UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2407

September Term, 2014

ANTHONY CRUSOE

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: January 26, 2016

Yum Chen Restaurant in Hyattsville, Maryland provides home delivery for its customers. On March 3, 2014, Elias Melgar ("Mr. Melgar"), an employee of the Yum Chen Restaurant, while attempting to make a food delivery, was robbed of about $500 in cash and the food he was carrying. In relation to that incident, Anthony Crusoe ("Crusoe") was indicted in the Circuit Court for Prince George's County for, *inter alia*, robbery of Mr. Melgar and second-degree assault. A jury, on September 25, 2014, convicted Crusoe of both of the aforementioned crimes. After sentencing, Crusoe filed this timely appeal in which he raises one question, which he phrases as follows:

> Did the trial court err by admitting into evidence a hammer found in [a]ppellant's apartment, where the State failed to link it to the crime charged?

We shall answer that question in the negative and affirm Crusoe's convictions.

I.
BACKGROUND[1]

On March 3, 2014, Yum Chen Restaurant received a phone order requesting a delivery of food to 3971 Warner Avenue, Apt. D-5 (hereinafter "the Warner Avenue address"). Mr. Melgar attempted to deliver the food to the Warner Avenue address but, after he parked near that address, he was approached by a person who Mr. Melgar later identified as Crusoe. According to Mr. Melgar's testimony, Crusoe grabbed the bag of food that he was carrying, and punched him in the mouth, while another young man hit him in the

[1]Because of the narrow scope of the question presented, we shall only summarize the evidence that is either directly relevant to the question presented or puts that evidence in context.

shoulder with a hammer. The assailants then stole Mr. Melgar's wallet, which contained about $500. After the two men fled, Mr. Melgar returned to his car and phoned his employer. His employer, in turn, called the Prince George's County Police Department and reported the robbery.

Based on facts discovered as a result of their investigation, Prince George's County police officers obtained a search warrant for 3993 Warner Avenue, Apt. C-6, which was Crusoe's residence. The police executed the warrant on the day after the robbery and discovered on the kitchen floor an empty plastic carry-out bag, a styrofoam food container, with some food remnants inside, and a Yum Chen menu. Above the aforementioned items, on a kitchen countertop, the police found a hammer.

At trial, pictures showing the kitchen counter where the hammer was found and the hammer were later admitted into evidence at Crusoe's trial as State's Exhibit 5 & 6. The hammer was admitted into evidence as State's Exhibit 16. Defense counsel objected to the introduction of State's Exhibit 5, 6 and 16 based on counsel's contention that the fact that a hammer had been found on the kitchen countertop in appellant's apartment was irrelevant.

Crusoe took the stand and, in essence, blamed the robbery on his former roommate, Antoine Dorsey ("Dorsey"), and another young man whose nickname was "Shaka." Crusoe denied participation in the robbery.

Crusoe testified that on the date of the robbery he lived in apartment C-6 at 3993 Warner Avenue and at that time had been enrolled in a youth program for three to four

weeks. His roommate at the time was Dorsey who, according to Crusoe, resembled him. Coincidently, according to Crusoe's testimony, he had ordered food from the Yum Chen Restaurant on the evening of the robbery, but this order was never delivered.

Crusoe testified that on the evening of March 3, 2014 he was "hanging out" in his apartment with a female friend[2] when he heard Dorsey and "Shaka," talking in the hallway. Dorsey, who was wearing a ski mask, then left with Shaka. About one hour later, Dorsey returned to the apartment "panting like he was tired," while holding a carry-out bag in his hand. To Crusoe it looked like Dorsey had been in a fight. What next transpired was developed in the following exchange:

> [Defense Attorney]: Did you ask him [Dorsey] about where he received this bag?
>
> [Mr. Crusoe]: Yes. I did.
>
> [Defense Attorney]: And did he respond to you?
>
> [Mr. Crusoe]: Yes.[3]
>
> [Defense Attorney]: And based on his response, what did you do?
>
> [Mr. Crusoe]: Based on his response, I told him - - I said I did not want anything to do with it because of what he told me.

[2]On direct examination, Crusoe referred to the friend who was in the apartment with him as "he"; but on cross-examination, he said his friend was a female.

[3]Earlier in Crusoe's testimony, defendant's counsel asked him what Dorsey said when Dorsey was asked where he got the carry-out bag. The prosecutor successfully objected to that question, presumably on hearsay grounds.

Crusoe further testified that after he became a suspect in the robbery, he was interviewed by Prince George's County Detective Steven Jackson. Crusoe admitted that he gave Detective Jackson three separate versions of the events that transpired on the evening of March 3, 2014, all of which were at odds with his trial testimony. In one of the versions, Crusoe said he was present when the robbery occurred and afterwards ran away with the food the victim was carrying. According to Crusoe, he gave those incorrect versions to Detective Jackson because a "young lady" friend of his (who was with him on the evening of the robbery) had been arrested for her involvement in the robbery; he told Detective Jackson the false stories because he wanted to absolve her of any blame.[4]

II.
ANALYSIS

Appellant argues that the trial judge abused her discretion in admitting into evidence pictures of the hammer and the hammer itself because such evidence was irrelevant. A

[4]In closing argument, appellant's counsel said:

> "Looking back on it, hindsight, it [Crusoe's statement to Detective Jackson] doesn't make a whole lot of sense. He's also 19. Things you do at 19 don't make a whole lot of sense. He wasn't a part of this offense. He wasn't a part of this crime. He put two and two together, and you certainly should, too. This was Antoine Dorsey and Shaka. This was not Mr. Crusoe. Mr. Crusoe had no part in this.

"ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *Nash v. State*, 439 Md. 53, 67, *cert. denied*, 135 S. Ct. 284 (2014) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)) (quotation marks omitted). Rather, we reverse only when the circuit court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Nash*, 439 Md. at 67 (quoting *Gray v. State*, 388 Md. 366, 383 (2005)) (quotation marks omitted).

Md. Rule 5-401 defines "relevant evidence" as meaning "evidence having 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."

In *Banks v. State*, 84 Md. App. 582, 589 (1990) we said:

> It is well settled that "[t]he real test of admissibility of evidence in a criminal case is 'the connection of the fact proved with the offense charged, as evidence which has a natural tendency to establish the fact at issue.'" *Dorsey v. State*, 276 Md. 638, 643 (1976), *quoting MacEwen v. State*, 194 Md. 492, 501 (1950); *Pearson v. State*, 182 Md. 1, 13 (1943). Evidence is relevant and, hence, admissible, if it tends either to establish or disprove the issue in dispute. *Kennedy v. Crouch*, 191 Md. 580, 585 (1948). On the other hand, "Evidence which is . . . not probative of the proposition at which it is directed is deemed 'irrelevant.'" *Dorsey*, 276 Md. at 643.

(Internal secondary citations omitted).

A trial judge enjoys very broad discretion when he or she makes a determination as to relevance. As the Court of Appeals said in *Merzbacher v. State*, 346 Md. 391, 404-05 (1997):

> Once a finding of relevancy has been made, we are generally loath to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.

During Mr. Melgar's testimony, the prosecutor showed him State's Exhibit 16 and asked whether the hammer "look[ed] familiar." Mr. Melgar replied, "yes, that was it. It was just a regular hammer." On cross-examination, Mr. Melgar said that the hammer that one of the robbers used to strike him was "small," with a wooden handle and a "claw" for removing nails, etc. at one end. Defense counsel then asked: "Are you still saying that this [State's Exhibit 16] was the hammer you saw [at the time of the robbery]?" Mr. Melgar replied: "Yes, I think that . . . was the hammer that they hit me with. It was that type of hammer." Cross-examination continued as follows:

> [DEFENSE COUNSEL]: Okay. So it was that type of hammer?
>
> [MR. MELGAR]: Yes, the type.
>
> * * *
>
> [DEFENSE COUNSEL]: By a hammer, you mean a hammer that has a claw on the end of it?
>
> [MR. MELGAR]: Yes, that's what it was like.

Also on cross-examination, Mr. Melgar was asked how he described the hammer to the police. He replied "[i]t was a small hammer with the handle, the handle made of wood."

Later, when an evidence technician took the stand to identify State's Exhibit No. 16 as the hammer he had recovered from Crusoe's apartment, the witness said that State's Exhibit No. 16 had a "composite handle with a rubber grip."

On appeal, Crusoe argues, that the trial judge abused her discretion in admitting into evidence the hammer, or the picture of it, because the State "failed to link it to the attack [on] Mr. Melgar."

It is true that the State did not conclusively prove that State's Exhibit No. 16 was the hammer that was used in the attack on the victim. But the State did prove, based on Mr. Melgar's testimony, that State's Exhibit 16 looked like the hammer that was used in the attack. That fact, coupled with testimony that appellant committed the robbery and proof that the police found the hammer (similar in appearance to the one used) lying on a counter-top inside Crusoe's apartment, in close physical proximity to a menu from the Yum Chen Restaurant and a carry-out bag, provided, at a minimum, circumstantial evidence that the hammer was the one used in the attack.

Appellant argues that the "presence of a hammer is probative only of the fact that [appellant's] apartment had in it a common household tool, as does almost every other household in America." We will assume that it is true that almost every apartment in this

country has a hammer.[5] But hammers come in many shapes and sizes; and it is therefore not true that "most households" have a hammer that looks like State's Exhibit 16.

Using the definition of relevant evidence set forth in Md. Rule 5-401, we hold that the trial judge did not abuse her discretion in admitting State's Exhibits 5, 6 and 16. The "fact that [was] of consequence to the determination of" the subject criminal action was whether Crusoe participated in a robbery in which a hammer was used. Evidence that Crusoe, on the day after the robbery, had on his kitchen countertop a hammer that looked like the one used in the robbery made it "more probable" that he participated in the robbery "than it would be" if the exhibits had been excluded.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[5]If Crusoe was believed, no one in his apartment owned that "common household tool." To the contrary, Crusoe testified that he and his roommate, Dorsey, didn't own a hammer but, earlier on the date of the robbery, Dorsey had to borrow a hammer from a neighbor. According to Crusoe's testimony, he had never seen State's Exhibit 16 prior to his arrest and the hammer that Dorsey borrowed did not look like State's Exhibit 16.