

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0453

September Term, 2014

RAOUL EMMANUEL HUGHES

v.

STATE OF MARYLAND

Meredith,
Berger,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: September 2, 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.

Following a jury trial in the Circuit Court for Montgomery County, Raoul Emmanuel Hughes (“Hughes”), appellant, was convicted of first-degree burglary and theft of property with a value of at least \$1,000 but less than \$10,000. On appeal, Hughes presents two issues for our review, which we have rephrased as follows:

1. Whether the circuit court erred by denying Hughes’s motion to suppress items recovered from Hughes’s vehicle.
2. Whether the circuit court abused its discretion by admitting various items recovered from Hughes’s vehicle into evidence.

As we shall explain, the issues raised by Hughes are either not properly before this Court or unavailing on the merits. Accordingly, we shall affirm the judgments of the Circuit Court for Montgomery County.

FACTS AND PROCEEDINGS

Many of the underlying facts of this case are not relevant to the rather limited issues raised on appeal. We set forth the facts significant to the issues presented and further facts that are relevant to the overall context of this appeal. We set forth the facts in the light most favorable to the prevailing party.

On November 22, 2012, a burglary occurred at 3858 Angelton Court in Burtonsville, Maryland. Kristen Goldberg and her 19-year-old son had left the home at approximately 3:30 p.m. to have Thanksgiving dinner with Ms. Goldberg’s parents. When they returned home at approximately 9:00 p.m., they found that the home had been burglarized. The glass sliding door -- which had been locked when the Goldbergs left the home -- was shattered

and various lights were left on. Ms. Goldberg immediately alerted the authorities. Police arrived shortly thereafter; officers evaluated the home while Ms. Goldberg waited outside.

When Ms. Goldberg was permitted to enter the home approximately fifteen to twenty minutes later, she discovered that various drawers had been pulled out and appeared to have been sifted through. Ms. Goldberg particularly noticed that “every drawer” in her bedroom had been pulled out and things were pulled out of all of the drawers in her bedroom as well as her son’s bedroom. Her jewelry box was open and various items of jewelry were missing. What appeared to be blood was smeared across the basement bathroom floor. A pillowcase was missing from a pillow in Ms. Goldberg’s bedroom, and there appeared to be blood on the uncased pillow.

Ms. Goldberg observed that her telephone, television, and internet were not working and that wires “were cut outside in the front” of her home. Ms. Goldberg determined that the items missing from her home were various pieces of jewelry, a camera, and \$50.00 in cash. She estimated the value of the missing jewelry and camera to be at least \$1,000 but less than \$10,000.¹

While investigating other burglaries in March of 2013, Detective Theresa Durham and Officer Colin O’Brien ultimately developed Hughes as a suspect in the Angleton Court

¹ One of the missing pieces of jewelry was a gold ring with baguettes of sapphires and diamonds. The investigation later determined that an item described as “a band ring, sapphire fancy ring with stars” was pawned in a Silver Spring pawn shop on November 23, 2012. The ring, however, was never recovered, as it had been sold or melted down by the time detectives made inquiries at the pawn shop.

burglary.² Blood samples from the Goldberg family's home were submitted for DNA analysis. Forensic analysis determined that the DNA profile taken from the pillow as well as a smear in the downstairs bathroom matched Hughes's profile with a probability of one in 303 billion.

Detective Durham contacted Hughes and asked him to come the police station. The police had possession of Hughes's Chevrolet van.³ Detective Durham had been informed by Detective Charlie Hoetzel that Hughes had been inquiring about picking up his van. Detective Hoetzel further informed Detective Durham than he had determined that the van was stolen. Detective Durham arranged for Hughes to come to the station, ostensibly to pick up the van. The actual intention of the police was to arrest Hughes for automobile theft when he arrived.

Hughes arrived in a black BMW sedan. He was accompanied by his girlfriend, Keesha Thomas ("Thomas"), who sat in the front passenger seat. Hughes parked the car, left the engine running, and went into the police station. Thomas remained seated in the BMW. After entering the station, Hughes was immediately arrested for automobile theft. At the same time, several officers, including a canine, exited the station and approached the

² In a separate trial, Hughes was convicted of four burglaries which occurred on March 25, 2013. That case is currently on appeal to this court. *Raoul Emmanuel Hughes v. State of Maryland*, No. 1145, Sept. Term 2014. A single motions hearing was held in the case relating to the March 25, 2013 burglaries and the Angleton Court burglary on the motion to suppress evidence recovered from Hughes's Chevrolet van.

³ The Chevrolet van had been impounded when Hughes was arrested on an earlier occasion.

BMW.⁴ Thomas was asked to exit the vehicle. Detective Durham asked Thomas whether there was anything illegal in the vehicle, and Thomas responded that immediately prior to arriving at the station Hughes had given her “a couple baggies” which Thomas believed contained either heroin or cocaine, but which actually contained marijuana. Thomas further told Detective Dunham that she had some marijuana in her purse, which was sitting on the front seat of the vehicle. The canine alerted to the presence of drugs in the BMW.

Thereafter, officers searched the BMW. They recovered latex gloves, a pair of Timberland boots, a wet brown/gray jacket, a knit ski hat, a reflector vest, a duffle bag containing red Chinese envelopes, foreign currency, purses, a jewelry box, jewelry, white rubberized cotton gloves, and a red rubberized telephone with wires.⁵ The police later obtained a warrant and further searched the vehicle, recovering wire cutters among other items. The only drugs recovered from the BMW were found in Thomas’s purse.

Hughes was ultimately charged with burglary and related charges. Hughes moved to suppress the items recovered from the BMW and a hearing was held on his motion to suppress on March 10, 2014. At the motions hearing, Hughes argued that he was arrested

⁴ Unsurprisingly, the way in which the officers approached the vehicle and interacted with Thomas were characterized differently by various witnesses. Thomas, for example, testified that “the car was surrounded by a bunch of detectives” and that she was “ordered” to get out of the BMW. Detective Durham testified that she removed Thomas from the car for her “safety” due to the presence of the canine, saying, “Why don’t we step from the car and talk?”

⁵ Many of the items recovered were linked to burglaries which had occurred earlier on the same day.

without probable cause and that the subsequent search of his vehicle was the fruit of an illegal arrest.⁶ He asserted that the canine sniff and information provided by Thomas “flow[ed] from his unlawful arrest,” arguing that the only reason the police could conduct the canine sniff and speak with Thomas was because the police illegally restrained Hughes and prevented him from leaving the police station.

In response, the prosecutor argued that there was probable cause to support the arrest, based upon modifications that had been made to the van’s vehicle identification number. The prosecutor further argued that the evidence recovered from the vehicle had an independent source because the search of the vehicle was permissible based upon the canine alert as well as Thomas’s statement regarding drugs in the vehicle. The prosecutor acknowledged that, in his view, the probable cause for the arrest played no role in the justification for the search.

The trial court ruled that there was probable cause to support Hughes’s arrest. The court further ruled that the canine alert and Thomas’s statement each separately supported the warrantless search of the BMW under the *Carroll*⁷ doctrine. The court emphasized that “under either theory, the dog alerting [or] what Ms. Thomas said -- either one standing alone

⁶ Hughes asserted that the van had been stolen several years before he took possession of it, and there was no probable cause to support a finding that Hughes knew or should have known that the van was stolen.

⁷ *Carroll v. United States*, 267 U.S. 132 (1925).

I find as probable cause to search the car under *Carroll*.” The court further rejected Hughes’s argument that the search flowed from the arrest, explaining as follows:

So I don’t find that the court can speculate and say, “Well, if the defendant hadn’t been arrested he would have -- or he wasn’t detained he could have run out and gotten his car and driven away.” That wasn’t the case. The facts are clearly that there was probable cause to arrest him. The fact that he could sort things out later maybe with this period of time in jail, maybe with the length of time that had gone by, maybe with a good-faith basis as to why the car had different VIN numbers, maybe with the defense that “Look, I never put the car up on a lift and looked at that VIN number,” he might have won the case. But that’s not the test. The test is probable cause.

And this car had so many flags on it, you didn’t really need to have an expert. But based with the expert, and the police actually -- that was good police work. They went to an expert to check it all out and report it stolen. So I don’t want to go down that road again. So the arrest was proper. And then the car is sitting there running, the door open. Officer Durham had every right to have the dog search/sniff from the outside.

So I’ll deny the defense motion to suppress all the items that were recovered from the BMW and March 25, 2013.^[8]

At trial, photographs of various items recovered from the BMW were admitted into evidence. Following a four-day jury trial, Hughes was convicted of first-degree burglary and theft of property valued at at least \$1,000 but less than \$10,000. He was sentenced to a term of twenty years’ imprisonment for the burglary charge and a consecutive term of five years’ imprisonment for theft. This appeal followed.

⁸ The court further ruled that the plain view doctrine supported the officers’ search of items in the trunk of the vehicle. That determination is not at issue in this appeal.

DISCUSSION

I.

Hughes’s first contention on appeal is that the circuit court erred by denying his motion to suppress the materials recovered from the BMW. Specifically, Hughes asserts that the circuit court erred because the seizure of the BMW was illegal and the items recovered during the search which followed should have been suppressed. As we shall explain, this issue is not properly before us.

Pursuant to Md. Rule 8-131(a), we will “not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.” As we have explained, Hughes’s argument before the trial court was based upon an assertion that his arrest was illegal and that the subsequent search of the BMW was the fruit of that illegal arrest.⁹ This argument was detailed in the motion to suppress and accompanying memorandum of law filed in the trial court, as well as at the hearing on the motion.

On appeal, Hughes raises a significantly different argument. He does not challenge the legality of his arrest but instead asserts that his car was illegally seized before the police had probable cause. Specifically, he argues “that the police seized Mr. Hughes’s car and its

⁹ Defense counsel did comment, in passing, that “the opening of [Hughes’s car] door is an unlawful seizure -- an unlawful entry.” No actual argument beyond this comment was offered. For example, defense counsel made no reference to Hughes’s possessory interest in the vehicle, and did not argue that there had any meaningful interference with said possessory interest. We do not believe that defense counsel’s comment, divorced from any actual argument as to why the opening of the door constituted a seizure, is sufficient to preserve the issue for our review.

passenger *before* the police had any probable cause to believe it contained any contraband.” Critically, this issue was neither raised before nor decided by the trial court. Accordingly, the issue is not properly before us on appeal.

Indeed, we would be remiss to address the merits of Hughes’s argument. When determining whether property has been seized -- in this case, the BMW -- a court must determine whether there was “some meaningful interference with an individual’s possessory interest in the property.” *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Whether meaningful interference with an individual’s possessory interest has occurred is a fact-specific inquiry which was not explored at all before the trial court. Accordingly, it would be inappropriate to undertake such an analysis on appeal.

We note without deciding, however, that the State presents several compelling arguments in its brief that may have prevailed before the trial court and/or on appeal, had this issue been properly raised. The State argues that: (1) Hughes’s car was not seized; (2) even if an unlawful seizure occurred, Hughes failed to demonstrate that the evidence he sought to suppress was the fruit of the allegedly illegal seizure; and (3) any illegality was attenuated by Thomas’s admission. Any or all of these arguments may have proved availing had the issue been properly raised before the trial court. Because the issue was not raised, however, we will not address it here.

II.

Hughes’s second contention is that the circuit court erred by admitting the materials recovered from Hughes’s vehicle into evidence at trial. The State responds that this issue is both unpreserved and unpersuasive. We agree with the State.

Prior to the start of trial, Hughes moved in limine to preclude the admission of evidence found in his vehicle on relevancy grounds. The motion was denied. Maryland Rule 4-323(a) provides: “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.” “[W]hen a motion in limine to exclude evidence is denied, the issue of the admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial.” *Morton v. State*, 200 Md. App. 529, 540-41 (2011) (quoting *Klauenberg v. State*, 355 Md. 528, 539 (1999)). Absent a contemporaneous objection, the issue is unpreserved.

During the trial, defense counsel stated that he had “no objection” to the admission of photographs of materials recovered from Hughes’s vehicle, testimony about the materials recovered from Hughes’s vehicle, and the overwhelming majority of the materials themselves. During Detective Durham’s testimony, the prosecutor moved into evidence multiple photographs of Hughes’s vehicle and evidence recovered from it. Defense counsel stated that he had “no objection” to the admission of this evidence. Defense counsel further failed to object to Detective Durham’s testimony about the evidence recovered from the

vehicle. Detective Durham identified various items in the photographs, including Hughes's car, Timberland boots, wire cutters, a red telephone with alligator clips, and gloves. Defense counsel made one objection when the prosecutor sought to introduce the wire cutters into evidence.¹⁰ Critically, however, defense counsel did not object to the admission of the photograph of the wire cutters or to the testimony of Detective Durham about how and where the wire cutters were recovered. "Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection." *DeLeon v. State*, 407 Md. 16, 31 (2008). Accordingly, this issue is not preserved.

Furthermore, assuming *arguendo* the issue were preserved, the decision to admit the evidence was well within the discretion of the trial court. Trial judges are vested with wide discretion with respect to evidentiary rulings, including when "weighing relevancy in light of unfairness or efficiency considerations." *State v. Simms*, 420 Md. 705, 724 (2011). Relevant evidence is "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." Md. Rule 5-401. Relevant evidence is generally admissible unless "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

¹⁰ When the State sought to introduce the wire cutters, the trial court asked defense counsel, "Same objection?" Defense counsel responded, "Same objection."

Hughes asserts that the evidence recovered from the vehicle was irrelevant because it was discovered almost four months after the Angleton Court burglary and there was no specific evidence that the particular instruments discovered in the vehicle were used in the burglary. To be sure, had the evidence been discovered immediately following the Angleton Court burglary, it would have been more probative than the same evidence discovered months later. Such a distinction, however, typically goes to weight, not admissibility. *Gray v. State*, 137 Md. App. 460, 500-01 (2001), *rev'd on other grounds*, 368 Md. 529 (2002) (“The trial court should act sparingly in excluding evidence on the basis of remoteness in time, however, because ‘remoteness ordinarily affects the weight, rather than the admissibility, of evidence.’”) (quoting *Purviance v. State*, 185 Md. 189, 198 (1945)). Furthermore, the State need not prove that the evidence recovered from Hughes’s vehicle was used in the Angleton Court burglary in order for the evidence to be relevant. Rather, it is sufficient if the evidence was probably connected to the burglary. *Spriggs v. State*, 226 Md. 50, 52 (1961) (“[A] probability of connection of proffered evidence with a crime is enough to make it admissible, its weight being for the trier of fact to evaluate.”). Accordingly, we conclude that, assuming *arguendo* the issue were preserved, the circuit court did not err by admitting the challenged evidence.

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