Circuit Court for Baltimore City
Case No. 118289001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2593

September Term, 2019

TIQUAN DINKINS

v.

STATE OF MARYLAND

Shaw Geter,
Gould,
Zic,

JJ.

Opinion by Zic, J.

Filed: September 14, 2021

*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.

A jury in the Circuit Court for Baltimore City convicted Tiquan Dinkins, appellant, of wearing, carrying, or transporting a handgun. The court sentenced him to a term of three years imprisonment. On appeal, Mr. Dinkins presents two questions for our review:

1. Did the trial court err by admitting "other crimes" evidence?
2. Is the evidence sufficient to sustain the conviction for wearing, carrying, or transporting a handgun?

Finding no error or abuse of discretion by the trial court, we shall affirm.

BACKGROUND

In the early morning hours of May 20, 2016, Emmanuel Clark was shot and killed on the 400 block of West Saratoga Street in Baltimore. Steven Ewell was present at the time of the shooting. Mr. Ewell testified that he and a group of friends had been "shooting dice all night," and, as "the sun started to come up," he heard shots fired and saw that Mr. Clark had been shot. According to Mr. Ewell, the shots were fired from a "black truck" because "[e]verybody kept saying a black truck, a black truck," though he acknowledged that he did not personally see a black truck.

Mr. Ewell told police that there were three individuals in the black truck and that the shots were fired from the backseat of the truck. Mr. Ewell also told police that the gun was a black or silver gun and that it sounded like the shots were fired from "a .32."[1]

[1] During his trial testimony, Mr. Ewell made conflicting statements concerning what he saw at the time of the shooting. Mr. Ewell testified that he told police that he saw a black truck, that three people were in the truck, and that shots were fired from the back seat of the vehicle and the windows were open. Mr. Ewell also admitted, however,

Daniel Lamont, a forensic scientist and firearms examiner for the Baltimore City Police Department, testified that the bullets recovered from Mr. Clark's body were .32 caliber.

On May 19, 2016, the day before the shooting, Ronald Sterns was carjacked at approximately 8:00 p.m. by three individuals while he idled at a stop light at the corner of Benninghaus Road and York Road in Baltimore City. Mr. Sterns was driving a rented black Dodge Durango SUV with New Hampshire license plates. He testified that the three men approached the SUV and one of the men placed a "black and silver revolver" inside the driver's window while instructing him to exit the SUV. Mr. Sterns exited the SUV, leaving his cell phone and identification card behind. Several months after the carjacking, Mr. Sterns discovered in his iCloud account a "selfie" photograph of the three

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that the shots came from behind him and he was focused on the money strewn on the ground and assisting the man who was shot. Additionally, on cross examination, the following exchange took place:

> [COUNSEL FOR APPELLANT]: -- but you never saw a truck?
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> [MR. EWELL]: I didn't see one personally, I just saw, you know, everybody was like black car, I'm like, you know, familiar with the cars so they was just shooting at us . . . .
>
> [COUNSEL FOR APPELLANT]: Okay. And you didn't see the people who the other people were referring to?
>
> [MR. EWELL]: No.
>
> [COUNSEL FOR APPELLANT]: Okay.
>
> [MR. EWELL]: Like I said in the video, I didn't see nobody.
>
> [COUNSEL FOR APPELLANT]: Say that one more time.
>
> [MR. EWELL]: Like I said in the -- when I first talked to the detectives, I didn't see anybody, I didn't see no faces, like I didn't see no one shooting you feel me. I'm just going off what the amongst said . . . .

individuals involved in the carjacking. The photograph had been taken with Mr. Sterns's phone on May 20, 2016 at 1:58 p.m.

Baltimore City Police Detective Jonathan Riker, the lead investigator assigned to Mr. Clark's homicide, testified that he obtained CCTV video footage from May 20, 2016, depicting the location of the shooting. Though the shooting was not captured on the video, Detective Riker identified a vehicle in the video that matched the description of the black Durango SUV provided to him by witnesses at the shooting, and that video footage was played for the jury.

Detective Riker testified that he interviewed Mr. Dinkins on October 6, 2016 and a recording of that interview was also played for the jury. During the interview, Mr. Dinkins denied having a gun or using a gun during the carjacking. Mr. Dinkins also denied being present in the vehicle on May 20, 2016 at 5:48 a.m. when Mr. Clark was shot. Mr. Dinkins insisted that he did not participate in the shooting, stating that it was Jerome Pittman and Rashad Harris who shot Mr. Clark.

Mr. Harris testified that he had participated in the carjacking with Mr. Dinkins and Jerome Pittman. According to Mr. Harris, on May 19, 2016, he, Mr. Dinkins, and Mr. Pittman were trying to find a ride back to the west side of Baltimore when they saw a truck stopped at a red light and decided to carjack the driver and take the truck. "We walked to the car, someone pulled a gun out and made the person get out of the car, we hop[ped] in and went over west." He stated that he did not recall telling police during an interview that he had seen Mr. Dinkins with a silver and black gun.

Mr. Harris testified that he could not remember who had threatened Mr. Sterns with a gun: "[Mr. Dinkins], I think, I think that's what I told you, I don't know, I can't remember." When the prosecutor again asked who had put the gun on Mr. Sterns, Mr. Harris responded: "[Mr. Dinkins] did that." Mr. Harris stated that Mr. Pittman and Mr. Dinkins dropped him off at home that same evening.

According to Mr. Harris, he rejoined Mr. Dinkins and Mr. Pittman in the stolen Durango when they picked him up in his neighborhood the following afternoon. Once inside the Durango, Mr. Pittman asked Mr. Harris, "you remember what happened to Terone . . . oh, it's a done deal." Mr. Harris stated that Mr. Dinkins nodded his head in agreement with Mr. Pittman's comment. Mr. Harris believed that Mr. Pittman's comment referred to the 2015 shooting death of "Terone," a close friend of Mr. Pittman.

Mr. Harris recognized the selfie photograph of him, Mr. Dinkins, and Mr. Pittman inside the Dodge Durango on the day of the carjacking. He stated that Mr. Dinkins took the photograph while seated in the passenger seat, while he was seated in the backseat and Mr. Pittman was in the driver's seat. The parties stipulated that Mr. Dinkins, Mr. Harris, and Mr. Pittman all pled guilty in federal court to the armed carjacking that occurred on May 19, 2016. The jury found Mr. Dinkins guilty of wearing, carrying, or transporting a handgun and not guilty of first- and second-degree murder and conspiracy to commit first-degree murder.

DISCUSSION

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING "OTHER CRIMES" EVIDENCE.

Mr. Dinkins contends that the circuit court erred in admitting "other crimes" evidence concerning the carjacking that occurred prior to the shooting death of Mr. Clark. He asserts that the "irrelevant" and "highly inflammatory" evidence of the carjacking should have been excluded under Rule 5-404(b) because it "inevitably created the likelihood that a juror might infer that [Mr. Dinkins] was carrying a handgun solely because during the carjacking he may have been in possession of one."

The State responds that Mr. Dinkins did not preserve this issue for review because, although he challenged the admission of the carjacking evidence in response to the State's pretrial motion, he did not make a contemporaneous objection or request a continuing objection when the evidence was introduced at trial. Even if the issue was preserved, the State contends that the circuit court did not abuse its discretion in admitting evidence of the carjacking as the evidence was relevant to the issue of identity.

Prior to trial, the State moved, pursuant to Rule 5-404(b), to introduce video evidence and testimony from Mr. Sterns and Mr. Harris regarding the carjacking. The State argued that the evidence was admissible to show identity, specifically to show that the black SUV and silver revolver used in the armed carjacking were the same black SUV and silver revolver used in the shooting of Mr. Clark. The circuit court deferred ruling on the motion pending review of the video footage of the crime scene. On the

morning of the second day of trial, the court ruled that evidence of the carjacking was admissible under the identity exception provided in Rule 5-404(b).

On the second day of trial, the State called Mr. Sterns to testify to the details of the carjacking of his black Dodge Durango SUV by three men, one of whom threatened him with a silver revolver. Mr. Dinkins did not object to Mr. Sterns's testimony. On the following day, prior to the examination of Mr. Harris, Mr. Dinkins asked the court to advise Mr. Harris that, pursuant to the court's earlier ruling, his testimony was limited only to the events involving the carjacking of Mr. Sterns's SUV and that anything that happened prior to that carjacking was excluded. Mr. Dinkins did not object to Mr. Harris's testimony, nor did he object on the following day when the State introduced the video footage from the Carroll Fuels gas station where the carjacking occurred. Prior to playing the video footage for the jury, the court asked defense counsel whether she had any objection to the playing of the video into the record and defense counsel responded "No, Your Honor."

Rule 4-323(a) states that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." The Court of Appeals has consistently reiterated "its commitment to the requirement of a contemporaneous objection to the admissibility of evidence in order to preserve an issue for appellate review." *Brown v. State*, 373 Md. 234, 242 (2003). A party must object each time a question eliciting such testimony is asked, otherwise, the objection is not preserved. *See Fone v. State*, 233 Md. App. 88, 113 (2017). "Th[is] requirement of a contemporaneous

objection at trial applies even when the party contesting the evidence has made his or her objection known in a motion in limine." *Id*. (alteration in original) (quoting *Wimbash v. State*, 201 Md. App. 239, 261 (2011)) (objection was not preserved where, following the denial of a motion in limine, defendant failed to object to testimony and failed to request a continuing objection).

There are two exceptions to the contemporaneous objection rule: where counsel requests a continuing objection, *see* Md. Rule 4-323(b),[2] or in situations where compliance with the contemporaneous objection requirement is excused because the court has "reiterated" its ruling "immediately prior" to the introduction of the evidence at issue. *See Watson v. State*, 311 Md. 370, 372-73 n.1 (1988) (explaining that requiring a contemporaneous objection after the court had reiterated its ruling "would be to exalt form over substance"). The Court has since noted that "*Watson* was limited to its specific circumstances." *Reed v. State*, 353 Md. 628, 638 (1999) (stating that "[w]hen the evidence, the admissibility of which has been contested previously in a motion in limine, is offered at trial, a contemporaneous objection generally must be made pursuant to Maryland Rule 4-323(a) in order for that issue of admissibility to be preserved for the purpose of appeal"); *accord Washington v. State*, 191 Md. App. 48, 90 (2010) (noting

[2] Maryland Rule 4-323(b) provides that:

> At the request of a party or on its own initiative, the court may grant a continuing objection to a line of questions by an opposing party. For purposes of review by the trial court or on appeal, the continuing objection is effective only as to questions clearly within its scope.

that "[t]he *Watson* exception is a narrow one"). These exceptions do not apply in this case.

Mr. Dinkins did not request a continuing objection and did not object when the State first introduced evidence of the carjacking during the testimony of Mr. Sterns. Though the court reiterated its previous ruling prior to Mr. Harris's testimony, by that time Mr. Sterns had already testified at length to the details of the carjacking. Accordingly, Mr. Dinkins's objection to the carjacking evidence was waived. *See Berry v. State*, 155 Md. App. 144, 172 (2004) (stating that "[t]he failure to object as soon as the . . . evidence was admitted, and on each and every occasion at which the evidence was elicited, constitutes a waiver of the grounds for objection").

Even if Mr. Dinkins had not waived his objection to the carjacking evidence, we would conclude that the trial court did not abuse its discretion in admitting the evidence. The admissibility of other crimes evidence is governed by Rule 5-404(b), which provides that "[e]vidence of other crimes, wrongs or other acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith." Evidence of other crimes or bad acts is admissible, however, where "the evidence is 'specially relevant' to a contested issue" other than propensity, "such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." *Burris v. State*, 435 Md. 370, 386 (2013) (quoting Rule 5-404(b)). "We review a circuit court's decision to admit or exclude evidence applying an abuse of discretion standard." *Norwood v. State*, 222 Md. App. 620, 642 (2015) (citing *Kelly v. State*, 392 Md. 511, 530 (2006)).

"Before other crimes evidence is admitted, a three-part determination must be made by the trial court." *Sifrit v. State*, 383 Md. 116, 133 (2004). The three-step analysis is as follows:

> First, the court must decide whether the evidence falls within an exception to Rule 5-404(b). Second, the court must decide "whether the accused's involvement in the other crimes is established by clear and convincing evidence." Finally, the court must balance the necessity for, and the probative value of, the other crimes evidence against any undue prejudice likely to result from its admission.

Hurst v. State, 400 Md. 397, 408 (2007) (quoting *State v. Faulkner*, 314 Md. 630, 634-35 (1989)); *Sifrit*, 383 Md. at 133.

Under the first step of the three-step process, the trial court found that the evidence was admissible under the identity exception because the evidence "connects Mr. Dinkins to the current crime scene." The court explained that "[t]he vehicle that was carjacked was a black late model Dodge Durango" and "a silver revolver, not a handgun but a silver revolver was used in the carjacking." The court noted that the "surprising[ly] . . . clear" video footage of the crime scene area appeared to show "a black late model SUV that appears to be a Dodge Durango. This evidence shows or goes to show that [Mr. Dinkins] was in possession of a similar vehicle that was carjacked with two others and that a silver revolver was used." The court noted that the "State also ha[d] evidence that [Mr. Dinkins] was in possession of the same vehicle as in the carjacking mere hours after this crime."

Evidence that a defendant was in possession of a type of firearm similar to the one used in the offense charged is admissible under the identity exception to the "other

crimes" evidence rule. *See Henry v. State*, 184 Md. App. 146, 168 (2009) (holding that evidence that the defendant had possessed a gun similar to the one used in a double shooting two weeks later fell within the identity exception to Rule 5-404(b)); *Wilkerson v. State*, 139 Md. App. 557, 572 (2001) (holding that evidence that the defendant had the murder weapon during a robbery one week prior to the murder was admissible to establish the identity of the murderer); *Emory v. State*, 101 Md. App. 585, 610-11 (1994) (noting that evidence of other offenses is admissible under the identity exception "if it shows . . . that on another occasion the defendant was . . . using certain objects used by the perpetrator of the crime at the time it was committed" (quoting *Faulkner*, 314 Md. at 637-38)). Here, because evidence of the silver and black revolver and black SUV involved in the carjacking was similar to the revolver and black SUV described in the shooting on the following day, the evidence of the carjacking was relevant to establish the identity of the shooter.

Under the second step, the court noted that Mr. Dinkins's involvement in the armed carjacking was not in dispute as he had pleaded guilty to the crime in federal court. Regarding the third and final step of the analysis, Mr. Dinkins argues that the probative value of the carjacking was relevant "only through a tenuous chain of circumstantial inferences." He points to inconsistencies in the descriptions of the black SUV, noting that while the Dodge Durango that was carjacked had tinted windows, Mr. Ewell had told police that the vehicle used in the shooting did not have tinted windows, and the fact that the silver revolver recovered from Mr. Pittman when he was arrested did not match the murder weapon showed that there were other silver revolvers "in circulation." These

types of discrepancies in the evidence, however, go to the weight of the evidence, and not its admissibility. *See Henry*, 184 Md. App. at 168. The carjacking evidence was significant in this case because it established Mr. Dinkins's presence in a black SUV ten hours before the shooting while in possession of a revolver that resembled the murder weapon. In a case based on circumstantial evidence, the carjacking evidence was relevant to establish the identity of the shooter. Any unfair prejudice that would result from the carjacking evidence was outweighed by its probative value.

Moreover, the possibility that the jury may have drawn an adverse inference from the carjacking evidence was ameliorated by the instruction given by the court:

> You have heard evidence that the defendant committed the crime of armed carjacking which is not a charge in this case. You may consider this evidence only on the question of identity. However, you may not consider this evidence for any other purpose. Specifically, you may not consider it as evidence that the defendant is of bad character or has a tendency to commit crime.

Based on this instruction, the jury was aware that the carjacking evidence was introduced for the limited purpose of identifying the shooter and that it could not be considered as propensity evidence. "Maryland courts long have subscribed to the presumption that juries are able to follow the instructions given to them by the trial judge, particularly where the record reveals no overt act on the jury's part to the contrary." *Spain v. State*, 386 Md. 145, 160 (2005) (citing *Wilson v. State*, 261 Md. 551, 570 (1971)), *Brooks v. State*, 85 Md. App. 355, 360-61 (1991)). In this case, there was no evidence to rebut the presumption that the jury followed the court's instructions. Accordingly, the circuit court did not abuse its discretion in admitting the evidence.

II. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN MR. DINKINS'S CONVICTION.

Mr. Dinkins challenges the sufficiency of the evidence supporting his conviction for wearing, carrying, or transporting a handgun because, he contends, the State failed to establish that he had a handgun on his person when the shooting occurred on May 20, 2016 "or at any point." We disagree.

In assessing a challenge to the sufficiency of the evidence, we "examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" and view the evidence and reasonable inferences therefrom "in the light most favorable to the State." *State v. Wilson*, 471 Md. 136, 159 (2020) (quoting *Fuentes v. State*, 454 Md. 296, 307 (2017)). "Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Redkovsky v. State*, 240 Md. App. 252, 262-63 (2019) (quoting *Tracy v. State*, 423 Md. 1, 12 (2011)).

We do not consider whether the jury "could have made other inferences from the evidence or even refused to draw an inference, but whether the inference [it] did make was supported by the evidence." *State v. Suddith*, 379 Md. 425, 447 (2004) (alteration in original) (quoting *State v. Smith*, 374 Md. 527, 557 (2003)). "Thus, 'the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded

any rational fact finder.'" *Darling v. State*, 232 Md. App. 430, 465 (2017) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004)).

Mr. Dinkins was convicted of violating § 4-203(a)(1)(i) of the Criminal Law Article, which prohibits a person from wearying, carrying, or transporting a handgun on their person or in a vehicle. A "handgun" includes "a pistol, revolver, or other firearm capable of being concealed on the person." Md. Code Ann., Crim. Law § 4-201(c). Proof of guilt based on circumstantial evidence is no different from proof of guilt based on direct evidence. *Suddith*, 379 Md. at 430. We have recognized that "[c]ircumstantial evidence . . . is entirely sufficient to support a conviction, provided that the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Benton v. State*, 224 Md. App. 612, 630 (2015); *see also State v. Manion,* 442 Md. 419, 431-32 (2015); *Painter v. State,* 157 Md. App. 1, 11 (2004).

According to Mr. Harris's testimony, Mr. Dinkins used a silver and black gun to threaten Mr. Sterns and carjack the black Dodge Durango on May 19, 2016. Mr. Ewell testified that on May 20, 2016, Mr. Clark was struck by shots fired from a black truck by an individual who used a gun that sounded "like a .32." The State also introduced CCTV video footage from May 20, 2016 showing a black SUV driving in the vicinity of the Saratoga block immediately prior to the shooting, which matched eyewitness descriptions provided to Detective Riker of the black SUV involved in the shooting. The State also introduced a selfie photograph taken by Mr. Dinkins in the stolen Durango six hours after the shooting.

Mr. Dinkins's arguments that Mr. Harris and Mr. Ewell were not credible and that Mr. Sterns's description of the assailant who pointed the gun at him did not match Mr. Dinkins go to the credibility of the testimony and weight of the evidence, rather than its sufficiency. *See Darling*, 232 Md. App. at 467 (noting that "credibility is a matter left to the fact-finder and we do not re-weigh on appeal evidence presented at trial"); *Correll v. State*, 215 Md. App. 483, 502 (2013) ("It is the jury's task to resolve any conflicts in the evidence and assess the credibility of witnesses."). Viewed in the light most favorable to the State, the jury could reasonably infer from the evidence that Mr. Dinkins wore, carried, or transported a handgun on May 20, 2016.

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