Circuit Court for Baltimore City
Case No.: 119119009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2422

September Term, 2019

KELVIN RANDALL

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 5, 2021

Following trial in the Circuit Court for Baltimore City, a jury found Kelvin Randall, appellant, guilty of first-degree assault, two counts of reckless endangerment, use of a firearm in the commission of a crime of violence, and discharging a firearm within the city limits of Baltimore.[1] The court sentenced appellant to an aggregate term of thirty years' imprisonment.[2]

On appeal, appellant contends that the trial court erroneously admitted a portion of a recorded telephone call into evidence, and that the evidence was legally insufficient. For the reasons explained below, we shall affirm.

BACKGROUND

Appellant's sister-in-law, Divenia Thornton, who had been watching appellant's nine-year-old son on a Friday night, called appellant on the telephone to report that the child was ill with a high fever. She asked him to come and get the child and seek medical attention for him. The child was supposed to spend the weekend with Thornton. When appellant answered the telephone, he angrily responded that he was "taking care of business," and that he would "come there when [he was] done." Several hours later, appellant went to Thornton's home and banged "extremely" loudly on the door, which was answered by Tyrone Smith, who lived in an upstairs apartment. Appellant pushed past

[1] The jury acquitted appellant of one count of first-degree assault, and one count of second-degree assault.

[2] Specifically, the court sentenced appellant as follows: fifteen years for first-degree assault; five years consecutive for one count of reckless endangerment; and ten years consecutive for use of a handgun in the commission of a crime of violence. The court merged the remaining counts for sentencing.

Smith and began loudly banging on Thornton's door. Appellant and Thornton then got in a loud argument.

Both Smith and Thornton said that, after appellant collected his child and returned to his truck, he produced a pistol and began firing it toward them. Smith testified that when appellant got in his truck:

> I seen him bend down and[,] out of instinct, I just pushed [Thornton] back to the side because it looked like he had something in his hand. I didn't know what was in his hand, so I pushed [her] out to her side, and I backed up and that's when I heard all the gunshots go off.

Appellant wounded Smith's leg and Thornton was unharmed. The police collected nine cartridge casings from the street in front of Thornton's home, and photographed gunshot damage to her home.

At trial, the State played a recording of a telephone call between appellant and an unknown person who appellant called from jail. During the telephone call, the unknown person said that Thornton had "said something about police said they found shells that matched a certain gun." Appellant responded: "That's not true. That's not true, you know why? … It got built. … Yeah, it got built, yo. It got built. Follow what I am saying? … Remember what I told you? The reason I paid so much for it?" When the unknown person said that Thornton is "saying that's what the police telling her []," appellant responded:

> That ain't true. I'm telling you it's not true, yo. All right. That's what I paid for. I wouldn't have paid that much for that if it – I wasn't paying for that, I was paying for that. Follow what I am saying?

Appellant did not testify at trial, and he called no witnesses.

DISCUSSION

I.

Prior to trial, the State moved *in limine* to obtain a ruling on the admissibility of the recorded telephone call between appellant and the unknown person. Prior to jury selection the trial court heard argument about the admissibility of the recorded telephone call. The State contended, as it does now, that the recording was admissible under the statement of a party opponent hearsay exception found in Md. Rule 5-803(a), and that the recording was relevant because it tended to show consciousness of guilt because, in the recording, appellant assuaged the fears of the unknown caller by claiming that the gun could not be traced. Appellant argued, as he does now, that, because he used such vague language during the phone call, his statements on the recording were not relevant, yet they were highly prejudicial.

The court granted the State's motion, stating, in pertinent part:

> Okay. Now that I've had the opportunity to hear the call I think that to the extent it's coded language, it's very thinly coded language and it seems self-evident not necessarily that [appellant] is placing himself at the scene of the crime or even involved in the crime, but indicating an awareness at least of the weapon that was used in the crime, and thus his confidence that the casings wouldn't be able to be traced to a particular gun.
>
> And so I find that it's [sic] relevance outweighs the risk of unfair prejudice even though as you pointed out -- I'm not so worried about mis-translation. I'm worried about the fact that it would definitely show to the jury that he was indeed in custody at least at some point in that case. If you have a supplemental or corrective instruction you'd like me to give on that particular point, I'll consider it,[3] but I will allow the taped -- the relevant portions of

[3] The court later instructed the jury to disregard the "circumstances under which the call was made."

> the tape about -- it starts with, like, something about my grandmother or grandmother said something about the gun.

"All relevant evidence is generally admissible unless its probative value is substantially outweighed by the danger of unfair prejudice." *Donaldson v. State*, 200 Md. App. 581, 595 (2011) (citation omitted). "Evidence is relevant if it tends 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.'" *Walter v. State*, 239 Md. App. 168, 198 (2018) (quoting Md. Rule 5-401).

In determining the admissibility of evidence on relevance grounds, we analyze two 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 for abuse of that discretion." *State v. Simms*, 420 Md. 705, 725 (2011) (citations omitted).

We discern neither error nor an abuse of the discretion on the part of the trial court when it determined that the recorded phone call was relevant and not unnecessarily prejudicial. As the trial court noted, the evidence did not necessarily place appellant at the scene of the crime, rather it indicated that he had knowledge of the weapon used in the crime, and was confident that the casings found at the crime scene could not be traced to his pistol. Moreover, the trial court cured any prejudice flowing from the fact that the phone call was made from jail by instructing the jury to disregard that fact.

II.

Appellant next contends that the evidence was legally insufficient to prove his criminal agency. In making that argument, appellant points to various perceived deficiencies in the State's case such as: the fact that no gun was recovered or linked to the shooting; the police acknowledged that they did not determine when the damage to Thornton's home occurred, or when the shell casings had been deposited in the street; no identification procedure, such as a photo array, was conducted; no forensic evidence linked appellant to the crime; Thornton was an unreliable eyewitness; Smith had never seen appellant before; and the recorded phone call was "just gibberish."

In reviewing the sufficiency of the evidence, we review the record to determine 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.'" *Pinheiro v. State*, 244 Md. App. 703, 711 (2020) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

We believe that, in the light most favorable to the State, the evidence was legally sufficient to support appellant's criminal agency. Smith's or Thornton's testimony, if credited, was sufficient to sustain appellant's convictions. *Turner v. State*, 242 Md. 408, 416 (1966); *Rodgers v. State*, 4 Md. App. 407, 414 (1968).

Consequently, we shall affirm the judgment of the circuit court.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.