Circuit Court for Anne Arundel County
Case Nos. C-02-CR-15-915 &
C-02-CR-16-137

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2315

September Term, 2016

KEDRICK TOOLES

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: May 8, 2018

*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.

Following a bench trial in the Circuit Court for Anne Arundel County, Kedrick Tooles, appellant, was convicted of attempted first-degree murder, attempted second-degree murder, and numerous assault and weapons offenses. The court sentenced him to life in prison, with all but forty years suspended, for attempted first-degree murder and a consecutive thirty-year sentence, with all but twenty years suspended, for attempted second-degree murder, followed by five years' probation. The remaining convictions were either merged or sentenced to run concurrently. Appellant's sole contention on appeal is that the court erred in refusing to admit various pieces of testimony demonstrating his mental state at the time of the commission of the crimes. He contends that the evidence demonstrated that he was mentally ill at the time of the crimes and, therefore, incapable of forming the *mens rea* to commit attempted first-degree murder.[1] For the reasons stated below, we affirm.

Appellant concedes that he shot two people on November 27, 2015, in Annapolis. Briefly recounted, shortly after 2:00 P.M. on that day, Traymont Wiley stepped out of the home on Copeland Street that he shared with his father to take out the trash. Appellant shot him once in the neck. Appellant attempted to fire more as he pursued Wiley, but the gun misfired.

[1] The *mens rea* of any attempted crime is the "'specific intent to commit a particular offense[.]'" *Spencer v. State*, 450 Md. 530, 567 (2016) (quoting *State v. Earp*, 319 Md. 156, 162 (1990)). Specifically, the *mens rea* for both degrees of attempted murder "require[s] proof of a specific intent to kill." *Chisum v. State*, 227 Md. App. 118, 135 (2016). Appellant's argument is more properly understood as contending that there was evidence demonstrating that because of his mental state, he could not have premeditated and deliberated sufficiently to sustain a conviction for attempted first-degree murder.

Appellant then walked to a nearby grocery store, calmly purchased some water, and got into a taxi cab. He directed the driver to take him to the Robinwood neighborhood on Tyler Avenue. Once there, appellant paid the driver and pulled out a gun as he stepped out of the cab. He walked toward a group of people, which included Corey Holland, and shot Holland in the stomach. Appellant attempted to fire again, but the gun jammed. Police apprehended appellant at the scene of the second shooting shortly afterward. No gun was recovered.[2]

At trial, defense counsel argued that appellant could not form the requisite *mens rea* to commit attempted first-degree murder because he was mentally ill. Specifically, appellant contends on appeal that the court erred in refusing to admit testimony as to his mental condition in five instances. The court sustained the prosecutor's objections: 1) during cross-examination of an eyewitness to the second shooting where defense counsel asked if the witness was aware that appellant had recently been released from a mental hospital; 2) during cross-examination of appellant's ex-girlfriend, whom he had stayed with the night before the shootings, as to whether appellant had recently left a mental institution; 3) to testimony during cross-examination of the second shooting victim's mother that appellant "had a lot going on with him"; 4) to testimony during direct examination of appellant's mother that prior to the first shooting, appellant "looked like he had a breakdown" and that she hoped he would have remained in the institution longer;

[2] The court concluded that there was insufficient evidence of premeditation in shooting Wiley and, therefore, convicted him of attempted second-degree murder. As to the shooting of Holland, however, the court concluded that there was sufficient premeditation and deliberation to convict appellant of attempted first-degree murder.

and 5) to a question during cross-examination of a police officer who had spoken with appellant after he was arrested as to appellant's statement that he had not slept for five days.

We conclude that appellant has not preserved for appellate review his arguments as to the admission of this testimony because defense counsel failed to provide a proffer. Where a trial court sustains an objection to the admission of evidence, in order to preserve the issue for appeal, there must be a proffer. *See Smirlock v. Potomac Dev. Corp.*, 235 Md. 195, 203 (1964). Stated another way, a party desiring to preserve the issue of the exclusion of evidence must "explain[] the contents and relevancy of the excluded testimony." *Mack v. State*, 300 Md. 583, 603 (1984), *abrogated on other grounds by Price v. State*, 405 Md. 10 (2008). Appellant failed to do so here.

After sustaining the prosecutor's objections, defense counsel responded as follows to each corresponding instance: 1) "Okay. Yeah, I don't think so. Okay. Okay. Thank you."; 2) "Okay. Okay."; 3) "Thank you, [victim's mother]. That's all I have, Your Honor."; 4) "Okay. What was the next thing you saw or heard after [appellant] walked passed [sic] you?"; 5) "Okay. And my last question." Accordingly, at no point did defense counsel provide a proffer as to the excluded testimony, and, therefore, the issues are not preserved. Moreover, there was ample admitted evidence of appellant's mental state at the time of the commission of the crimes, and defense counsel argued that there was

insufficient evidence of premeditation and deliberation to constitute attempted first-degree murder of Holland.

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