Circuit Court for Howard County
Case No. 13-K-18-058749

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2703

September Term, 2018

TONY EUGENE THOMAS

v.

STATE OF MARYLAND

Meredith,
Friedman,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: January 16, 2020

Tony Thomas was convicted by a jury sitting in the Circuit Court for Howard County of first-degree assault and use of a handgun in the commission of a crime of violence.[1] The court sentenced him to consecutive terms of imprisonment totaling 30 years, the first five years to be served without the possibility of parole.

Before us now, Thomas appeals his convictions, arguing: (1) that the circuit court erred by denying his motion to suppress; (2) that the trial court abused its discretion when it refused to ask during *voir dire* whether any prospective juror would give greater weight to the testimony of an expert witness merely because they are an expert; and (3) that the evidence was legally insufficient to sustain his convictions. We hold that the motion to suppress was properly denied; that the trial court appropriately exercised its discretion by declining to ask the requested *voir dire* question; and that the evidence is legally sufficient to sustain Thomas's convictions. We, therefore, affirm.

BACKGROUND

Ripponjeet Mahli was attacked outside the door to his home, which he shares with his mother. The attacker repeatedly struck Mahli in the head with a gun. Mahli was able to push the man down, get inside his house, and close the door. Ravinder Mahli ("Ms. Mahli), Mahli's mother, heard her son yelling that a man was trying to kill him and hurried to the kitchen to call 911. She never saw her son's attacker.

[1] Thomas was acquitted of burglary with intent to commit a theft and burglary with intent to commit a crime of violence.

Howard County Police Officer Brian Phillips testified that he responded to the scene and spoke to Mahli. Based on this conversation, police dispatched a helicopter and K-9 units to search for a "black male with a maximum height of five foot eleven" in the area. No suspect was found. The next morning, Ms. Mahli observed a black glove, that did not belong to anyone in her family, lying in some blood splatter on the kitchen floor. She contacted the police and an officer collected the glove.

At trial, Mahli testified that his attacker was a "dark skinned" man wearing a hat, a jacket, and a glove. When asked if he meant a "black person [or] a white person," Mahli replied a "[w]hite person." Thomas is African-American. Mahli was then asked if he saw his attacker in the courtroom and he replied, "No."

A neighbor testified that on the night Mahli was attacked, she observed a man dressed in all black smoking a cigarette near the bottom of the Mahli's driveway. A cigarette butt that was later found on the street near the entrance to the Mahli's driveway was collected and processed for DNA evidence.

Thomas was arrested on July 14, 2017 at a house in Oxon Hill, where he rented a bedroom. During a search of Thomas's bedroom, police recovered a .40 caliber, semi-automatic pistol.

A DNA analyst testified that she analyzed three items for DNA evidence: the cigarette butt, the glove, and the gun, and for comparison, samples from Mahli and Thomas. The cigarette butt yielded a partial DNA profile consistent with a female contributor. A blood stain on the exterior of the glove yielded one male profile that was

consistent with Mahli's DNA. Analysis of an interior sample from the glove yielded a DNA profile "consistent with a mixture of three or more individuals including a major male contributor."[2] The major male contributor profile matched the DNA profile obtained from Thomas. Moreover, swabs taken from the trigger area, the left side of the frame, the grip, and the magazine of the gun all yielded mixed DNA profiles with a major male contributor consistent with Thomas's DNA.

DISCUSSION

I.

On July 12, 2017, a search and seizure warrant was issued for the Oxon Hill residence where Thomas was living.[3] The warrant described the premises to be searched as "a one-story brick detached single family style residential dwelling." The police executed the warrant two days later. Thomas moved to suppress evidence seized from the house, arguing that the warrant was an invalid general warrant because it failed to identify the specific unit in a multi-unit dwelling that was the target of the search. The circuit court held a hearing and denied the motion to suppress. On appeal, Thomas contends that this was error. We disagree.

[2] Only the major male contributor profile contained enough DNA to be analyzed.

[3] Thomas became a suspect after the DNA profile developed from the interior of the glove was entered into the Combined DNA Index System (CODIS) and returned a match for Tony Eugene Thomas.

In reviewing the circuit court's denial of a motion to suppress, we consider only the evidence contained in the record of the suppression hearing. *McFarlin v. State*, 409 Md. 391, 403 (2009). We accept the circuit court's factual findings, unless clearly erroneous. *Id*. Viewing the evidence and the inferences that may reasonably be drawn from it in the light most favorable to the prevailing party, we then undertake our own independent constitutional appraisal of the suppression ruling. *Id*.

Sergeant Mark Orlosky, the sole witness called at the suppression hearing, testified that the Howard County Police set up "physical and electronic surveillance" at Thomas's address before applying for a search warrant. Thomas was observed sitting behind the residence and using a key to enter the residence through a rear door in the basement. Based upon the exterior appearance of the residence and the fact that the house had one street number and one mailbox, Sgt. Orlosky believed it to be "a single-family, ranch-style home that consisted of a main floor and a basement."

Upon entering the residence, police discovered that the homeowner and his daughter lived on the main floor and the four rooms in the basement were rented to different individuals, including Thomas. After the entire house was swept for people, the police "narrowed [their] search to Mr. Thomas's bedroom." Police then recovered the handgun from inside a drop ceiling.

The motions court ruled that the warrant was valid.[4] It found that Sgt. Orlosky reasonably believed the house was a single-family home based upon the exterior appearance and features. Moreover, all the evidence that was seized was located in Thomas's room, which the warrant authorized a search of.

The Fourth Amendment requires that a valid warrant must "particularly describ[e] the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.[5] "The manifest purpose of this particularity requirement was to prevent general searches." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). "[T]he discovery of facts demonstrating that a valid warrant was unnecessarily broad does not[, however,] retroactively invalidate the warrant." *Id*. at 85. Rather, the validity of the warrant is "assessed on the basis of the information that the officers disclosed, or had a duty to discover and to disclose, to the issuing Magistrate." *Id*.

Here, the circuit court credited Sgt. Orlosky's testimony that the residence appeared to be a single-family home from the outside and that he only became aware that it was being used as multi-unit dwelling upon execution of the warrant. Under *Garrison*, the warrant was not rendered invalid based on information discovered only after the officers entered the premises. *Id*. at 88-89; *see also Peters v. State*, 224 Md. App. 306,

[4] Because of this, the court declined to address the good faith exception.

[5] The Maryland Constitution also contains a similar prohibition on general warrants, but Thomas has not made any arguments in reliance on this provision. *See* Md. Const. Decl. of Rts. art. 26.

343 n.11 (2015) (explaining the general rule that a warrant to search a multi-unit dwelling is void if it does not specify the unit to be searched but noting that an exception exists where "the multi-unit character of the premises was not known to the officers"). Upon discovering the multi-unit character of the premises, the officers limited their search to Thomas's bedroom, which is consistent with the lawful objective of the search warrant. The circuit court, therefore, did not err by denying the motion to suppress the evidence seized.

II.

Prior to trial, Thomas requested that the circuit court ask the venire if "any prospective juror [would] give more weight to the testimony of an expert witness merely because that witness is called as an expert?" Thomas excepted to the circuit court's failure to ask the question. On appeal, Thomas contends the court abused its discretion by not asking the question, which he asserts was mandatory under *Thomas v. State*, 454 Md. 495 (2017).

We review a trial judge's decision not to ask a requested *voir dire* question for an abuse of discretion. *Pearson v. State*, 437 Md. 350, 356 (2014). Maryland allows for limited *voir dire*, the "sole purpose of [which] is to ensure a fair and impartial jury by determining the existence of cause for disqualification." *Washington v. State*, 425 Md. 306, 312 (2012). "If the proposed question does not further the goal of uncovering bias among prospective jurors, the trial court will not abuse its discretion in refusing to pose the question." *Id.* at 325.

Nevertheless, in a series of decisions culminating in *Thomas*, the Court of Appeals has held that, if requested, a trial court must ask *voir dire* questions directed at uncovering bias for or against a witness "based on that witness's occupation, status, category, or affiliation." 454 Md. at 512. In *Thomas*, the defendant requested a narrowly tailored question directed at police witness bias and, instead, the circuit court asked a "lengthy" and "broad occupational bias *voir dire* question." *Id*. at 497-98. In holding that the trial court erred, the Court analyzed the trilogy of cases concerning occupational bias *voir dire* questions: *Langley v. State*, 281 Md. 337 (1977); *Bowie v. State*, 324 Md. 1 (1991); and *Moore v. State*, 412 Md. 635 (2010).

In *Langley*, the Court held that if police witnesses are crucial to the State's case, a trial court is required to ask, if requested, an occupational bias question tailored specifically to police witnesses. 281 Md. at 349. In *Bowie*, the Court expanded upon *Langley*, holding that the court erred by not asking requested *voir dire* questions which sought to elicit potential bias for or against police witnesses and against witnesses called by the defense merely because of their status or affiliation. 324 Md. at 10-11. In *Moore*, the Court amplified its reasoning in *Langley* and *Bowie*, explaining that "it is grounds for disqualification for a juror to presume that one witness is more credible than another simply because of that witness's status or affiliation with the government." 412 Md. at 649-50. The *Thomas* Court distilled from these cases the notion that questions targeting occupational, status-based, or affiliation-based bias must be "tailored to the witnesses who are testifying in the case and their specific occupation, status, or affiliation" and, if

requested, are mandatory. 454 Md. at 513. Because the question posed by the trial court in *Thomas* was too broad and did not target the specific occupational bias at issue in that matter, the Court of Appeals reversed and remanded to the Court of Special Appeals. *Id.* at 513-14.

In this case, Thomas's written request was for a question targeting bias for or against a generic "expert witness," which the trial court declined to ask. Additionally, Thomas requested questions targeting occupational bias against police officers and for or against State or defense witnesses, which the trial court agreed to ask. The decisions in *Langley*, *Bowie*, *Moore*, and *Thomas* make clear that *voir dire* questions ferreting out biases concerning occupations, statuses, or affiliations must be tailored to the witnesses who are expected to testify at trial. We, therefore, conclude that because the court-conferred status of an "expert witness" does not give rise to the possibility of intrinsic bias presented in *Thomas*, it is not enough to request a generic question about expert witnesses. Because Thomas did not request questions targeting biases against the specific expert witnesses called to testify by the State at his trial—the DNA analysts from BODE Cellmark Forensics[6] and the Howard County Police detective who testified as a firearms

[6] BODE Cellmark Forensics is a private company which contracts with the Howard County Police Department to provide DNA analysis services.

expert—the issue of whether such a question would be mandatory is not before us. [7] To the extent that the venirepersons might have given more or less credence to the three experts called by the State because of their affiliation with the government, the police-witness bias and State's witness bias *voir dire* questions asked by the court adequately covered that cause for disqualification. The generic expert bias question requested by Thomas was, therefore, not mandatory and the court did not abuse its discretion by declining to ask it.

III.

Finally, Thomas contends the evidence is legally insufficient to sustain his convictions for first-degree assault and use of a firearm in the commission of a crime of violence because the State failed to establish his identity as the perpetrator. We review an insufficiency of the evidence claim only on the grounds raised in the trial court in a motion for judgment of acquittal. *Starr v. State*, 405 Md. 293, 302 (2008). In his motion for judgment of acquittal, Thomas argued that the State failed to meet its burden with respect to identity because Mahli did not identify him in court or prior to trial. He further argued that the DNA evidence standing alone was insufficient because, although it

[7] In a footnote, Thomas argues that to the extent that his question was too broad, the trial court was obligated under the authority of *Logan v. State*, 164 Md. App. 1, 61 (2005), to rephrase it and could have done so by asking a question directed at bias against DNA analysts, specifically, not expert witnesses generally. Thomas did not make this argument when he excepted to the court's failure to ask this question and we cannot say the trial court abused its discretion by not rephrasing the question given that the State called more than one type of expert in its case.

supplied a link between Thomas and the glove, it did not establish that Thomas was in possession of the glove when Mahli was assaulted.

We assess the sufficiency of the evidence to support a criminal conviction by asking "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." *Potts v. State*, 231 Md. App. 398, 415 (2016). We view "not just the facts, but all rational inferences that arise from the evidence, in the light most favorable to the prevailing party." *Smith v. State*, 232 Md. App. 583, 594 (2017). Moreover, 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." *Potts*, 231 Md. App. at 415.

Under Maryland law, "[i]t is well-settled that circumstantial evidence alone is sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Ware v. State*, 170 Md. App. 1, 29 (2006) (cleaned up). Mahli testified that his assailant wore a glove and a glove was later found at the crime scene.[8] The major male contributor of the DNA found on the interior of that glove, where one would expect the wearer of the glove to deposit skin cells, was consistent with Thomas's DNA. A

[8] Thomas questions the "origin" of the glove, noting that it was not recovered until the day after the attack. At trial, however, Officer Phillips identified photographs taken on the night of January 13, 2017 at the Mahli residence depicting blood on the kitchen floor and a black glove.

reasonable juror could infer from this evidence that Thomas wore the glove while attacking Mahli. Furthermore, the evidence that Mahli's attacker used a weapon to perpetrate the attack and evidence that Thomas possessed a handgun circumstantially links him to the crime. Finally, Thomas's appearance was consistent with the description of the suspect that Mahli provided on the night of the crime.[9]

As this Court has explained, in a purely circumstantial case, "if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal sufficiency of the evidence." *Ross v. State*, 232 Md. App. 72, 98 (2017). While there might have been an innocent explanation for the presence of Thomas's DNA on the glove, its presence also supported an inference of guilt. The evidence was, therefore, legally sufficient to go to the jury.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO PAID BY APPELLANT.

[9] In a legal sufficiency challenge, Mahli's contrary trial testimony that his assailant was a dark-skinned white person and was not in the courtroom does not factor into our analysis. *See McCoy v. State*, 118 Md. App. 535, 539 (1997) (noting that "we examine that version of the facts most favorable to the State, … and look at it as if it were the only testimony in the case"). In any event, defense counsel did not raise this testimony in the motion for judgment of acquittal.