

Circuit Court for Baltimore City
Case No. 114015005

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2544

September Term, 2016

TRANNIE HAYES

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Graeff,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 2, 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.

After a bench trial in the Circuit Court for Baltimore City, Trannie Hayes, appellant, was found guilty of second degree murder and use of a handgun in the commission of a crime of violence.¹ The court imposed a sentence of 30 years for the second degree murder conviction and 20 years, consecutive, the first five years to be served without the possibility of parole, for the conviction of use of a handgun in the commission of a crime of violence.

QUESTIONS PRESENTED

On appeal, appellant presents the following questions for our review, which we have rephrased slightly, as follows:

1. Did the circuit court err in admitting a witness' videotaped statement as substantive evidence pursuant to Maryland Rule 5-802.1?
2. Was the evidence sufficient to support appellant's convictions?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal arises out of the fatal shooting of Eddie Blick, Jr., on November 14, 2013. According to an expert in forensic pathology, Mr. Blick died from multiple gunshot wounds, and the manner of death was homicide.

On the day of the shooting, Peter Novak, a truck driver, was making a pick up at the Capitol Cake Company in Baltimore City.² While he was in his truck, Mr. Novak heard

¹ Appellant also was charged with wearing, carrying, and transporting a handgun. The court stated that, because that crime was a lesser included offense of use of a handgun in the commission of a crime of violence, the court would “not be ruling on that.”

² In the record, the Capitol Cake Company is referred to by a number of different names. For consistency, we shall use this name throughout our opinion.

what he thought were gunshots. He then heard the sound of someone's feet "flopping" on the street, and a man fell directly in front of his truck. Another person with a gun came out from behind another truck, shot the man who had fallen on the sidewalk, lowered the gun, and "casually walked away." The shooter, who Mr. Novak believed was a man, was black and wore a gray hoodie. The shooter then drove away from the scene in a dark blue Nissan.

Rodney Montgomery, a crime lab technician with the Baltimore City Police Department, recovered ballistics evidence from the scene of the shooting. Testing revealed that eight of the recovered cartridge casings "were fired from the same unknown firearm."

Detective Stephen Matchett, a member of the Baltimore City Police Department, was the lead detective investigating Mr. Blick's death. At approximately 4:26 p.m. on the day of the shooting, he was called to respond to the 1300 block of Laurens Street at the intersection of Carey Street. He obtained and reviewed video from surveillance cameras at a bar and liquor store located at 1300 Laurens Street and at the Capitol Cake Company, located at 1304 North Laurens Street.

During the course of his investigation, Detective Matchett received information that James Moore had witnessed the shooting. On December 18, 2013, Detective Matchett and another officer picked up Mr. Moore, who was being held in the Baltimore City Detention Center on an unrelated matter, and transported him to police headquarters, where he was interviewed. The interview was video and audio recorded.

Detective Matchett prepared a photographic array that consisted of six separate photographs, one of which was a photograph of appellant. In a process that was recorded,

another detective, who was not involved in the investigation into the death of Mr. Blick and did not know which, if any, of the photographs depicted the target of the investigation, presented the photographic array to Mr. Moore while Detective Matchett watched from another room. Mr. Moore identified a photograph of appellant as the shooter, although he could not identify appellant by name. Under the photograph of appellant, the following words were written:

On Nov-13-2013 This person walked up on Eddie on lauren when He got on the side of bar He pulled out the Gun shot Him 2 times eddie Tried to run He got closer to him shot Him like 5 More times and Eddie Fell in the gutter[.]

Beneath that statement, Mr. Moore wrote his signature, which was dated December 18, 2013.

At trial, Mr. Moore acknowledged that he was in the area of Laurens and Carey street on the date of the shooting. He stated and that he was at the Club Paradise Lounge on Laurens Street at noon or 1 p.m. He did not recall seeing anyone get shot. He acknowledged that, on December 18, 2013, Detective Matchet and another police officer picked him up and drove him to police headquarters. He stated that the officers spoke to him as they drove to police headquarters, and for about 15 minutes in the parking lot after they arrived, telling him what they already knew about the homicide case.³ The officers subsequently locked him in a room and left him alone for about 15 minutes. A different

³ Mr. Moore testified that he did not remember what the officers told him about the case, nor what he told them in response, because the incident occurred “three years ago.”

detective then entered the room and showed him some photographs. Mr. Moore testified that one of the photographs was marked with a circle, and after it was shown to him, he set it aside. He stated that he wrote something on a piece of paper that did not have a photograph on it, but he denied writing the words beneath appellant's photograph identifying him as the shooter. Mr. Moore acknowledged, however, writing his signature under the photograph of appellant.

Mr. Moore reviewed the transcript and portions of the video recording of his interview with police. He testified that he only said what the detectives told him to say, but he could not recall what they told him. Subsequently, the video recording of Mr. Moore's interview with the detectives and his review of the photographic array was played for the court.⁴ Mr. Moore continued to assert that, during his review of the photographic array, he wrote what Detective Matchett told him to write. When asked why he lied in the recorded interview, Mr. Moore stated that the police threatened him. He testified that Detective Matchett gave him an "ultimatum" and threatened him, stating that he could either adopt the story given to him by the detectives and they would help him with a pending legal matter or, if he refused, he would get "set up."

⁴ The recording contradicted parts of Mr. Moore's testimony related to the suggestiveness of the interview, including his assertion that the photograph of appellant was marked with a blue circle and that he did not write the words appearing underneath the photograph.

Both Mr. Moore and Detective Matchett testified that the police never gave Mr. Moore help with any of his pending legal matters. Detective Matchett testified that he did not tell Mr. Moore what to say prior to the interview.

DISCUSSION

I.

Appellant contends that the circuit court erred in admitting Mr. Moore’s recorded interview with the police as substantive evidence. He argues that the video interview was hearsay because it was an “out-of-court statement offered at trial to prove its truth.” (quoting *Muhammad v. State*, 223 Md. App. 255, 266 (2015)). He asserts that the interview was not admissible under the hearsay exception set forth in Maryland Rule 5-802.1(a) because “it was impossible to determine whether the recorded statement was inconsistent with Mr. Moore’s trial testimony,” arguing that the statements Mr. Moore made during the recorded interview were tainted by “police input” and “police direction.”⁵

“‘Hearsay’ is 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.” Md. Rule 5-801(c). “Except as otherwise provided by [the Maryland Rules] or permitted by applicable constitutional provisions or statutes, hearsay is not admissible.” Md. Rule 5-802.

⁵ Maryland Rule 5-802.1(a) states that certain evidence is not excluded by the hearsay rule, including: “A statement that is inconsistent with the declarant’s testimony, if the statement was . . . (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement.”

Ordinarily, we review a trial court’s decision to admit evidence for abuse of discretion. *Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 48 (2016); *Donati v. State*, 215 Md. App. 686, 708, *cert. denied*, 438 Md. 143 (2014). Review of the admissibility of evidence that is hearsay, however, is reviewed under a different standard. *Bernadyn v. State*, 390 Md. 1, 7-8 (2005). Whether evidence constitutes hearsay, or falls within an exception to the rule against hearsay, is an issue of law that we review *de novo*. *Id.* The factual findings underpinning the court’s legal conclusion in this regard, however, “necessitate a more deferential standard of review.” *Gordon v. State*, 431 Md. 527, 538 (2013).

There is no dispute that Mr. Moore’s videotaped interview was hearsay, given that the State sought to introduce those statements as evidence that appellant was, in fact, the shooter. The disputed issue is whether Mr. Moore’s recorded statement was admissible as substantive evidence under an exception to the rule against hearsay. The State asserts that it was admissible, relying on Maryland Rule 5-802.1, which provides, in relevant part, as follows:

The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:

(a) A statement that is inconsistent with the declarant’s testimony, if the statement was (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) reduced to writing and was signed by the declarant; or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement.

Here, Mr. Moore testified and was subject to cross-examination at trial, and the recording satisfied the requirement of Rule 5-802.1(a)(3). The only question at issue, therefore, is whether Mr. Moore’s statements at trial were inconsistent with his statements during the interview.

In *Corbett v. State*, 130 Md. App. 408, 421, *cert. denied*, 359 Md. 31 (2000), this Court stated that “[i]nconsistency includes both positive contradictions and claimed lapses of memory” that “amount to deliberate evasion.” (quoting *Nance v. State*, 331 Md. 549, 564 n. 6 (1993)). Mr. Moore’s trial testimony was inconsistent with statements he made during his interview with police. Mr. Moore testified at trial that he did not witness the shooting, but he stated during the interview that the person he identified as appellant shot the victim multiple times.⁶ Under these circumstances, the circuit court did not err in finding that the video recording was admissible pursuant to Rule 5-802.1(a)(3).

II.

Appellant next contends that the evidence was insufficient to establish his identity as the shooter. He asserts that the “sole witness” to the shooting was Mr. Moore, whose testimony was “too inconclusive, contradictory, and uncertain, to be the basis of a legal conclusion.”

The State disagrees. Although it agrees that Mr. Moore’s testimony was “challenging,” it asserts that the trier of fact properly could compare Mr. Moore’s trial

⁶ Mr. Moore also testified at trial that he did not ask the interviewing officers for favorable treatment in one of his drug cases in exchange for his cooperation, while the video recording clearly shows him attempting such a negotiation.

testimony with his prior statements on the recording, in which he implicated appellant, and determine that appellant was the shooter.

The test for sufficiency of the evidence in a bench trial is whether the evidence, “if believed, directly or inferentially permits the court to be convinced, beyond a reasonable doubt, of the defendant’s guilt.” *Stephens v. State*, 198 Md. App. 551 (2011). *See also Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (“[T]he relevant question 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.”). “We give ‘due regard to the [fact finder’s] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.’” *State v. Suddith*, 379 Md. 425, 430 (2004) (quoting *Moye v. State*, 369 Md. 2, 12 (2002)). *Accord Walker v. State*, 234 Md. App. 160, 166-67 (2017) (same).

Conflicting evidentiary inferences are left to the trier of fact. *Neal v. State*, 191 Md. App. 297, 315, *cert. denied*, 415 Md. 42 (2010). The Court of Appeals has explained our role in reviewing conflicting evidentiary inferences as follows:

The primary appellate function in respect to evidentiary inferences is to determine whether the trial court made reasonable, *i.e.* rational, inferences from extant facts. Generally, if there are evidentiary facts sufficiently supporting the inference made by the trial court, the appellate court defers to the fact-finder instead of examining the record for additional facts upon which a conflicting inference could have been made, and then conducting its own weighing of the conflicting inferences to resolve independently any conflicts it perceives to exist. The resolving of conflicting evidentiary inferences is for the fact-finder.

State v. Smith, 374 Md. 527, 547-48 (2003).

Here, the circuit court found Mr. Moore’s trial testimony incredible and his out-of-court identification of appellant credible. Under these circumstances, there was sufficient evidence to support appellant’s convictions. See *Brown v. State*, 182 Md. App. 138, 182 (2008) (stating that the “testimony of a single eyewitness may be sufficient to prove guilt beyond a reasonable doubt.”). Accord *Branch v. State*, 305 Md 177, 184 (1986).

Appellant’s reliance on *Kucharczyk v. State*, 235 Md. 334 (1964), is misplaced. In that case, the prosecuting witness, an intellectually disabled 16-year-old boy with an I.Q. of 56, gave contradictory testimony about whether the defendant had assaulted him. *Id.* at 336-37. Noting that the other prosecution witnesses were “unable to offer any testimony concerning any actual assault,” the Court reversed the defendant’s conviction for lack of sufficient evidence. *Id.* at 338. The Court explained that its conclusion:

[F]low[ed] from the fact that the testimony of the prosecuting witness, who was the only person that testified as to any overt act on the part of the appellant, was so contradictory that it lacked probative force and was thus insufficient to support a finding beyond a reasonable doubt of the facts required to be proven.

Id. at 337.

Maryland’s appellate courts have long held that the doctrine set forth in *Kucharczyk* “is extremely limited in scope.” *Pittman v. Atl. Realty Co.*, 359 Md. 513, 544 (2000) (quoting *Smith v. State*, 302 Md. 175, 182 (1985)). See also *Vogel v. State*, 76 Md. App. 56, 59 (1988) (“Some appreciation of the limited utility of the so-called *Kucharczyk* doctrine may be gathered from the fact that it was never applied pre-*Kucharczyk* in a

criminal appeal and it has never been applies post-*Kucharczyk* in a criminal appeal.”) (quoting *Bailey v. State*, 16 Md. App. 83, 93-94 (1972)).

Moreover, this Court has made clear that *Kucharczyk* does not apply when the inconsistency is between an out-of-court statement identifying a defendant as the shooter and subsequent trial testimony. *Brown*, 182 Md. App. at 183-84. In *Brown*, prior to trial, the State interviewed Jermaine Hardy who positively identified Brown as the shooter. *Id.* at 146-47. At trial, however, Mr. Hardy repudiated the identification he made at the interview and testified that Brown was not the shooter. *Id.* at 148.

On appeal, Brown argued that there was insufficient evidence to support his convictions because Mr. Hardy’s earlier identification of Brown was the only evidence that linked him to the crime scene, and Mr. Hardy’s testimony was “too inconclusive, contradictory and uncertain to establish that appellant committed the offenses.” *Id.* at 180. This Court disagreed, stating that *Kucharczyk* was inapposite because, in that case, the eyewitness’ in-court testimony was “*internally* inconsistent,” whereas Mr. Hardy “was unequivocal in his claim at trial that [Brown] was not his assailant.” *Id.* at 183. Although Mr. Hardy’s trial testimony contradicted his earlier identification, this Court explained that *Kucharczyk* “has no application where [witness] testimony is [merely] inconsistent with an out of court statement.” *Id.* at 184 (quoting *Alexander v. State*, 4 Md. App. 214, 218 (1968)). This Court went on to note:

The fact that the jury was presented with evidence that [Brown] was the perpetrator, in the form of Mr. Hardy’s pre-trial photo identification and [the interviewing officer’s] testimony, as well as evidence that he was not the

perpetrator, in the form of Mr. Hardy’s trial testimony, made the issue of identification a credibility question for the jury.

Id. at 185.

Additionally, this Court stated that the “jury clearly considered the other probative evidence” corroborating Mr. Hardy’s identification, which included:

[Mr.] Hardy’s testimony that he fired several shots at his assailant; [Brown’s] presentation at the hospital on the night in question, with a gunshot wound; Brown’s fabrication of a robbery; Brown’s use of a false name at the hospital; and Brown’s sudden departure from the hospital, before treatment and despite having been told by the police to remain at the hospital.

Id. at 186. Declining Brown’s “invitation to substitute [his] view of the evidence for that of the jury,” this Court affirmed Brown’s convictions. *Id.*

Similarly, here, that Mr. Moore’s out of court identification was inconsistent with his trial testimony made the issue of appellant’s identity a credibility determination for the court. The circuit court stated that it found Mr. Moore’s trial testimony “to be both unreliable and inconsistent with the physical and electronic evidence that was presented in the case.” By contrast, it concluded that the statements Mr. Moore made during the interview with police were credible. In so finding, the court considered Mr. Moore’s demeanor during the interview, the degree to which his testimony at the interview was coerced, the physical evidence that corroborated his identification of appellant as the shooter, and his motive for offering inconsistent testimony at trial.

With respect to Mr. Moore’s demeanor during the interview, the circuit court explained that Mr. Moore’s identification of appellant as the perpetrator was “very emphatic,” as evidenced by the fact that he “clearly and unequivocally” told police that he

knew the identity of the shooter and that he “slam[med] his hand on [appellant’s] photo” during the identification procedure. Although Mr. Moore attempted to negotiate a benefit for his “upcoming case” in exchange for his identification, he “was not promised anything by any of the detectives” during the interview that would have influenced his identification of appellant as the shooter. Furthermore, as the circuit court explained, Mr. Moore’s assertion at trial that he did not write the statement below appellant’s photo is clearly contradicted by the video of the interview that shows Mr. Moore handwriting the statement without prompting or suggestion by the interviewing officers.

The circuit court also found that the physical evidence and testimony of other witnesses corroborated the credibility of Mr. Moore’s identification. Video surveillance footage showed that Mr. Moore was standing outside Club Paradise Lounge at the time of the murder and facing a direction that would have given him a clear vantage of the shooting. During the interview, Mr. Moore told officers that appellant got in a “dark blue car” after the shooting, which is corroborated by the testimony of Mr. Novak, who stated that the shooter drove away in a “dark blue Nissan.” Mr. Moore also told the interviewing officers that Mr. Blick “fell in the gutter” when he was shot, which is consistent with Mr. Novak’s testimony that, after the shooting, Mr. Blick fell “at the edge of the sidewalk in the street.” Finally, the circuit court found that Mr. Moore’s description of the number and pattern of shots fired was “consistent with other testimony in [this] case.” During the interview, Mr. Moore claimed that Mr. Blick was shot “two times” initially and then “five more times” as appellant drew closer to him. This is supported by the medical examiner’s conclusion that

Mr. Blick was shot “seven times,” as well as Mr. Novak’s testimony that approximately “four or five” shots were fired.

The evidence was sufficient to support appellant’s convictions.

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