

Circuit Court for Allegany County
Case No. 01-K-17-18840

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2558

September Term, 2017

JOSHUA SMITH

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 5, 2019

*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 jury trial in the Circuit Court for Allegany County, Joshua Travis Smith, appellant, was convicted of robbery with a dangerous weapon, robbery, second-degree assault, theft in an amount of at least \$1,000 but less than \$10,000, and conspiracy to commit robbery. Mr. Smith raises two issues on appeal: (1) whether the court erred in admitting the contents of a recorded phone call between himself and his girlfriend because, he claims, it was not relevant evidence, and (2) whether the docket entries must be corrected to reflect a conviction for conspiracy to commit robbery rather than a conviction for conspiracy to commit armed robbery. Because the recorded call was relevant evidence that tended to establish Mr. Smith's guilt, we affirm his convictions. However, we remand the case to the circuit court to correct the commitment record and docket entries to reflect that he was convicted of conspiracy to commit robbery, not conspiracy to commit armed robbery.

At trial, the State presented evidence that Justin Smith (Justin) used a knife to rob the Best Price Market in McCoole, Maryland. Immediately after the robbery, he fled in a vehicle being driven by Cindy Lewis. Ms. Lewis testified that the appellant, Mr. Smith, was in her vehicle before and after the robbery, that he planned the robbery with Justin, and that he aided and abetted Justin by opening the car door for him after the robbery.

At trial, defense counsel sought to prohibit the State from introducing the transcript of a recorded jail call between Mr. Smith and his girlfriend, Shana Riggleman. During that call, the following exchange occurred:¹

[Riggleman]: Wesley was just like talking about how you know since he met Juice you know what I mean he didn't trust him and you kept tellin' him trust him and shit like and Wes was like plus I felt like he was like jealous of me too and I was like why and he's like I don't know he's like I guess cause me and Mont are tight. He's like I just felt like me and him didn't vibe. He's like and I got that sense like that he was a snake and uh . . .

[Mr. Smith]: Who, Wes felt like that about Juice?

[Riggleman]: Yeah.

[Mr. Smith]: I don't, I could sense that. That's why Wes ain't been coming around.

[Riggleman]: He straight said that. He said, he straight said that. He said I feel, he's like he's like the dude made me feel like he was like jealous of you or something. He's like cause every time I talk to Mont he's like cut into our conversation. He was like so that's, he's like honestly that's why I didn't come around. He's like and plus the fact that I don't trust him and he said that you know he said something to you about it and you were like oh yeah that's my boy you know, you can trust him and dah dah dah dah. Well, Wes was like you know I asked him where he come from and said he was like (indecipherable) from here Westernport and she's like oh yeah he's definitely a snake. You know it was like busting him out of his shit like you know what I mean like straight busting him clean out.

[Mr. Smith]: Well, I mean it's still as long as she ain't (indecipherable) you know what I mean as long as she ain't bustin' nothin' else out that's all that matters.

[Riggleman]: Yeah, but still you know what I mean.

¹ For reference, testimony at trial had established that Mr. Smith's nickname was "Piedmont," Justin's nickname was "Juice," and that Ms. Lewis and Mr. Smith had previously spent time together with a man named Wes Viney, who was Lewis's ex-boyfriend's brother.

[Mr. Smith]: The only one that can tie, you understand?

[Riggleman]: What? Say again, baby?

[Mr. Smith]: She’s the only one that can tie.

[Riggleman]: Yeah, yeah I get what you mean. Ok.

[Mr. Smith]: Huh?

[Riggleman]: Yeah, uh yeah I understand. I know she’s the only one.

[Mr. Smith]: Yeah, that’s it.

The State asserted that the conversation was relevant to Mr. Smith’s guilt because he appeared to be telling Ms. Riggleman that Ms. Lewis was the only person who could tie him to the robbery. Defense counsel agreed that the jury could infer from the call that there was an unknown female who could tie Mr. Smith to a crime. However, he asserted that the call was not relevant to this case because, at the time of the call, Mr. Smith was also charged with other crimes involving Justin. Thus, counsel asserted that there was no basis for the jury to infer that Mr. Smith was referring to Ms. Lewis or the robbery of the Best Market. The trial court determined that the recorded conversation was relevant evidence and that the parties were free to argue its weight to the jury. On appeal, Mr. Smith claims, as he did in the trial court, that the recorded call was not relevant because there was no evidentiary basis to connect it to the charged crimes in this case.

Evidence is relevant if it has “any tendency 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.” Md. Rule 5-401. “A person’s post-crime behavior often

is considered relevant to the question of guilt because the particular behavior provides clues to the person’s state of mind.” *Stevenson v. State*, 222 Md. App. 118, 145 (2015) (citation omitted). Relevance may be established by inference, with the “probative value” of the evidence being dependent upon “the degree of confidence” in the inferences. *Decker v. State*, 408 Md. 631, 641 (2009). “While trial judges are vested with discretion in weighing relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence.” *State v. Simms*, 429 Md. 705, 724 (2011).

Here, we discern no error in the trial court’s determination that the recorded call was relevant to prove Mr. Smith committed the charged offenses. Mr. Smith acknowledges on appeal that his “repeated references to a female who was ‘the only one that can tie’ allowed an inference that there was a female witness who could inculcate [him].” Moreover, when Mr. Smith’s conversation is viewed in relation to the other evidence introduced at trial, the jury had a reasonable basis to infer that he was talking about Ms. Lewis tying him to the Best Price Market robbery. In the recorded call, Mr. Smith indicated that there was “only one” female who could tie him to a crime and that the female was the same person who had spoken to Wes and his girlfriend about Justin. Ms. Lewis, of course, was a female who knew Mr. Smith, Justin, and Wes Viney. Moreover, Mr. Smith did not proffer that there were any female witnesses in his other pending cases who might have also been familiar with all those persons and that could have tied him to a crime. But, more importantly, if Mr. Smith believed that there was “only one” woman who could tie him to a crime, it was reasonable to infer that Ms. Lewis was the woman he was discussing, as she

was a female and one of only two people who knew he was involved in the robbery of the Best Price Market. Thus, the recorded phone conversation tended to prove that Mr. Smith had been involved in the robbery of the Best Price Market.² Consequently, it was relevant evidence and properly admitted.

Mr. Smith also asserts that the docket entries and commitment record must be corrected to reflect that he was convicted of conspiracy to commit robbery rather than conspiracy to commit armed robbery. The State concedes that the docket entries must be corrected but contends that the issue is not preserved because Mr. Smith did not file a motion to correct the commitment record in the circuit court. We agree that the issue is not preserved. However, we exercise our discretion under Maryland Rule 8-131(a) to address Mr. Smith’s claim. Because the record reflects, and the parties agree, that Mr. Smith was convicted of conspiracy to commit robbery, not conspiracy to commit armed

² Mr. Smith briefly asserts that the evidence was “inadmissible under . . . [Rule] 5-403,” which allows the court to exclude relevant evidence if its probative value is outweighed by its prejudicial effect. However, this issue is not preserved as Mr. Smith did not raise it in the trial court. And, in any event, Mr. Smith does not argue this point with particularity on appeal.

robbery, we remand the case to the circuit court with instruction to correct the commitment record and docket entries.³

JUDGMENTS OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED. CASE REMANDED TO THE CIRCUIT COURT FOR THE SOLE PURPOSE OF CORRECTING THE DOCKET ENTRIES AND COMMITMENT RECORD TO REFLECT THAT APPELLANT WAS CONVICTED OF CONSPIRACY TO COMMIT ROBBERY RATHER THAN CONSPIRACY TO COMMIT ARMED ROBBERY. COSTS TO BE PAID 75% BY APPELLANT AND 25% BY ALLEGANY COUNTY.

³ Mr. Smith also notes that the entries on MDEC and the Maryland Judiciary Case Search website indicate that he was convicted of conspiracy to commit armed robbery. If those entries are not updated after the Clerk corrects the commitment record and docket entries, Mr. Smith may address that issue by either filing a motion in the circuit court or by following the directions for correcting errors on the Maryland Judiciary Case Search website.