Circuit Court for Prince George's County
Case No. CTX160058X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3184

September Term, 2018

VICTOR TERRILL

v.

STATE OF MARYLAND

Kehoe,
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 5, 2021

Victor Terrill was charged in the Circuit Court for Prince George's County with two counts of first-degree assault, second-degree assault, reckless endangerment, and use of a handgun in the commission of a crime of violence, as well as one count of illegal possession of a regulated firearm. In July 2018, Terrill was convicted of illegal possession of a regulated firearm and acquitted of all other counts. Terrill was sentenced to fifteen years' incarceration, all but seven years suspended, and five years' probation. On appeal, Terrill presents three questions for this court's review, as follows:

1. Did the circuit court err by permitting the State to introduce inadmissible hearsay through Officer Heyward?

2. Did the circuit court err by permitting the State to introduce inadmissible hearsay through Ms. Douglas?

3. Did the circuit court abuse its discretion by permitting an improper prosecutorial closing argument?

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

BACKGROUND & PROCEDURAL HISTORY

X.C.[1] was living in apartment #301 at 2725 Lorring Drive in District Heights with his mother in March 2015. On March 27, 2015, while he was in the living room watching television, he heard his mother and her boyfriend, Terrill, yelling. He then heard what he thought was a gunshot hitting a door. When he went to see what happened, Terrill came out of the room and pointed a gun at him. He ran out of the apartment and to the

[1] We refer to the child victim by his initials because of his age; X.C. was eleven-years-old at the time of the incident.

apartment of a neighbor, Ricardo Allen, to call 911. Mr. Allen also heard a loud noise, like "something popped like two or three times." After that noise, he heard rapid knocking on his front door. When he opened it, he found X.C. frantic and crying, asking to call the police because a gun was fired in his house.

At the same time, Crystal Terrill,[2] X.C.'s mother, ran to apartment #202 and knocked on the door. Josephine Douglas answered the door to find Ms. Terrill crying and not wearing any shoes. Though the neighbors did not know each other, Ms. Terrill ran into Ms. Douglas's apartment. Ms. Terrill told Ms. Douglas that her boyfriend had shot a gun at her and her son. Approximately fifteen minutes later, the police arrived at Ms. Douglas's apartment, questioned Ms. Terrill, and escorted her out.

On March 27, Deputy Kevin Deck of the Prince George's County Sheriff's Office Domestic Violence Unit, along with another deputy, responded to apartment #301. When they arrived at the apartment, they knocked on the door, yelled "Sheriff's Office," and attempted to open the door. When he started to open the door, he was met with resistance, and the door was shut on him. He was able to see a "black elbow" on the other side of the door.[3]

Officer Cedric Heyward, formerly of the Prince George's County Sheriff's Office Domestic Violence Unit, also responded to the call reporting the shooting. He parked

[2] At the time of the incident, Terrill and Crystal Terrill were not married. At the time of trial, they were married and Ms. Terrill invoked her marital privilege with respect to the events of March 27, 2015.

[3] Terrill is a black man.

outside 2723 Lorring Drive and approached 2725 on foot. As he was walking, Officer Heyward "observed a male walking briskly away from the [rear] balconies" of 2725. Someone outside the building told Officer Heyward that the man had just jumped off one of the balconies, so Officer Heyward ordered him to the ground and placed him under arrest. The man was identified as Terrill.

After arresting Terrill, Officer Heyward went to apartment #301 to assist the officers there. In the apartment, there were two firearms behind the front door. Officer Heyward was unsure how long the firearms had been there, and did not observe any bullets, shell casings, or bullet holes in the apartment.

Lauren Milburn, crime scene investigator for the Prince George's County Police Department, processed the apartment for evidence. She recovered two weapons from the apartment: a black semiautomatic Smith & Wesson and a silver Smith & Wesson revolver. She recovered two fired cartridge casings from inside the cylinder of the revolver. She also recovered Winchester .40 Smith & Wesson cartridges from the hallway floor, the children's bedroom, the dining area, and the master bedroom, as well as a WCC 88 cartridge and two Federal .38 special cartridges in the master bedroom. None of the cartridges appeared to have been fired and there were no spent shell casings in the apartment aside from the ones inside the revolver. Ms. Milburn did not observe any bullet holes in the apartment.

Scott McVeigh, senior firearms examiner for the Prince George's County Police Department, determined that the semiautomatic was not operable because the striker was

broken, but the revolver was operable. His comparison analysis of the fired cartridge casings recovered from the apartment and known samples he fired from the revolver were inconclusive.

At trial, the parties stipulated that Terrill was prohibited from possessing a firearm. The jury convicted him of illegal possession of a regulated firearm and acquitted him of all other counts. He was sentenced to fifteen years in prison, all but seven years suspended. This timely appeal follows.

DISCUSSION

I. OFFICER HEYWARD'S TESTIMONY

Terrill asserts that the circuit court erred when it permitted inadmissible hearsay testimony from Officer Heyward. As Officer Heyward described what happened when he saw Terrill walking away from the apartment building, the following colloquy occurred:

> [THE STATE]: What did you do after you initially saw him?
>
> [OFFICER HEYWARD]: The citizens that were outside—
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [THE STATE]: What did you do when you initially saw him?
>
> [OFFICER HEYWARD]: I was advised that—
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: The question is, what did you do, sir.
>
> [OFFICER HEYWARD]: Okay. I made contact with the male and ordered him to the ground.

[THE STATE]: Okay. And why did you go over to make contact with him?

[OFFICER HEYWARD]: Because I was—

THE COURT: Go on.

[OFFICER HEYWARD]: I was advised that he had just jumped off the balcony.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[THE STATE]: Again, why did you make contact with him?

[OFFICER HEYWARD]: I was advised he had just jumped off the balcony.

Terrill contends that Officer Heyward's testimony that he was told that Terrill had jumped off a balcony constitutes hearsay because it consisted of out-of-court statements that were used to prove the truth of the matter asserted – that Terrill had jumped off the balcony. The State alleges that the statements were offered "for the purpose of showing that Officer Heyward relied on and acted upon that statement in ordering the man to the ground;" in other words, the statement was offered to show the effect on the listener and how they influenced Officer Heyward's actions.

"Generally, an out-of-court statement is admissible as non-hearsay if it is offered for the purpose of showing that a person relied and acted upon the statement, rather than for the purpose of showing that the facts elicited in the statement are true." *Morales v. State*, 219 Md. App. 1, 11. (2014). For example, "[i]n the context of an officer explaining why he or she arrived at a particular location, the officer should not be put in a false position of seeming to have just happened upon the scene; he should be allowed some

explanation of his presence and conduct." *Id.* (Internal citations and quotations omitted). The same principle is applicable here. Officer Heyward needed to provide context of the conclusions he drew in an investigation that led him to take certain actions, such as ordering a man to the ground and detaining him. Without this background information, the officer would be describing a "false position of seeming to have just happened upon," effectively telling the jury he saw a man in the vicinity and ordered him to the ground without any explanation as to why he acted in that manner.

Additionally, officers are permitted to testify about "statements that led him to arrest an individual" because those statements would "show that the officer relied on and acted upon those statements." *Daniel v. State*, 132 Md. App. 576, 590 (2000). Officer Heyward did not offer his testimony as an assertion of truth; rather the testimony concerning this conversation with a citizen was offered to explain how it came to be that he concluded Terrill was a suspect to be detained before he fled the scene. The court did not err in permitting Officer Heyward's testimony.

II. MS. DOUGLAS'S TESTIMONY

The second issue on appeal concerns whether the circuit court erred in permitting testimony from Ms. Douglas. Ms. Douglas testified as to what happened in her apartment when Ms. Terrill arrived, and the following colloquy occurred:

[THE STATE]: And what, if anything, did she say to you at that point?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[THE STATE]: What, if anything, did she say to you at that point?

[MS. DOUGLAS]: She said that her friend, I think it's her boyfriend, was shooting at her, and her little son had to run out of the house.

[THE STATE]: I'm sorry, you said he was shooting at—

THE COURT: Hold on a second.

(Pause.)

THE COURT: Go ahead.

[THE STATE]: Thank you. And I'm sorry, you said that she said her boyfriend was doing what?

[MS. DOUGLAS]: Shooting at them in the house.

[THE STATE]: And when you say "them" who was she—

[MS. DOUGLAS]: Her and her son.

[THE STATE]: Okay. And what did she say happened after that?

[MS. DOUGLAS]: She ran out. She said she didn't know what was wrong with him, he was on something she thought.

Terrill contends that this testimony was inadmissible hearsay and was not admissible as an excited utterance. Maryland permits the admission of "statement[s] relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Md. Rule 5-803(b)(2). In evaluating whether a statement falls within the excited utterance exception, "we examine the totality of the circumstances." *State v. Harrell*, 348 Md. 69, 77 (1997). A statement may fall within the excited utterance exception "if the declaration was made at such a time and under such circumstances that the exciting influence of the occurrence clearly produced a spontaneous and instinctive reaction on the part of the declarant … [who is] still

emotionally engulfed by the situation." *Id*. (Internal citations and quotations omitted). Time between the startling event and the statement is not alone determinative. *Id*.

The statements made by Ms. Terrill to Ms. Douglas directly related to the startling event. At trial, Ms. Douglas testified that it was around 6 p.m. when she heard someone knocking loudly on her apartment door. Officer Heyward responded to the 911 call and arrived at the apartment complex at 6:10 p.m. When Ms. Douglas opened the door, she noted that Ms. Terrill was crying, visibly upset, and was not wearing any shoes. Ms. Terrill ran into the apartment as soon as Ms. Douglas opened the door, despite Ms. Douglas not knowing her personally or even knowing her name. The startling event was someone, allegedly her boyfriend, shooting at her and her son. She was clearly frantic when she ran to Ms. Douglas's apartment concerned for her safety. While Ms. Terrill was still emotionally engulfed by the entire situation, she hysterically described the events to Ms. Douglas. These were clearly excited utterances exempt from the hearsay prohibition.

In the alternative, Terrill failed to properly preserve the claim. "A party must either object each time a question concerning the matter is posed or … request a continuing objection to the entire line of questioning." *Fone v. State*, 233 Md. App. 88, 113 (2017) (Internal citations and quotations omitted). The burden is on the party objecting to the evidence "to make an objection at the time the evidence is offered unless and until the trial judge grants, in his or her discretion, a continuing objection." *Kang v. State*, 383 Md. 97, 123 (2006).

During this colloquy, Terrill only objected one time. The single objection was in response to the initial question, "And what, if anything, did she say to you at that point?" Terrill did not ask for a continuing objection or further object to the State's questions clarifying the witness's answers about what the mother had told her. Terrill failed to properly preserve this claim and the court did not err in permitting Ms. Douglas's testimony.

III. CLOSING REBUTTAL ARGUMENT

Terrill claims that the court abused its discretion when it allowed the State to argue that Terrill was at Ms. Terrill's apartment frequently and had his own items stored at her apartment. Specifically, Terrill takes issue with the following argument by the State during rebuttal:

> [THE STATE]: So defense counsel is talking about this apartment, and that the defendant doesn't live there. Right? Okay. But let's use our common sense here. The defendant is her boyfriend at that time. He's over there. They're now married, as [X.C.] testified. What happens in a relationship? You're over at that person's house all the time.
>
> Clearly, this was a serious relationship. You're over there. You're spending time there. He has stuff there. You're there very frequently. So this isn't—we're not talking about a place where he went to visit a friend.
>
> [DEFENSE COUNSEL]: Objection, Your Honor.
>
> THE COURT: Overruled. I'm just going to remind the jurors that it's going to be your recollection of the testimony that shall control during your deliberations.
>
> [THE STATE]: We're not talking about a friend's house or a coworker's house that he regularly goes to and happened to be visiting. We're talking about his girlfriend's house. He's—I'm going to argue to you, he's there on a regular basis. Okay? So as far as they're saying he has no idea about guns, or bullets, or things in the house, no. This is his girlfriend.

Terrill claims this was an improper argument because the State argued facts that were not in evidence: that Terrill was at the apartment "very frequently" and "on a regular basis" and that he "ha[d] stuff there." The State argues that the remarks were made in response to the defense's closing argument where counsel emphasized that Terrill did not live at the apartment and that the guns, ammunition, and drugs did not belong to him. The State continues that the court instructed the jury to "consider [the evidence] in light of your own experiences. You may draw any reasonable conclusions from the evidence that you believe to be justified by common sense and your own experiences." The State contends the argument that that Terrill was at the apartment frequently had had his own belongings there was a reasonable conclusion from the evidence that Terrill was the mother's boyfriend.

Though counsel may not argue facts not in evidence, counsel has "great latitude in the presentation of closing arguments." *Wise v. State*, 132 Md. App. 127, 142 (2000). "The mere occurrence of improper remarks does not by itself constitute reversible error." *Wilhelm v. State*, 272 Md. 404, 431 (1974) (Internal quotations omitted). Reversal is required only "where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Lawson v. State*, 389 Md. 580, 592 (2005) (Internal quotations omitted). "A reviewing court may consider several factors, including the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused"

when assessing whether reversible error occurred. *Spain v. State*, 386 Md. 145, 159 (2005) (Internal citations and quotations omitted).

The comments made by the State were not sufficient to mislead the jury. X.C. testified that at the time of the shooting, Terrill was his mother's boyfriend, and at the time of trial, they were married. It is a reasonable inference that because Terrill was romantically involved with Ms. Terrill, that he spent considerable time at the apartment and may have personal belongings stored there. The State's remarks were not severe, and the court took the proper steps to cure any potential prejudice by reminding the jury at the time of the remarks that it was their recollection of the testimony that would control during deliberations.

The weight of the evidence against Terrill was also great. During trial, X.C. testified that he heard gunshots and that Terrill pointed a gun at him. Ms. Terrill, despite invoking spousal immunity at trial, told her neighbor immediately after the incident that her boyfriend had shot at her in the apartment. Sergeant Deck was met with resistance from a black male when he attempted to enter the apartment. When he gained access, the apartment was empty but the balcony door was open, and Officer Heyward testified that neighbors informed him Terrill jumped off the balcony. Terrill stipulated that he was prohibited from possessing a firearm. The court did not err in permitting the remarks by the State in the rebuttal argument, and even if the remarks were impermissible, the error does not constitute reversible error.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.