

Circuit Court for Montgomery County
Case No. 132788

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3076

September Term, 2018

BRIAN MADDOX

v.

STATE OF MARYLAND

Meredith,
Graeff,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: December 16, 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.

Appellant, Brian Maddox (“Maddox”), complains that his convictions by the Circuit Court for Montgomery County for robbery, second degree assault, and false imprisonment were based on insufficient evidence. Further, he contends that the trial court erred when it admitted evidence that his physical appearance changed in the interval between the criminal incident and trial. The incident, which occurred on 25 July 2017, involved the robbery of a convenience store, in the course of which one of its employees was assaulted, tied-up, and forced into a back room. The State presented “touch” DNA evidence that augured that Maddox handled an electrical cord used to restrain the employee, as well as testimony of the employee regarding the appearance of the perpetrator at the time of the crimes. The State also presented evidence that Maddox had changed his appearance since the crimes—adding corrective eyeglasses and a new hair style—which evidence the trial judge allowed as relevant to identification. At the end of a three-day jury trial, Maddox was sentenced to life without parole for robbery (after merger of the assault conviction) and five years concurrent for false imprisonment. This timely appeal followed. We shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

On the morning of 25 July 2017 Berhane Dadi (“Dadi”) was working as a cashier at the White Oak Convenience Store in Silver Spring. During her shift, Dadi was confronted by an African-American male wearing an “African costume” and white pants. This man, after mulling about the store briefly, pulled a handgun from his pants, pointed it

at Dadi, and demanded money.

Dadi complied, providing the man with the money in the cash register. The man then led Dadi, with the gun at her back, to the front of the store to lock the main entrance door. After the man asked Dadi about any security cameras, she led him to the manager's office in the back. Unaware of how to operate the security cameras, Dadi began disconnecting plugs and cables to try and comply with the man's request that she turn off the cameras. After her efforts proved unsuccessful, the man removed what he thought was the disc used for recording what the cameras observed. He then led Dadi to the bathroom—which was connected to the manager's office, but not in the public area of the store—forced her to lie on the floor, and tied her hands behind her back with a black cord found in the bathroom. After threatening to kill Dadi if she moved, he departed the bathroom.

After waiting for a few minutes, Dadi opened the bathroom door to see if the man was still in the store. When she saw that he was, she locked the bathroom door and called the police. The man had fled the store by the time the police arrived. Dadi walked Detective Paris Capulpo (“Capulpo”) through the store to trace the course of the crimes. Capulpo directed Justin Longhi (“Longhi”), a forensic specialist with the Montgomery County Police Department, to collect the cord that was used to restrain Dadi.

Dadi described further the man as slightly taller than her,¹ with a stocky build, and braided hair. Beyond the “African costume” and white pants, Dadi added that the man was wearing a baseball cap (with a hood pulled over it) and had a tattoo up the arm used to

¹ Dadi is 5'4” tall.

wield the gun. As part of their subsequent investigation, the police identified Maddox as a suspect. Capulpo testified that, at the time of arrest, Maddox was 5'9", 220 or 230 pounds, with long dreadlocks, wore no eyeglasses, and had heavily-tattooed arms. A DNA analysis of the cord that was taken from the store was requested by Capulpo, who took also buccal swabs from Dadi and Maddox.

At trial, Dadi, through a translator, struggled with consistency in her re-telling of the events as narrated previously to the police. The owner of the White Oak Convenience Store, Babu Kottakuzhiyil ("Kottakuzhiyil"), testified as well, providing details about the layout of the store and the security system. Kottakuzhiyil stated that the store possessed a large number of electrical cords, some kept in the bathroom and some in his office. He agreed with the defense's characterization that there was "no way to tell one black cord from another." Dadi testified that the bathroom contained a number of cords, but that she did not see where the cord used to restrain her came from specifically as her face was directed toward the floor. Both Dadi and Kottakuzhiyil testified that the bathroom, although intended for employees only, was accessible physically to the general public as the door lock was broken. Kottakuzhiyil allowed customers rarely to use it in an emergency.

Chandra Christianson ("Christianson") was presented as a State's expert witness in forensic biology, particularly DNA testing and analysis. An employee of the Montgomery County Police Crime Lab, Christianson testified that the cord collected by Longhi from the store produced a mixed DNA profile, including three minor contributors and a male major

contributor.² Christianson identified Maddox as the major contributor. Her testing was based on “touch” DNA from the cord, which comes from human skin cells that are left behind often, but not exclusively, from touching an item. She testified further that “touch” DNA can be transferred in any number of ways in addition to the primary act of touching an item. She noted also that it is possible that a person could transfer “touch” DNA to another person, who could then transfer the first person’s skin cells to an object. Christianson admitted that there was no way to determine how long Maddox’s DNA had been on the cord, or even if he had ever handled it personally.

Following the State’s witnesses, evidence was offered by the State that Maddox—whom, at the time of trial, was wearing eyeglasses and did not have dreadlocks—had completed a medical intake following his arrest and did not claim at that time a need for prescription glasses, and that he appeared in court a month earlier with dreadlocks. Defense counsel objected to this evidence, claiming it was irrelevant, but the trial judge overruled the objection saying, “I think it is relevant . . . a somewhat dramatic change in hairstyle in this case, on a case where it’s an identification case and we still didn’t know if the victim was going to be ID’ing him or not in court.”

The jury returned verdicts of guilty as to robbery, false imprisonment, and second-degree assault. A kidnapping charge was *nol prossed*. Maddox was found not guilty of robbery with a dangerous weapon.

QUESTION PRESENTED

² A major contributor is present when the amount of DNA from that person is at least three times as much as the DNA from the other contributors combined.

Appellant presents the following questions for review, which we have rephrased modestly:³

- I. Was the jury presented with sufficient evidence to convict Maddox on the charges of robbery, second degree assault, and false imprisonment?
- II. Did the trial court err in admitting evidence of Maddox’s change of physical appearance in the time between the charged incident and trial?

STANDARD OF REVIEW

We analyze challenges to the sufficiency of the evidence in a light favorable to the prosecution, determining whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Taylor v. State*, 346 Md. 452, 464-65 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We are not tasked with re-balancing the weight of the evidence, but rather “our concern is only whether the verdict was supported by sufficient evidence . . . which could fairly convince a trier of fact of the defendant’s guilt of the offense charged beyond a reasonable doubt.” *Id.* Further, the judgment of the circuit court will not be set aside unless clearly erroneous. *Id.*

Trial courts have great discretion when determining relevance, but that discretion does not extend to the admission of purported facts that are “obviously irrelevant as well as prejudicial to the defendant.” *Pearson v. State*, 182 Md. 1, 31 (1943). In that regard, we review the relevancy of evidence employing a non-deferential standard of review. *State v. Simms*, 420 Md. 705, 724 (2011).

³ Appellant’s questions were:

1. Is the evidence sufficient to sustain Mr. Maddox’s convictions?
2. Did the trial court err in admitting evidence regarding Mr. Maddox’s recent haircut and need for corrective lenses?

DISCUSSION

I. Sufficiency of the Evidence.

The primary argument advanced by Maddox is that the State relied heavily on unreliable “touch” DNA in identifying Maddox as the perpetrator of the crimes. Maddox urges also that there is no evidence to “exclude the hypothesis that [his] DNA was transferred to the cord prior to the robbery,” again emphasizing the inherent fallibility of “touch” DNA and its ease of transfer through indirect means. The State responds by noting that the reliability of the DNA evidence was a determination for the jury to make, and that the evidence presented was sufficient for a rational jury to conclude that Maddox was the perpetrator.

As noted earlier, we ask ourselves “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.” *Jones v. State*, 240 Md. App. 26, 41 (2019). This standard insures that the fact-finder’s ability to weigh the evidence and come to a conclusion is preserved from the specter of an appellate court retrying the case in spite of a rational conclusion reached by the jury. *Smith v. State*, 415 Md. 174, 183 (2010). This principle applies “whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone.” *Id.* at 185.

Maddox’s contention that “touch” DNA present is not a reliable type of evidence and that there are scenarios where Maddox’s DNA could have found its way onto the cord without him taking part in the crime is not for us to resolve. The decision of how much

weight to give to certain items of evidence is up to the fact-finder and not a basis of a valid challenge to sufficiency. *See Correll v. State*, 215 Md. App. 483, 502 (2013) (stating that “[i]t is not a proper sufficiency argument to maintain that the jurors should have placed less weight on the testimony of certain witnesses or should have disbelieved certain witnesses”). The jury here was on notice from Christianson’s testimony of the pitfalls in using “touch” DNA for identification purposes, which laid out, in great detail, the various ways in which “touch” DNA might be fallible as to the culpability of a defendant. Yet, despite this, the jury convicted Maddox as the perpetrator of the incident. Maddox’s DNA was present undeniably on the cord that was identified as having been used to restrain Dadi. The cord itself was located in what Maddox describes as a “quasi-public” restroom, but was not in a high-foot traffic part of the store. The weight of this evidence was for the jury to determine.

Maddox attempts to draw a comparison between fingerprint cases and “touch” DNA, noting that the Court of Appeals has held that fingerprint evidence “must be coupled with evidence of other circumstances tending to reasonably exclude the hypothesis that the print was impressed at a time other than that of the crime.” *McNeil v. State*, 227 Md. 298, 300 (1961). The “other circumstances” contemplated by *McNeil* include “circumstances such as the location of the print, the character of the place or premises where it was found and the accessibility of the general public to the object on which the print was impressed.” *Lawless v. State*, 3 Md. App. 652, 659 (1968). The State focused here on the location on the cord of the “touch” DNA, testing only those parts most likely to be touched when using it to restrain a victim. Further, the State noted that although the bathroom was accessible

physically to the public, it was not in a high-foot traffic area, and that the cord was not an item that was accessible readily or likely touched often by members of the public who may have used the “employees only” bathroom (compared to a doorknob or shelf). These considerations are consistent with the circumstantial evidence required in reviewing convictions based on fingerprints. *Id.* at 659.

A further impediment to the success of Maddox’s argument is that he relies erroneously on the idea that “touch” DNA was the “sole evidence” the State relied on in its prosecution. Although the State did lean heavily on “touch” DNA to connect Maddox to the crimes, it was not the only inculpatory evidence presented. Dadi’s testimony and post-incident description of Maddox, along with the surveillance camera footage of the perpetrator regarding the area outside the store, were part of the State’s case. Given all of this to consider, the jury reached the conclusion that Maddox, beyond a reasonable doubt, was guilty of the three charges for which it convicted him. There was sufficient evidence for the jury to make the determination it did and, thus, we affirm the judgment of the trial court.

II. Evidence of Change of Physical Appearance.

Appellant contends that evidence showing Maddox’s physical appearance had changed between the time of the criminal incident and trial was irrelevant. Maddox argues that, because of the lack of an eyewitness identification of him before trial and his reasonable belief that an eyewitness identification would not be forthcoming at trial, it was illogical to admit the evidence of an appearance change as there was no witness who the

physical changes could have misled. Further, Maddox observes that the police had taken pictures of him at the time of his arrest, such that changing his appearance prior to trial could have no bearing on the outcome of the trial.

In response, the State contends that the evidence of the appearance change was relevant because Maddox’s counsel, during cross-examination of Dadi, asked questions that appeared to draw a contrast between her physical description of the perpetrator and Maddox as seated at counsel table. Notably, the State points to an exchange between Dadi and Maddox’s counsel where Dadi was asked whether the robber “had glasses or no glasses,” to which she responded “[h]e did not wear.” The State also points out that identity was the primary issue in the case before the jury, and that evidence going to that issue was relevant as it displayed an attempt by Maddox to avoid identification at trial.

For evidence to be relevant, the offered evidence must have a “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. We hold that the evidence here was relevant to the proceeding and that the trial court did not err in admitting it. The parties concede that identification was the central issue at trial. Thus, evidence showing a change in appearance from the time of the robbery to that at trial is relevant to identifying Maddox as the perpetrator of the crime. The police relied on Dadi’s physical description of Maddox, contributing to identifying him as a suspect and later arresting him. Even though Dadi did not identify Maddox out-of-court, there was no assurance that she would not do so at trial and that a change in Maddox’s appearance would be relevant in impeding that objective. Maddox’s argument, that his changed appearance

was not connected to an attempt to avoid identification, defies credulity on this record. Evidence of the appearance change would be relevant here as the changes display an attempt to avoid identification. Dadi was the victim of the crime committed supposedly by Maddox. Thus, any difference in his appearance from the time she was victimized to the time of trial was relevant to her identification testimony and weight to be accorded it.

Further, Maddox’s counsel’s cross-examination of Dadi regarding whether the perpetrator wore glasses, opened the door for the relevance of this evidence as a response. *State v. Robertson*, 463 Md. 342, 352 (2019) (“The open door doctrine ‘authorizes admitting evidence which otherwise would have been irrelevant in order to respond to . . . admissible evidence which generates an issue.’” (quoting *Clark v. State*, 332 Md. 77, 84 (1993))). The trial court did not err in admitting it.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**