecht*, 336 Md. 475, 478 (1994)). This standard applies uniformly among all categories of criminal cases, including in cases decided, either in whole or in part, on circumstantial evidence. *Smith v. State*, 415 Md. 174, 185 (2010); *see also State v. Mayers*, 417 Md. 449, 466 (2010) ("We defer to any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide

whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence.")

a. Involuntary Manslaughter

On appeal, Murdaugh argues that "there was no evidence, whatsoever, of any 'grossly negligent' act committed by [Murdaugh]." This argument was never presented to the circuit court. At the end of the second day of trial, and at the close of the State's case, defense counsel for Murdaugh made a motion for judgment of acquittal, and the following exchange occurred:

> [DEFENSE COUNSEL]: There is nothing to show that it was deliberately premeditated with malice aforethought. That's the only charge of murder – that's the only count in relation to the homicide which is charged.
>
> * * *
>
> [STATE]: Your Honor, the defendant is charged with the common law form, and the statute provides that the State can charge the common law form. So he's not just looking at first degree murder. He's also looking at the theories of murder second degree, manslaughter, involuntary manslaughter, as well as potentially felony murder.
>
> * * *
>
> THE COURT: Anything further?
>
> [DEFENSE COUNSEL]: No, your honor.

At the close of all evidence, defense counsel for Murdaugh renewed the motion and added:

> [. . .] I will adopt all the arguments that I made at the close of the State's case. It is in the light most favorable to the defense.
>
> At best, the State has shown that briefly, for a short period of time, Mr. Murdaugh was in possession of a bag that had a firearm. There is no

> evidence suggesting that he killed, either intentionally or unintentionally, Mr. Coates.
>
> Based on that, we ask for judgement of acquittal as to all charges.

That was the full extent of the argument made at trial with regard to the involuntary manslaughter charge.[1] At no time during trial did Murdaugh argue, as he does now, that there was insufficient evidence of his gross negligence to support an involuntary manslaughter charge.

Maryland Rule 4-324 provides, in pertinent part:

> A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. **The defendant shall state with particularity all reasons why the motion should be granted**.

(Emphasis added.)

A number of appellate opinions in this State emphasize the requirement that evidentiary deficiencies must be stated "with particularity" at the trial court level in order to preserve challenges to the sufficiency of the evidence on appeal. "A defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal in challenging the denial of a motion for judgment of acquittal." *Tetso v. State*, 205 Md. App. 334, 384, *cert denied*, 428 Md. 545 (2012).

[1] As the State points out in their brief, "[t]hough involuntary manslaughter was not charged as a separate offense, the State, in its sufficiency argument at the close of the State's case, reminded the trial court and counsel that Murdaugh had been charged with 'the common law form [of murder],' and therefore the State could proceed on 'theories of murder second[-]degree, manslaughter, involuntary manslaughter, as well as potentially first[-]degree murder."

In *Hobby v. State*, 436 Md. 526, 539-40 (2014), the Court of Appeals noted:

> Maryland Rule 4-324(a), concerning motions for judgment of acquittal, provides, in pertinent part: "The defendant shall state with particularity all reasons why the motion should be granted." **"Under [Maryland] Rule 4-324(a), a defendant is . . . required to argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient."** *Montgomery v. State*, 206 Md. App. 357, 385, 47 A.3d 1140, 1157, *cert. denied*, 429 Md. 83, 54 A.3d 761 (2012) (alteration and omission in original) (internal quotation marks omitted) (quoting *Fraidin v. State*, 85 Md. App. 231, 244-45, 583 A.2d 1065, 1072, *cert. denied*, 322 Md. 614, 589 A.2d 57 (1991)). And, "[t]he language of the rule **is mandatory**." *State v. Lyles*, 308 Md. 129, 135, 517 A.2d 761, 764 (1986).

(Emphasis added.)

We decline to consider Murdaugh's argument as to whether the State offered sufficient evidence of his gross negligence to support the jury's involuntary manslaughter conviction. As is clear from the record, Murdaugh failed to state this argument with particularity in support of his motions at trial. Consequently, we agree with the State that he has waived this issue on appeal.

b. Possession of a handgun

Murdaugh also contends that "[t]he evidence was insufficient as to possession of a handgun" because "[t]here was no evidence that the weapon which [Murdaugh], admittedly, possessed was actually an operable firearm." In response, the State asserts that "[t]he jury could have inferred that Murdaugh's gun, in Murdaugh's hand was the murder weapon," and that the victim's death provided proof of the operability of the handgun. As this Court held in *Brown v. State*, 182 Md. App. 138, 166 (2008), "tangible evidence in the form of the weapon is not necessary to sustain a conviction; the weapon's

identity as a handgun can be established by testimony or by inference." Furthermore, the Court of Appeals has articulated that, "to be a firearm[,] it must propel a missile by gunpowder or some such similar explosive." *Howell v. State*, 278 Md. 389, 396 (1976). Regarding a firearm's "operability," the Court of Appeals has held that "circumstantial evidence may prove the operability of a weapon beyond a reasonable doubt." *Magnum v. State*, 342 Md. 392, 400 (1996).

In the present case, the State produced evidence that Murdaugh possessed a 9-millimeter handgun. The jury heard evidence that Murdaugh was carrying a handgun in a black bag which he was carrying at the time and location of the homicide. The jury also heard evidence that Murdaugh had taken the handgun out of the bag and shown it to at least one other person on that date. There was evidence that, at the time of the shooting, only Murdaugh and Coates remained outside. After the shooting, Murdaugh was "shaking and nervous and sweating" as he entered Fung's apartment through the balcony door. When Murdaugh left the scene as police were arriving, he left his black bag at Fung's apartment; according to witness testimony, Murdaugh's bag contained a handgun. The handgun would later come into the possession of another witness, McQueen, who described it as a "Glock [17]," a 9-millimeter handgun.

Coates's cause of death was a single gunshot wound to the head from a 9-millimeter bullet which was recovered from his neck. Both Coates's death, and the 9-millimeter bullet recovered from Coates's head, are circumstantial evidence of the operability of the gun which shot Coates. As mentioned above, there was sufficient evidence from which the jury could have inferred that it was Murdaugh who shot Coates

while they stood alone outside of the apartment complex. Therefore, there was sufficient evidence presented from which a trier of fact could have found that the handgun possessed by Murdaugh was operable.

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