

Circuit Court for Montgomery County
Case No. 133804C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3352

September Term, 2018

MARIO GERMAIN

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: February 5, 2020

*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 Montgomery County, Mario David Germain, appellant, was convicted of unlawful possession of a regulated firearm. His sole contention on appeal is that the circuit court erred in admitting his internet search history that was extracted from his cell phone following his arrest. For the reasons that follow, we affirm.

At trial, the State presented evidence that the police stopped a car that was being driven by Mr. Germain and was occupied by three other people. During a search of the vehicle, the police found a loaded 9mm Luger semi-automatic handgun underneath the driver's seat. The police collected several swabs from the gun for DNA testing. Five of the swabs contained a mixed DNA profile with at least two contributors. Mr. Germain was excluded as being a major contributor of DNA in four of the samples. However, he was included as a major contributor of DNA in the fifth sample. The State's forensic analyst testified that the probability of "randomly selecting an unrelated individual from the entire population matching the major DNA profile obtained from this sample [was] approximately 1 in 610 octillion."

In addition to the forensic evidence collected from the firearm, the police also obtained a search warrant to extract data from Mr. Germain's cell phone. During the extraction, the police were able to retrieve Mr. Germain's internet search history, which revealed that he had entered the search term "9mm" five times on the day before his arrest,

he had entered the search term “gun” 41 times in the three weeks prior to his arrest, and he had entered the search term “Bersa” 71 times in the six days prior to his arrest.¹

On appeal, Mr. Germain first contends that the court erred in admitting his internet search history because it was not relevant. We disagree. 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. And the fact that, in the weeks and days leading up to his arrest, Mr. Germain was using his cell phone to repeatedly search the internet for information related to semi-automatic handguns certainly makes it more probable that he knew about the semi-automatic handgun that was found under his seat and that he had the intent to possess it, both of which were matters at issue in the case. Mr. Germain nevertheless claims that this is “an inference too far,” because an art-lover might use their phone to “search for Vincent Van Gogh’s ‘Starry Night,’” without making it “probable that the person is in possession of the painting.” This is true as far as it goes. But, as the State points out in its brief, it would be highly probative if “that individual was found with the original of ‘Starry Night’ under his bed[.]”

Mr. Germain also asserts that, even if his internet search history was relevant, it was an abuse of discretion for the trial court to admit that evidence because its probative value was substantially outweighed by its prejudicial effect. *See* Md. Rule 5-403. Specifically, he contends that it prejudiced the jury by “portraying him as a criminal or violent person.”

¹ Detective Grant Lee testified that Bersa was a brand of semi-automatic handgun.

We discern no abuse of discretion on the part of the trial judge. This was not a case where Mr. Germain was accused of committing a violent crime and the jury might have improperly inferred that he committed that crime based solely on his interest in guns. Rather, in this case, if the jury chose to adopt the inference suggested by the State, his interest in guns was highly probative to the elements of the charged offense. Although, it is true that his internet search history likely “prejudiced” his defense by making it more likely that the jury would convict him, such prejudice was not unfair and therefore did not warrant exclusion of that evidence.

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