UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1895

September Term, 2015

MICHAEL NEAL BROWN

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: January 3, 2017

A jury in the Circuit Court for Prince George's County convicted Michael Neal Brown, appellant, of trespassing and disorderly conduct following an incident that occurred at a McDonald's in Seat Pleasant on the night of November 12, 2014. The court sentenced appellant to a term of incarceration of 90 days, with all but one day suspended, for trespassing, and a consecutive suspended sentence of 60 days for disorderly conduct. Appellant raises two issues on appeal:

> 1. Did the trial court err in admitting evidence of prior bad acts in violation of Maryland Rule 5-404(b)?
>
> 2. Was the evidence sufficient to sustain convictions for disorderly conduct and trespassing?

For the reasons that follow, we agree with the State that these issues are not preserved for review, and we affirm the circuit court.

BACKGROUND

Considered in the light most favorable to the State as the prevailing party, *State v. Smith*, 374 Md. 527, 533–34 (2003), the evidence at trial established the following:

In November 2014, Anthony Tyrone "Tony" Carpenter worked as a security guard at the McDonald's on Martin Luther King Jr. Highway in Seat Pleasant. He testified that on November 3rd, appellant entered the restaurant and asked about a job. Then, appellant started cursing and using profanity. Carpenter asked appellant to leave, and appellant did so. On November 6th, appellant entered the restaurant and started cursing. When Carpenter approached, appellant "challenged" him, saying, "You have to call your boys? What you

going to do? What you going to do?" Carpenter forcibly removed appellant from the restaurant.

Then, on November 12th, appellant came to the McDonald's with his mother. Carpenter testified that appellant was "excited" and "antsy." Carpenter told appellant that "I hope we're not going to have any problems out of you tonight." Appellant ordered food and sat down close to Carpenter. Appellant started loudly cursing and using profanity, to the point that Carpenter observed that restaurant employees were stopping to watch. Appellant screamed, "f--k you. What you going to do? I'm going to f--k you up. I'm going to send my folks. I'm going to kill your family. I got folks. I know where your familiar [sic] live, you know, where your mamma live[.]"Carpenter told appellant to leave the restaurant, and he refused. Carpenter then called 911 and reported that appellant was intoxicated and "combative."[1]

Appellant went outside, followed by Carpenter who reported appellant's movements to the 911 dispatcher. Once outside, appellant started trying to take his clothes off in order to fight Carpenter. Instead of fighting Carpenter, however, appellant walked across the street and sat down on the curb.

Officer Joseph Millett responded to the restaurant.[2] Carpenter pointed out appellant to Officer Millett. Officer Millett testified that appellant was "very, very irate and upset,"

[1] The 911 call was played for the jury.

[2] All law enforcement officers in this case are members of the Prince George's County Police Department.

but he managed to calm appellant down. Officer Millett stated that appellant directed his anger at Carpenter, saying that he did not want to leave the restaurant and that appellant would "bring [his] boys" to fight Carpenter. Officer Millett advised appellant not to return to the McDonald's that evening, or he would be arrested for trespassing. Appellant said he understood. Officer Millett returned to his patrol car and started driving away from the scene; he turned around, however, when he observed appellant walk toward the restaurant in his rearview mirror.

Before appellant entered the restaurant, Officer Brian Bell stopped appellant in the parking lot of the McDonald's. Officer Bell advised him that he was not supposed to return to the McDonald's. Appellant cursed at Officer Bell and said he was going to see his mom. Officer Bell arrested appellant for trespassing and placed him in the passenger seat of his police cruiser. While Officer Bell transported appellant to booking, appellant threatened Officer Bell, saying, "I'll have my boys f--k you and your boys up." Appellant then spit on Officer Bell's face.

Appellant testified in his defense. He admitted that he had been drinking that evening, and his mother expressed disapproval. He testified that Carpenter rudely intervened in the conversation with his mother. Carpenter told appellant that he did not want appellant at the restaurant, and Carpenter asked appellant to leave, which he did. Appellant testified that he walked across the street to wait for his mother, but police arrived and escorted him back to the McDonald's parking lot before arresting him. Appellant expressly denied cursing or spitting on Officer Bell.

The State charged appellant with two counts of disorderly conduct, second-degree assault, and trespassing. The State *nol prossed* one of the counts of disorderly conduct. The jury acquitted appellant of second-degree assault, but convicted him of trespassing and disorderly conduct.

DISCUSSION

I. Evidence of the Prior Visits

Prior to trial, appellant moved to bar the State from introducing testimony as to appellant's November 3rd and November 6th visits to the McDonald's, arguing that this evidence was inadmissible pursuant to Rule 5-404(b).[3] The court denied appellant's motion.

On appeal, appellant contends that evidence of appellant's prior visits to and ejections from the McDonald's is the epitome of the prior bad acts evidence that Rule 5-404(b) is meant to exclude. Appellant argues that the State did not meet any of the exceptions in Rule 5-404(b) that would have permitted this evidence to be admitted. Moreover, appellant contends that this evidence was far more prejudicial than probative and should have been excluded for that reason. Appellant admits that "[t]echnically," the issue is not preserved because he objected only to Carpenter's testimony as to the November 3rd visit, and evidence of both visits was admitted elsewhere without objection,

[3] Rule 5-404(b) provides: "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. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident."

but he argues that we should, nevertheless, address the issue based on the reasoning of *Watson v. State*, 311 Md. 370 (1988).

The State contends that the issue is not preserved because appellant failed to object when Carpenter testified as to the November 6th visit and also failed to object when other evidence of the November 3rd visit was admitted. Furthermore, the State argues that the preservation exception as stated in *Watson* does not apply to this case. If the issue is preserved, the State contends that the court properly admitted this evidence as probative of appellant's intent and because of the special relevance to the events of November 12th.

The Court of Appeals has observed that when a court denies a motion *in limine* to suppress evidence, then "the party who made the motion ordinarily must object at the time the evidence is actually offered to preserve his objection for appellate review." *Reed v. State*, 353 Md. 628, 634 (1999). *See also* Rule 4-323(a) ("An 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."). Additionally, "when particular grounds for an objection are volunteered or requested by the court, 'that party will be limited on appeal to a review of those grounds and will be deemed to have waived any ground not stated.'" *State v. Jones*, 138 Md. App. 178, 218 (2001) (quoting *Leuschner v. State*, 41 Md. App. 423, 436 (1979)), *aff'd*, 379 Md. 704 (2004). Furthermore, "[i]t is a long-standing rule in Maryland that any objection to the admission of evidence is waived by the subsequent admission, without objection, of the

same evidence at a later point in the proceedings." *Standifur v. State*, 64 Md. App. 570, 579 (1985) (citing *Spriggs v. Levitt & Sons, Inc.*, 267 Md. 679, 682-83 (1973)).

The Court of Appeals carved out an exception to this general preservation requirement in *Watson*, 311 Md. 370 (1988). In that case, Watson moved *in limine* to exclude evidence of a prior attempted rape conviction in his trial for rape. *Id.* at 371-72. The court denied the motion, and Watson failed to object when this evidence was offered at trial. *Id.* at 372 n.1. The Court, nevertheless, found that Watson had preserved his objection to this evidence because the trial judge reiterated his ruling prior to the State's cross-examination of Watson, in which the State elicited the challenged evidence. *Id.* The Court determined that "requiring Watson to make yet another objection only a short time after the court's ruling to admit the evidence would be to exalt form over substance." *Id. See also Dyce v. State*, 85 Md. App. 193, 196-98 (1990) (exercising discretion to address an issue raised by motion *in limine* where Dyce failed to object when evidence was subsequently addressed because the ruling and the evidence were separated only by Dyce's direct examination). "The *Watson* exception is a narrow one[,]'" however. *Washington v. State*, 191 Md. App. 48, 90 (2010) (citing *Reed*, 353 Md. at 636 n.4).

Returning to the present case, the trial court did not reiterate its ruling prior to Carpenter's testimony. Appellant contends that the court's ruling was close in time to the proffer of the challenged evidence, given that the two are separated by only fifteen pages of transcript. Appellant fails to appreciate, though, that the ruling and Carpenter's testimony as to the prior visits are separated by the court's opening instructions, as well as

the opening statements of both the State and appellant. This case, then, is distinguishable from both *Watson* and *Dyce*, and the exception does not apply.

Appellant objected only to Carpenter's testimony as to the November 3rd visit. Appellant objected to Carpenter's testimony regarding the November 6th visit on the grounds that Carpenter's statement that appellant spat on him was inadmissible. Accordingly, appellant did not object on the ground he raises on appeal, and it is, thus, not preserved. *See Jones*, 138 Md. App. at 218 (citing *Leuschner*, 41 Md. App. at 436). Furthermore, evidence of the prior visits to McDonald's was admitted without objection when the State played the 911 call.[4] The issue of the admissibility of evidence of the prior visits to McDonald's, then, is not preserved.

In any event, appellant's contention is unpersuasive on its merits. Although generally inadmissible, evidence of a prior bad act can be admitted if the evidence "is relevant to the offense charged on some basis other than a propensity to commit crime." *Harris v. State*, 324 Md. 490, 496 (1991). Carpenter, the security guard, testified that when appellant entered the restaurant on November 12th, he told appellant that he "hoped that "we're not going to have any problems out of you tonight." Evidence of appellant's prior conduct was relevant to explain what would otherwise appear to be an unnecessarily confrontational attitude on Carpenter's part.

[4] Appellant objected to the playing of the 911 call on the grounds that it was an inadmissible business record of the police. Appellant did not raise the prior bad acts argument in objecting to this evidence, and it is, therefore, waived. *See Jones*, 138 Md. App. at 218 (citing *Leuschner*, 41 Md. App. at 436).

II. Sufficiency of the Evidence

Appellant contends that the State failed to produce sufficient evidence of both disorderly conduct and trespassing. As to disorderly conduct, appellant was convicted of violating Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("C.L."), § 10-201(c)(4)(i), which prohibits "[a] person [from] enter[ing] the land or premises of another" and "willfully disturb[ing] the peace of persons on the land . . . by making an unreasonably loud noise." Appellant argues that the State failed to demonstrate that he was making loud noises, much less that he was making loud noises inside the restaurant. C.L. § 6-403(a) prohibits trespassing and provides: "A person may not enter or cross over private property . . . of another, after having been notified by the owner or the owner's agent not to do so, unless entering or crossing under a good faith claim of right or ownership." Appellant contends that he had no notice he was trespassing because he was unaware that the parking lot was the private property of McDonald's.

The State argues that appellant has failed to preserve this issue for our review. If appellant has preserved the issue, then the State contends that there was sufficient evidence from which a reasonable trier of fact could convict appellant of disorderly conduct and trespassing.

Rule 4-324(a) permits a criminal defendant to move for a judgment of acquittal at the conclusion of the State's case-in-chief and again at the close of all the evidence. Importantly, "[t]he defendant **shall state with particularity** all reasons why the motion should be granted." Rule 4-324(a) (emphasis added). "Grounds that are not raised in

support of a motion for judgment of acquittal at trial may not be raised on appeal." *Jones v. State*, 213 Md. App. 208, 215 (2013) (citing *Graham v. State*, 325 Md. 398, 417 (1992)), *aff'd*, 440 Md. 450 (2014). Stated another way, "'[a] defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal[.]'" *Starr v. State*, 405 Md. 293, 303 (2008) (quoting *McIntyre v. State*, 168 Md. App. 504, 527-28 (2006)).

In this case, appellant moved for a judgment of acquittal at the proper times, and argued with particularity why the motion should be granted. He, however, did not raise the arguments he now brings on appeal.

In moving for a judgment of acquittal as to trespassing, appellant's counsel argued: "Officer Bell testified that he came back on the sidewalk. He never came back on." Appellant, then, challenged the evidence for trespassing on the grounds that the State failed to demonstrate he was on the restaurant's property, which is a different argument than the one he makes to this Court.

As to disorderly conduct, appellant argued at trial: "[T]here is no evidence that he was causing any disturbance with other people. The only disturbance right now is between him and Mr. Carpenter." Again, this is a different ground than he urges to this Court. Accordingly, we agree with the State that this issue is not preserved.

Looking past preservation, we conclude that there was legally sufficient evidence to support both convictions.

A person is guilty of disorderly conduct when, among other ways, he enters upon the land or premises of another and willfully "disturbs the peace . . . by making an unreasonably loud noise." Criminal Law Article ("C.L.") § 10-201(c)(i). Carpenter, the security guard, testified that appellant threatened to "f--k up" Carpenter and members of his family in tones loud enough to attract the attention of other employees of the restaurant. This is sufficient to sustain the conviction. It is true, as appellant asserts in his brief, that there was conflicting evidence but it is the role of the jury to resolve such conflicts. *Smith*, 374 Md. at 533–54.

A person is guilty of trespassing if he enters onto another's private property "after having been notified by the owner or the owner's agent not to do so." C.L. § 6-403. Carpenter, an agent of the owner, instructed appellant to leave the premises. Initially, he refused and then left. After his encounter with Officer Bell, he returned to the McDonald's premises, although he was arrested before he could re-enter the restaurant itself. From this evidence, a fact-finder could reasonably conclude that appellant was trespassing.

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