UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2402

September Term, 2014

DAVID QUINTANILLA

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Nazarian,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 14, 2015

David Quintanilla was convicted of robbery with a dangerous weapon in the Circuit Court for Montgomery County. He challenges the trial judge's decision to admit two pieces of testimony, one on the grounds that it was irrelevant and inadmissible, and the other as improper lay opinion testimony. We find no error and affirm.

I. BACKGROUND

On January 16, 2014, Kevin Cerritos went to work at Subway, as he had six times a week for two years. As he arrived at work, a man in the shopping center, later identified as Mr. Quintanilla, asked him for money. Mr. Cerritos was familiar with Mr. Quintanilla; he had seen him in the center three days a week, three to four times a day, for approximately six or seven months, both before and after work. Whenever he approached Mr. Cerritos, Mr. Quintanilla would ask him for money. Sometimes Mr. Cerritos gave him money, sometimes he didn't.

When Mr. Cerritos closed the store around 10:15 p.m., Mr. Quintanilla approached him again. Mr. Cerritos told him he didn't have any money. Mr. Cerritos then went to a nearby Pizza Hut and bought a soda. Mr. Quintanilla entered the store, "kind of mad," and said to Mr. Cerritos that he "thought you said you didn't have any money, and I just saw you, you buy a soda." Uncomfortable, Mr. Cerritos lied and told him that his friend had given him the soda for free. Mr. Quintanilla "just left, and like, he was laughing, like, sarcastically, and he left but mad."

After Mr. Cerritos left Pizza Hut, he saw Mr. Quintanilla again as he crossed the shopping center's parking lot. Mr. Quintanilla again confronted Mr. Cerritos as he walked

by, yelling that he knew Mr. Cerritos had money. Mr. Cerritos put on his headphones and attempted to ignore him. But as he walked, Mr. Cerritos noticed a man following him. The man "was with, like, four or five guys more, but he was pointing at [Mr. Cerritos] with another guy." He continued to head home, but was tackled by two men before he got there.

One of the men put a gun to Mr. Cerritos's face and told him to "give [him] the money or you're going to die." Although the man wore a mask, Mr. Cerritos identified him as Mr. Quintanilla: Mr. Cerritos "recognize[ed] his voice; and, also, that same night he robbed [Mr. Cerritos] and … asked [him] for money, he was wearing the same clothes and jacket." The masked man Mr. Cerritos didn't recognize took his wallet, and handed it to Mr. Quintanilla, who opened it and remarked, "I knew you had some money." The two men fled when a car drove down the street, and Mr. Cerritos called the police.

Detective Donald Hayes responded to Mr. Cerritos's call. He circulated a description, and several other officers stopped individuals who matched the description for show-ups. Shortly thereafter, Officer Whitney Kujawa stopped Mr. Quintanilla, but released him without advising Detective Hayes so that a show-up could be conducted. Officer Kujawa stopped Mr. Quintanilla because he "matched the description of the lookout given by the victim over the radio," but after asking him for his name, birthdate, and where he had been that night, she released him without asking for a show-up. She could not recall why she didn't call it in.

Officer Paris Capalupo also stopped Mr. Quintanilla that night. He asked if anyone had run a warrant check on Mr. Quintanilla, and when Officer Capalupo was told he'd already been cleared, he also released Mr. Quintanilla without conducting a show-up.

Mr. Cerritos continued to work at Subway after the incident, and recognized Mr. Quintanilla when he came inside and asked to use the bathroom a few weeks later. He saw him again in the liquor store after he had left work, and called the police. Officer James Lee responded and approached Mr. Quintanilla. He asked for his name, took his picture, and made a copy of his ID. He contacted the station, but was told only to conduct a field interview, and then release him.

On February 5, 2014, Officer Capalupo saw an individual who matched Mr. Quintanilla's description, and called a uniformed officer to stop him. Officer Jeffrey Bunge conducted the stop. Officer Bunge identified the man as Mr. Quintanilla. Officer Capalupo brought Mr. Cerritos by, and he positively identified Mr. Quintanilla as one of the men who robbed him. Mr. Quintanilla was then arrested.

Mr. Quintanilla was tried in the circuit court on September 23-24, 2014, and a jury convicted him of robbery with a dangerous weapon. He was sentenced to ten years of incarceration, all but five suspended, on December 16, 2014, and filed a timely appeal.

II. DISCUSSION

Mr. Quintanilla presents two questions on appeal: *first*, whether the circuit court abused its discretion by allowing Officer Kujawa's allegedly erroneous testimony regarding warrant checks, and *second*, whether the circuit court abused its discretion by

allowing Detective Hayes's testimony opining on Mr. Cerritos's state of mind when he interviewed him the night of the incident.[1] We see no abuse of discretion in either decision.

A. Officer Kujawa's Testimony Was Admissible.

Mr. Quintanilla contends that Officer Kujawa gave inadmissible, erroneous testimony about warrant checks. We find that it was not, for two reasons: (1) the testimony given was relevant because Mr. Quintanilla raised the issue on cross-examination, and (2) even if the testimony was erroneous, Mr. Quintanilla should have addressed the error on re-cross.

i. Officer Kujawa's testimony was relevant because the issue was raised during cross-examination.

In assessing the admissibility of evidence on relevance grounds, we ask two separate questions—"whether the evidence is legally relevant, and if relevant, whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice… During the first consideration, we test for legal error, while the second consideration requires review of the trial judge's discretionary weighing and is thus tested

[1] Mr. Quintanilla's brief phrased his questions as follows:

> 1) Did the trial court err in permitting the officer who released [Mr. Quintanilla] after he cleared a warrant check to testify that warrants are just for individuals who fail to appear in court?
>
> 2) Did the trial court abuse its discretion in permitting inadmissible lay opinion testimony?

for abuse of that discretion." *State v. Simms*, 420 Md. 705, 725 (2011) (citations omitted). If the testimony was not relevant, it was error to admit it. Md. Rule 5-402. To be relevant, evidence must be both material and have probative value. *Smith v. State*, 423 Md. 573, 590 (2011). The testimony must have "a 'tendency' to make [the] proposition 'more probable' . . . [and i]t is enough if the item could reasonably show that a fact is slightly more probable than it would appear without that evidence." *Id.* (citation omitted).

We do not undertake a lengthy relevance analysis of Officer Kujawa's statement, however, because Mr. Quintanilla himself introduced the issue in question during cross-examination. He argues that it was irrelevant for Officer Kujawa to testify on redirect examination about the purpose of warrant checks, and that the officer testified incorrectly that a warrant check reveals only whether someone hadn't appeared for court:

> [COUNSEL FOR THE STATE]: When you talked about that he was quote "cleared," what does that mean?
>
> [OFFICER KUJAWA]: That means he ran a negative wanted check.
>
> * * *
>
> [COUNSEL FOR THE STATE]: And what is a wanted check?
>
> [OFFICER KUJAWA]: It runs a systems check to see if he's wanted by Montgomery County or any other state or prison system.
>
> * * *
>
> [COUNSEL FOR THE STATE]: *And a warrant would mean somebody just didn't go to court, failed to appear normally*?

> [COUNSEL FOR MR. QUINTANILLA]: Objection, Your Honor.
>
> [OFFICER KUJAWA]: Yes, ma'am.
>
> [THE COURT]: Overruled.

(Emphasis added). But it was Mr. Quintanilla's counsel, on cross-examination, who questioned Officer Kujawa's decision to release him after he had been "cleared":

> [COUNSEL FOR MR. QUINTANILLA]: Did dispatch come back and tell you—
>
> [COUNSEL FOR THE STATE]: Objection.
>
> [COUNSEL FOR MR. QUINTANILLA]: —he's clear?
>
> [THE COURT]: Overruled.
>
> [OFFICER KUJAWA]: Yes, ma'am.

After raising the issue, Mr. Quintanilla can't preclude the State from attempting to clarify what Officer Kujawa meant when she testified that he had been "cleared." Re-direct examination is appropriately limited in scope to issues brought out on cross-examination. In *Thurman v. State*, 211 Md. App. 455 (2013), we noted that "[i]n theory, re-direct examination should be limited to explanations and replies to any new matters brought up during cross-examination, while re-cross examination should be further limited to new matters brought up during re-direct." *Id.* at 470 (citing Maryland Evidence Handbook § 1207 at 574 (4th ed. 2010)); *see Fisher Body Div. v. Alston*, 252 Md. 51, 56 (1969). The issue of warrant checks—being "cleared"—was a "new matter" introduced by Mr.

Quintanilla on cross. Officer Kujawa's clarification fell within the scope of re-direct examination, since it spoke directly to "new matters brought up during cross-examination."

ii. If the testimony was erroneous, Mr. Quintanilla should have addressed the error during re-cross examination.

Mr. Quintanilla further alleges that the Officer's testimony was factually wrong, and "any probative value was outweighed by the danger of unfairly prejudicing Mr. Quintanilla, misleading the jury, and/or confusing the jury." Although we do not see how this testimony was unfairly prejudicial—it is unclear to us how "[i]n creating the clearly erroneous impression that warrant checks only reveal those who fail to appear for court … the prosecutor crossed the line," and Mr. Quintanilla fails to clarify this for us—any errors could and should have been addressed by Mr. Quintanilla during re-cross.

In *Thurman*, we noted that "it is not appropriate for a trial judge to determine before ever hearing the re-direct examination that no re-cross examination will be permitted." 211 Md. App. at 470. We emphasized the importance of re-cross examination as a vehicle to address new issues raised on re-direct, citing several federal cases to support the proposition that "[i]t is well settled that if a new subject is raised in redirect examination, the [] court must allow the new matter to be subject to recross-examination." *Id.* at 472 (citing *United States v. Riggi*, 951 F.2d 1368, 1375 (3d Cir. 1991)).

It would have been appropriate for Mr. Quintanilla, faced with allegedly erroneous testimony raised on re-direct, to request re-cross and question Officer Kujawa on her statement, clarifying any confusing terms or erroneous characterizations. Mr. Quintanilla

may well have had a good tactical reason not to do so, but we discern no error in allowing the Officer to testify as she did.

B. Detective Hayes's Testimony Was Not Impermissible Lay Opinion Testimony

Mr. Quintanilla contends that Detective Hayes's "feeling" that Mr. Cerritos was accurately recalling information about the incident during his interview was impermissible lay opinion testimony that should have been suppressed:

> [COUNSEL FOR THE STATE]: Okay, and when he spoke with you did you feel that he was able to recall information for you?
>
> [DETECTIVE HAYES]: Yes, ma'am.
>
> [COUNSEL FOR MR. QUINTANILLA]: Objection, Your Honor, speculation.
>
> [THE COURT]: Overruled.

In *Matoumba v. State*, 390 Md. 544 (2006), the Court of Appeals recognized that police officers may "express opinions as to why certain conduct gave them reasonable articulable suspicion" even though the officers had not been qualified as experts. *Id.* at 553. The Court in that case concluded that the trial court was "not required to qualify the police officers as expert witnesses before the officers were permitted to testify as to the reasons underlying and justifying the frisk of the petitioner," *id.*, and we too have allowed opinion testimony by officers to support their reasons in pursuing a suspect or a case. In *Cantine v. State*, for example, we allowed opinion testimony explaining why detectives decided to

obtain a wiretap. 160 Md. App. 391, 405 (2004).[2] And in *Shemondy v. State*, we allowed a police sergeant to explain his experiences working undercover "[b]ecause this knowledge is not within a juror's everyday experience, his testimony would have assisted the jury in understanding the evidence." 147 Md. App. 602, 612 (2002).

Here, Detective Hayes was asked whether he believed that Mr. Cerritos was accurately providing information regarding the incident. His answer, "Yes, ma'am," was proffered as *justification* for why he followed the leads provided by Mr. Cerritos.

Similarly, Detective Hayes's testimony did not encroach on the jury's ability to independently judge Mr. Cerritos's credibility. In *Conyers v. State*, 354 Md. 132 (1999), the Court of Appeals found that a police officer, commenting on statements given by the defendant's cellmate, was not "offering an opinion as to [the cellmate's] credibility as a witness, … and, because he was able to confirm that information, he regarded it as accurate and, therefore, truthful." *Id.* at 154. Relying on *Conyers*, we held in *Nero v. State*, 144 Md. App. 333 (2002), that a police officer, testifying to whether she believed two witnesses were certain when identifying a suspect from photo arrays, also was not inadmissible. "[The officer] merely testified that [the witnesses] appeared to be certain in their identifications. The witnesses could be right or wrong. The disputed testimony may be relevant to the witnesses' credibility but no more so than [in *Conyers*]." *Id.* at 356-57.

[2] "[T]estimony in the form of an opinion or inference otherwise admissible is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact." Md. Rule 5-704(a).

Detective Hayes's testimony did not opine on Mr. Cerritos's credibility, but relayed the Detective's impressions of the witness he was interviewing. The jury was free to believe his statement or not and to form its own independent conclusions about Mr. Cerritos's credibility when he testified. We find no error in the court's decision to allow the testimony.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.