

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0819

September Term, 2014

ALLEN SILBERMAN

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Krauser, C.J.

Filed: September 3, 2015

*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.

Convicted, by a jury in the Circuit Court for Carroll County, of attempted robbery and attempted theft under \$1,000, Allen Silberman, appellant, presents a single question for our review:

Did the trial court err in permitting Sgt. Richard Lambert to testify that he had met appellant numerous times during his eleven years as a member of the Westminster Police Department?

Finding no error, we affirm.

Background

At about 4:45 p.m. on November 22, 2013, Jeffrey Senseney drove up to the PNC Bank “drive-thru” ATM on East Main Street to withdraw \$300. After the money was dispensed to Senseney by the ATM, appellant tried to grab the money from him. In response, Senseney punched appellant in the face, whereupon appellant let go of the money and walked away. Senseney then pulled his car around to the bank entrance, entered the bank, and reported the incident to a bank employee, who called the police.

Sergeant Richard Lambert responded to the scene, interviewed Senseney, and spoke to the bank manager about obtaining a copy of the surveillance video.¹ When the bank manager provided Sergeant Lambert with several still photographs taken by the bank surveillance camera, the officer, upon seeing the photographs, recognized appellant, whom he had met on other occasions.

¹ The bank surveillance footage was admitted into evidence and played for the jury.

The following evening, Sergeant Lambert responded to a complaint that individuals “were using a vehicle to sleep in.” The officer arrived at the reported location and found three individuals there, one of whom was appellant. Sergeant Lambert then advised appellant of his Miranda rights, and appellant agreed to speak to him without an attorney present.² Thereafter, Sergeant Lambert placed appellant under arrest.

During his trial testimony, appellant admitted that he was at the PNC Bank at the time of the incident, but he claimed that he never tried to grab any money from anyone. He said that, he walked up to the drive-thru ATM machine, and was waiting in line to check his account balance, when he “heard screeching tires and a horn honk.” He quickly moved out of the way, and, then, because the car had almost hit him, he approached the vehicle looking for an apology. A verbal altercation ensued and “the subject in the van elbowed him in the face and told him to get the fuck away from him.” The vehicle then drove away, and appellant left the scene.

Discussion

The testimony at issue occurred during the direct examination of Sergeant Lambert:

[State]: Are you familiar with a person by the name of Allen Silberman?

[Sergeant Lambert]: I am.

[State]: Do you see him here in Court today?

² Sergeant Lambert testified that appellant was cooperative and stated that, in the past, he “[n]ever had an issue with Mr. Silberman.”

[Sergeant Lambert]: I do. He's in the blue shirt sitting at the defense table.

[State]: Your Honor, for the record he has identified the Defendant.

Court: Noted for the record.

[State]: You have met Mr. Silberman before?

[Sergeant Lambert]: I have.

[State]: Okay. How many times have you met him?

[Sergeant Lambert]: Numerous times –

[Defense Counsel]: Objection.

Court: Basis?

[Defense Counsel]: I think it encroaches upon what our concerns were earlier. He's identified Mr. Silberman, says he knows him. I think that's sufficient.³

Court: Overruled.

[Defense Counsel]: Thank you.

[State]: Thank you.

Court: You may answer the question.

[Sergeant Lambert]: I've had contact with Mr. Silberman many times over the last 11 years. I see him quite frequently in Westminster, up and down Main Street.

[State]: Okay. Approximately do you see him weekly? Do you see him monthly? How familiar are you?

³ It appears that this discussion was held off the record because the record does not contain any earlier discussion on this topic.

[Sergeant Lambert]: I would say on a weekly basis.

After cross-examination concluded, the court asked the jury if they had any questions.⁴ The questions posed by the jurors were marked as court's exhibits 4-8 and shared with counsel. Court's exhibit 6 read: "Question for Sgt. How do you know Silverman [sic] by name? You mentioned you have seen him on Main Street several times yet have you had any contact/conversation with him prior to the day?" Thereafter, counsel, for both sides, had the opportunity to address any or all of the questions submitted by the jury.

During re-direct, the prosecutor, referring to a juror's question in court's exhibit 6, posed the ensuing questions to Sergeant Lambert, who responded as follows:

[State]: And the question is, you've met Mr. Silberman before and through meeting Mr. Silberman you knew his name, is that right?

[Sergeant Lambert]: That is correct.

[State]: Had you had any conversations with him prior to the day of the 23rd of November?

[Sergeant Lambert]: Yes.

[State]: Ballpark number?

[Sergeant Lambert]: Maybe a dozen.

Appellant contends that Sergeant Lambert's "testimony – that he had met appellant numerous times and had many contacts with him – had zero probative value given that

⁴ Appellant did not challenge the court's practice of permitting the jurors to ask questions throughout the trial.

identity was not at issue,” and that reversal is required because the testimony “risk[ed] the inference that the jury would assume that appellant had numerous prior criminal contacts with the police.” The State responds that this issue is not preserved because appellant’s objection at trial made “no reference to prejudice or bad acts evidence[.]” And it further asserts that, “[e]ven if preserved, [Sergeant] Lambert’s testimony did not constitute ‘bad acts’ evidence within the meaning of Rule 5-404(b).”

Maryland Rule 4–323(a) states, in part, 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.” Furthermore, unless a continuing objection is granted, pursuant to Rule 4-323(b), the contemporaneous objection rule “requires the party opposing the admission of evidence to object each time the evidence is offered by its proponent.” *Klaenberg v. State*, 355 Md. 528, 545 (1999). Although defense counsel objected the first time Sergeant Lambert testified that he had met appellant numerous times, the testimony that Sergeant Lambert met appellant before and had “maybe a dozen” conversations with him was admitted without objection. Hence, because appellant did not request a continuing objection, appellant waived any objection to this line of questioning on appeal.

Moreover, Sergeant Lambert’s testimony did not constitute inadmissible other crimes evidence. Maryland Rule 5-404(b) provides, in part: “Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in

conformity therewith.” The Court of Appeals has “defined prior bad acts evidence as ‘an activity or conduct, not necessarily criminal, that tends to impugn or reflect adversely upon one’s character, taking into consideration the facts of the underlying lawsuit.’” *Gutierrez v. State*, 423 Md. 476, 489 (2011) (quoting *Klaunberg v. State*, 355 Md. 528, 549 (1999)).

Here, the testimony that Sergeant Lambert met appellant numerous times before the incident at issue and that he saw appellant “quite frequently in Westminster, up and down Main Street” did not impugn or reflect adversely upon appellant’s character. Sergeant Lambert’s testimony did not suggest that he knew appellant from prior arrests or investigations and his statements were made in the context of explaining why he was able to immediately recognize appellant when he was shown the still photos from the bank surveillance video. The testimony in no way implied that appellant had a criminal history or that his prior contacts with Sergeant Lambert were negative. In fact, Sergeant Lambert testified that had never had any problem with appellant.

Thus, Sergeant Lambert’s vague testimony that he had met appellant on numerous prior occasions clearly had no negative impact on appellant’s character. Accordingly, the testimony at issue did not constitute inadmissible other crimes evidence, and, therefore, the court did not err in overruling defense counsel’s objection.

**JUDGMENTS OF THE CIRCUIT COURT
FOR CARROLL COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**