

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1976

September Term, 2014

MONICA MONIQUE MYERS

v.

STATE OF MARYLAND

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: April 8, 2016

*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 Prince George’s County, appellant, Monica Monique Myers, was convicted of reckless endangerment.¹ The court sentenced her to five years in prison, suspending all but seven days, with credit for seven days’ time served. Appellant now presents a single question for our consideration:

Did the trial court err in permitting the complainant to offer lay opinion testimony that Appellant “tried” to throw hot grease on him?

Finding no error or abuse of discretion, we shall affirm the judgment of the trial court.

FACTS AND LEGAL PROCEEDINGS

On the evening of November 8, 2013, 21-year-old Tyree Holmes was at home with appellant, appellant’s six-year-old son, Holmes’s eight-year-old brother, and Holmes’s grandmother, Amelia Myers.² When Holmes observed appellant’s son repeatedly kicked his brother, with no disciplinary action taken by appellant or Amelia, he called appellant’s son “a pretty bad name” and told the child to leave the living room or Holmes would “whoop his A.”

Amelia came into the room, and a verbal argument erupted between her and Holmes. A few minutes later, appellant entered the living room, and the argument with Holmes shifted from Amelia to her, becoming heated, with threats and epithets hurled by each participant.

Appellant left the living room for the kitchen, still arguing with Holmes. When Holmes followed her into the kitchen, he said, “She threw hot grease on me,” causing

¹ The jury acquitted appellant of first-degree and second-degree assault.

² Because appellant and her mother share a surname, we will refer to Amelia Myers as “Amelia” for clarity. Appellant, Monica Myers is Tyree Holmes’s aunt.

painful second and third degree burns to his left arm and left side of his body that required skin grafts and a lengthy hospital stay.

Appellant testified that in the midst of the verbal argument with Holmes, she went into the kitchen to check on the chicken nuggets she was frying for her son. She denied throwing the hot grease at Holmes, instead stating that Holmes “came charging in the kitchen,” and smacked her arm as she turned toward him, which caused an accidental splash of the grease on his arm.

DISCUSSION

Appellant claims that the trial court improperly permitted Tyree Holmes to testify, over objection, that appellant “tried” to throw hot grease on him. In her view, Holmes’s “speculative conclusion” about her state of mind amounted to improper lay opinion, which cannot be considered harmless error beyond a reasonable doubt.

The State first raises a preservation argument, noting that appellant did not offer timely objections to the several questions posed to Holmes regarding what appellant tried to do with the hot grease. Even if considered, the State continues, the trial court properly exercised its discretion in permitting Holmes to testify about his personal knowledge of what appellant did on the night in question. Finally, even if the admission of the testimony were erroneous, any error was harmless in light of the cumulative testimony offered by another of the State’s witnesses.

Upon direct examination by the prosecutor about his injury from the hot grease, Holmes testified, as follows:

Q You indicated that Defendant poured the grease; can you describe how that happened?

A She pulled it up to face level. I assumed she was going to throw it on my face.

[DEFENSE COUNSEL]: Objection.

THE COURT: Sustained.

[PROSECUTOR]: Just describe what you saw.

THE WITNESS: Okay. She lifted up the pot. She picked it up. I knocked it down with my arm, that's how it got on my arm and this left part of my body right here.

BY [PROSECUTOR]:

Q You said the pot was lifted to face level?

A Yes.

Q Are you taller than the Defendant?

A Yes.

Q Initially was the pot of grease on the stove?

A Yes.

Q And, if you know, what is the level of the stove to your waist to your shoulders?

A To my waist.

Q So did the pot have to be lifted from your waist level to your head level?

A Yes.

Q So you've indicated that the Defendant lifted the pot up to your face level and tried to pour it on you?

A Yes.

[DEFENSE COUNSEL]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Move to strike the answer.

THE COURT: Motion to strike granted.

BY [PROSECUTOR]:

Q When the Defendant picked up this pot of grease and lifted it to head level, what, if anything did she try to do with it?

A What did she try to do with it?

Q What did she try to do with the pot of grease?

A Tried to throw it on me.

[DEFENSE COUNSEL]: Objection.

THE COURT: Basis?

[DEFENSE COUNSEL]: Calls for speculation on his part, Your Honor.

THE COURT: Overruled.

Initially, we do not agree with the State that appellant failed to preserve this issue for our review. As the record indicates, defense counsel objected numerous times to the question, including immediately after Holmes answered the question. This is sufficient to satisfy Maryland Rule 4-323(a), which provides 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.” Therefore, appellant preserved the issue for our review.

Appellant contends that Holmes’s testimony was objectionable as wholly speculative opinion testimony of a lay witness regarding her state of mind at the time of Holmes’s injury. We disagree.

Maryland Rule 5-701 governs opinion testimony by lay witnesses and provides: “If the witness is not testifying as an expert, the witness’s testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.” Whether to admit lay opinion testimony is vested in the sound discretion of the trial court. *Bey v. State*, 140 Md. App. 607, 623 (2001).

In the exercise of its discretion, a trial court should admit lay opinion testimony if it is derived from first-hand knowledge, rationally connected to the underlying facts, helpful to the jury, and not barred by any other rule of evidence. *Robinson v. State*, 348 Md. 104, 118 (1997), *overruled on other grounds by Ragland v. State*, 385 Md. 706 (2005). In *Ragland v. State*, the Court of Appeals offered the following “helpful explanation of lay opinion testimony,” as set forth in *Asplundh Mfg. Div. v. Benton Harbor Eng’g*, 57 F.3d 1190, 1196-98 (3d Cir. 1995):

The prototypical example of the type of evidence contemplated by the adoption of [Federal Rule of Evidence] 701³ relates to the appearance of persons or things, identity, the manner of conduct, competency of a person, degrees of light or darkness, sound, size, weight, distance, and an endless

³ Rule 701 of the Federal Rules of Evidence (“FRE”) is substantially similar to Maryland Rule 5-701. Because of the similarity between the rules, judicial decisions construing FRE 701 provide “persuasive authority for the interpretation of Md. Rule 5-701.” *Ragland*, 385 Md. at 720.

number of items that cannot be described factually in words apart from inferences. . . . Other examples of this type of quintessential Rule 701 testimony include identification of an individual, the speed of a vehicle, the mental state or responsibility of another, whether another was healthy, the value of one’s property.

385 Md. at 717-18.

Although appellant argues that Holmes’s testimony that appellant “tried” to throw the hot grease on him amounted to speculative conjecture with respect to her state of mind as she held the pot, the mental state of another, as well as the manner of one’s conduct, is specifically contemplated by the rule permitting the introduction of lay opinion testimony. *Ragland*, 385 Md. at 718; *see also State v. Jones*, 311 Md. 23, 32-33 (1987) (upholding the admission of a lay opinion that an automobile was “trying to catch up with” a police car because it would have been difficult or impossible for the witness to convey fully that impression to the jury merely by reciting the underlying facts observed by that witness).

Holmes’s testimony that appellant tried to pour the hot grease on him was rationally based upon his personal observation and perception of her actions, as well as the undisputedly strained familial history between him and appellant. In addition, his testimony included more than his opinion that appellant tried to throw the hot grease on him; he added a description of his first-hand observations in support of that opinion, that is, in the heat of an argument, she lifted the pot from the stove to his face level (and he was taller than she). *See Warren v. State*, 164 Md. App. 153, 168-69 (2005) (citing *Expert and Opinion Evidence*, 31A Am. Jur. 2d § 198 (2005)) (noting that it is

“preferable” that a person offering a lay opinion explain that opinion with testimony about the actor’s “actions and conduct”).

Holmes’s opinion testimony was relevant to the issue in the case, as appellant based her defense on the contention that she did not intentionally throw the grease at her nephew, but that he hit her arm as he charged into the kitchen, causing the grease to spill accidentally on his arm and body. His observations of appellant lifting the pot to face level and asserting that she tried to throw the grease at him may have been helpful to the jury in deciding whether the incident was intentional or accidental. We therefore cannot say that the trial court acted outside the bounds of its considerable discretion in permitting the testimony.

Even were it error for the trial court to overrule appellant’s objection, we would find any such error to be harmless, as Holmes’s answers to the allegedly objectionable questions were cumulative to other testimony that tended to establish intention in appellant’s actions. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (Error is harmless if “a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict”); *Dove v. State*, 415 Md. 727, 743 (2010) (“In considering whether an error was harmless, we also consider whether the evidence presented in error was cumulative evidence”).

Holmes had earlier testified, without objection, that when he went into the kitchen, appellant poured hot grease on him, after lifting the pot containing the grease from the stove to the level of his face. Additionally, Holmes’s mother, Shawnda Lawson, who arrived at the apartment during the argument between appellant and her son and observed

the incident, testified that appellant “grabbed the pot” from the stove and “threw it” at Holmes. Thus, the jury was already aware of appellant’s actions, which, if believed, would have supported Holmes’s claim that appellant intentionally poured the grease on him and undermined her assertion that the spilling of the oil was accidental.

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