Circuit Court for Queen Anne's County
Case No. C-17-CR-18-000075

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1099

September Term, 2018

STEPHEN DANIEL ROBIE

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: July 23, 2019

*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.

A jury in the Circuit Court for Queen Anne's County convicted appellant Stephen Daniel Robie of second-degree assault and reckless endangerment, but acquitted him of first-degree assault, possession of a dangerous weapon with the intent to injure, and attempted false imprisonment. The court had previously granted a motion for judgment of acquittal on charges of attempted first-degree and second-degree murder.

The court sentenced Robie to eight years in prison, and he filed a timely notice of appeal. He asks us to consider two questions, which we have rephrased to make them less argumentative and more comprehensible:

1. Did the trial court err in limiting Robie's cross-examination of the victim and of the State's expert?

2. Did the trial court err in allowing a law enforcement officer to testify about Robie's resemblance to the initial suspect and in introducing a photograph of that suspect?[1]

For the reasons that follow, we shall affirm the judgments of the trial court.

FACTS AND LEGAL PROCEEDINGS

In November 2013, W.C.[2] placed personal ads on the Baltimore and Eastern Shore platforms of Craigslist. In the ads W.C. said that he was "[s]eeking friendship and

[1] Robie formulated the questions as follows:

1. Did the trial court err in impermissibly foreclosing Appellant's constitutional right of confrontation through cross-examination?

2. Did the trial court err in allowing irrelevant witness testimony to invade the province of the jury and err in admitting the photograph?

[2] Because of the circumstances surrounding the offenses in this case, we have elected to refer to the victim by his initials.

companionship" with another man. The ads, which were admitted into evidence as Defendant's Exhibit 2, contained "sexual fantasy," not all of which, W.C. said, was true.

A man, or possibly two different men, both using the name "Stephen Crane" and the same email address, answered each ad. W.C. responded to the "Stephen Crane" who had answered the ad on the Baltimore platform.

"Stephen Crane" told W.C. that he was from Alabama, but was staying in North East, in Cecil County. The two men exchanged messages, and "Stephen" sent a photograph of himself that is indisputably a photograph of Robie. Ultimately, "Stephen" and W.C. agreed to meet at W.C.'s house on November 28, 2013, Thanksgiving morning.

At approximately 8:00 a.m. on November 28, 2013, Robie, wearing a pair of aviator sunglasses, arrived at W.C.'s house in Queen Anne's County. As W.C. turned around to lead Robie inside, he felt a thud on the back of his head and fell to the floor. Looking up, he saw Robie, brandishing a drywall hammer. W.C. begged Robie not to hurt him and told him to take whatever he wanted. Robie responded by telling W.C. to shut up and do exactly as he said under threat of further injury.

Robie ordered W.C. to turn over onto his stomach, got on top of W.C., and put a zip-tie around his right wrist. W.C. believed that he was going to be raped or killed.

As Robie attempted to place the zip-tie around W.C.'s other wrist, the tie flew off. While Robie was trying to find another zip-tie, W.C. stood up and ran toward his kitchen. Robie followed, and the two men fought. W.C. was able to grab a knife-sharpening tool, which he jabbed at the assailant.

In the struggle, the men tripped and fell to the floor. Robie pulled out a knife or another weapon, and W.C. began kicking him in the groin. W.C.'s counterattack evidently had some effect, because Robie cried out, "Stop, truce." W.C. responded, "What the f do you mean by truce? Get out of my house." Robie grabbed his sunglasses, and W.C. shoved him out the back door. Looking out the window, he saw Robie back down the driveway in a white truck, but he could not make out the license plate.

W.C. realized that Robie had left the broken zip-tie, a bag of zip-ties, and a black glove in the house. W.C. said that he picked up those items using a tissue, and put them in a drawer. On cross-examination, he acknowledged that he may have left the broken zip-tie on the counter.

While showering, W.C. discovered a gash on the back of his head. He drove himself to an urgent care facility, where it took six or seven staples to close the wound. Because W.C. was reluctant to disclose the circumstances under which the assailant came to his house, and because he did not want to disrupt his family's Thanksgiving celebration, he told the medical staff that he had injured his head when he fell down the stairs in his house. At first, he did not call the police.

At the urging of his friends, W.C. notified the police of the attack on December 5, 2013. At that time, he gave a recorded statement to Corporal Maria Bassaro of the Queen Anne's County Sheriff's Office. He also gave her the zip-ties and glove that Robie had left in his house. She submitted the zip-ties and glove to the Maryland State Police crime lab.

In an attempt to identify his attacker, W.C. visited several social media sites. On one site, he found a photograph of a man from North East, wearing aviator sunglasses, who resembled "Stephen Crane." Because of the man's photograph and location, W.C. initially believed him to be the attacker. W.C. notified Corporal Bassaro, who obtained a search warrant for the man's house and recovered a rusty silver hatchet and a book on male bondage. When W.C. viewed the man in person, however, he knew that the suspect was not the man who had attacked him. We shall refer to this initial suspect as "Mr. K."

Based on further investigation, Sergeant Amelia VanSant of the Queen Anne's County Sheriff's Office interviewed Robie in September 2014. In the interview, Robie was forthcoming at first. After waiving his *Miranda* rights, Robie told her that he was from Alabama and that he had lived in Cecil County. He also told her that he owned a white truck that only he drove, but he said that the truck was in Alabama. In addition, Robie admitted that he had answered a handful of Craigslist ads for sexual activity with men and women.

Once Sergeant VanSant told him about W.C.'s allegations, however, Robie became less forthcoming. He could not say whether he did or did not assault W.C.; he said that he could not remember ever going to Queen Anne's County; and he insisted that he "didn't plan on killing nobody." Before the interview ended, Sergeant VanSant obtained a DNA sample from Robie, pursuant to a search warrant.

Julie Kempton, a forensic scientist with the Maryland State Police crime lab, analyzed the DNA samples that had been taken from W.C., Robie, and Mr. K. to compare them to samples from the black glove and zip-ties that were recovered from W.C.'s

house. She determined, to a reasonable degree of scientific certainty, that at least three people contributed to the DNA on the inside of the black glove; that Robie was the major contributor; that Robie had deposited six to nine times more DNA on the inside of the glove than any other contributor; and that Robie had probably worn the glove. She further determined that two people contributed to the DNA on a cutting of the glove from the base of the thumb, that Robie was the major contributor, and that neither W.C. nor Mr. K. was the minor contributor. W.C. was the major contributor of DNA on the broken zip-tie, and Robie was the minor contributor.

For the defense, Jason McCullough, an expert in computer forensics, testified that he had analyzed the two email chains between W.C. and "Stephen Crane." He could not verify whether both email chains had been sent by the same person, but he stated that it is relatively easy to establish a fake email profile in another person's name or "hijack" an email profile without the owner's knowledge. His testimony was apparently intended to suggest that anyone could have emailed the photograph of Robie to W.C.

We shall introduce additional facts as they become relevant.

DISCUSSION

I.

Robie contends that the trial court erred in foreclosing his constitutional right of confrontation through the cross-examination of W.C. and Kempton.

The Cross-Examination of W.C.

In cross-examining W.C., defense counsel sought to have the witness read the text of his sexually explicit ads and messages. In addition, defense counsel herself attempted

to read some of the sexually explicit messages that W.C. had sent to "Stephen Crane" and to ask W.C. to affirm that he had written them.[3] The trial court permitted defense counsel to ask W.C. about portions of the ads and the messages. On other occasions, however, it sustained the State's objections on the ground that the messages were in evidence and that "[t]hey speak for themselves."

The Cross-Examination of Kempton

W.C. had testified that he had put the zip-ties and glove into a drawer and that he may have left the broken zip-tie on a counter for some time. In cross-examining Kempton, Robie sought to employ W.C.'s testimony to suggest that Robie's DNA might somehow have been accidentally transferred to the zip-ties and glove while they were still in W.C.'s possession.

Kempton agreed that DNA can be transferred from one item to another and that someone's DNA might be found on something that he or she never touched. She acknowledged that if a tissue were used to collect more than one piece of evidence (as W.C. said he did in picking up the glove and the zip-tie), it could transfer DNA from one item to another. She also acknowledged that if several pieces of evidence were stored together so that they were touching one another, the transfer of DNA from one to another "might be possible." Kempton explained that because of the possibility of contamination, a forensic scientist must be very careful when handling DNA evidence.

[3] The ads and messages do not invite battery, bondage, violence, or rape. Consequently, their explicit content is irrelevant to this opinion.

Although Kempton had discussed the crime lab's many protocols to preserve the integrity of the samples, Kempton agreed with defense counsel that she would have no idea "how things were handled before they were brought to the lab." The following colloquy ensued:

> Q. So, in your opinion, it would be bad if evidence remained at someone's house for eight days, stored together, then moved and placed together on a kitchen counter prior to the police collecting it?
>
> A. Without having a full, you know, what is the type of evidence, was the scene secured. There's no –
>
> Q. Let's say it's an unsecured scene for eight days, would that be bad?
>
> [PROSECUTOR]: Objection.
>
> THE COURT: Sustained.
>
> Q. The sequence that I just expressed to you, you wouldn't do that in your lab, right?
>
> A. We don't leave things out exposed for any length of time except when we're physically working on them.
>
> Q. Correct. DNA is really sensitive to transfer?
>
> A. Yes.

Analysis

Robie contends that the circuit court "foreclose[ed]" his right of confrontation by limiting defense counsel's ability to question W.C. about the sexually explicit ads and emails and by sustaining an objection to one question about the potential contamination of DNA evidence. His contentions have no merit.

The Confrontation Clause of the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee criminal defendants the right to confront the witnesses against them. *See, e.g.*, *Martinez v. State*, 416 Md. 418, 428 (2010) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986); *Church v. State*, 408 Md. 650, 663 (2009)). "The ability to cross-examine witnesses, however, is not unrestricted." *Martinez v. State*, 416 Md. at 428. A trial court may exercise its discretion to "impose reasonable limits on cross-examination when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant." *Id.* (citation omitted); *see also* Md. Rule 5-611(a)(3) (requiring a court to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to . . . protect witnesses from harassment or undue embarrassment").

"The scope of cross-examination lies within the sound discretion of the trial court." *Pantazes v. State*, 376 Md. 661, 681 (2003). On appellate review, we determine whether the trial judge's limits on cross-examination inhibited the defendant's ability to receive a fair trial. *Id.* at 681-82.

We have no difficulty concluding that the court properly exercised its discretion in circumscribing the questions concerning the sexually explicit ads and emails. The ads and emails were already in evidence, and they had been exhibited to the jury as well. The ads and messages do not support an inference that W.C. consented to being battered, bound, or raped. *See supra* n.3. Consequently, it is difficult to envision what purpose

they served, other than to embarrass and humiliate the witness or to play on the jury's latent prejudices.[4]

Nor do we see an abuse of discretion in the court's decision to sustain an objection to one question during the cross-examination of Kempton. As a matter of form, the question itself was rather sloppy: "Let's say it's an unsecured scene for eight days, would that be bad?" The question is comprehensible only if it is understood to encompass the prior question: "So in your opinion it would be bad if evidence remained at someone's house for eight days, stored together, [and was] then moved and placed together on a kitchen counter prior to the police collecting it." In her aborted response to the prior question, the witness had begun to say that she could not answer it, because she needed additional information. Before defense counsel cut her off, she suggested that she would need to know what type of evidence was involved, whether the scene was secured, and possibly other things as well. Because the ensuing hypothetical question did not address all of the factors that Kempton needed in order to formulate a response, the question was formally defective; and Kempton could not answer it without engaging in impermissible speculation.[5]

[4] The record supports both explanations. In Robie's opening statement, his counsel told the jury that W.C. likes "perverse" sex and "lives a very dangerous lifestyle." Later, when counsel was cross-examining W.C. about the ads and messages, the witness himself was prompted to ask whether he was on trial.

[5] Robie argues that, in sustaining the objection to the question about whether it would be "bad" if the scene had been unsecured for eight days before the police recovered the evidence, the court somehow precluded him from exploring whether Mr. K. was "an alternative agent." He argues that Kempton "could not exclude" Mr. K. "as a

(Continued)

II.

On redirect examination, Corporal Bassaro looked at a photograph of Mr. K. and testified, over objection, that he bears a strong resemblance to Robie. Robie complains that the testimony improperly bolstered W.C.'s credibility and invaded the province of the jury. He also complains about the admission of the photograph. His contentions are unmeritorious.

As previously stated, W.C. had initially identified Mr. K. as his assailant after locating a photograph of him, wearing sunglasses like the ones worn by the assailant, on a dating website. In addition to the similarity in the choice of eyewear, Mr. K. listed his place of residence as North East, where the assailant had said he was staying.

During her direct examination, Corporal Bassaro stated that she had considered Mr. K. a suspect because of what W.C. had found. On cross-examination, defense counsel established that Corporal Bassaro had initially charged Mr. K. for the assault on W.C., that she had obtained a search warrant for his residence on the basis of W.C.'s identification of him on a website, and that W.C. had printed out pictures of Mr. K. and gave them to her.

On redirect examination, the prosecutor questioned Bassaro about State's Exhibit 7, a photograph of Mr. K.:

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minor contributor" to the DNA on the glove. Robie's account is not completely accurate. According to Kempton, the amount of the minor contributors' DNA on the glove was so low that it did not permit a full profile, so no one could be included or excluded. Mr. K. was, however, excluded as the minor contributor of the DNA obtained from the cutting of the glove.

Q. [Defense counsel] asked you about social media, pictures of Mr. K.?

A. Yes.

Q. Is this what was used to identify Mr. K.?

A. Yes, it was.

Q. And he's about the same age as Mr. Robie?

A. That's correct.

Q. White male?

A. White male, yes.

Q. About the same height and weight?

A. Yes.

Q. Is this Mr. K. to the far right?

A. Yes, it is.

Q. Safe to say he bears a strong resemblance to Mr. Robie?

A. Yes.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[PROSECUTOR]: Your Honor, the State would move for the admission of State's Exhibit 7.

THE COURT: Any objection?

[DEFENSE COUNSEL]: I do, Your Honor. Quite frankly, I don't think they're apples to apples and we're not -- that's her subjective opinion with regard to the photo.

[PROSECUTOR]: Jury can make their own --

THE COURT: I'll overrule the objection and admit the document.

It is difficult to see how this exchange is supposed to have bolstered W.C.'s testimony. During his testimony, W.C. was not shown the photograph of Mr. K. or asked to compare Mr. K.'s appearance to Robie's, so the Corporal's testimony was not offered to reinforce something that W.C. had said. Nor did Corporal Bassaro testify that it was understandable why W.C. might confuse Mr. K. with Robie. Instead, the Corporal was explaining why she continued to rely on W.C. despite his misidentification of Mr. K. Her testimony was relevant because Robie's had dwelled on the misidentification of Mr. K. in his cross-examination.

It is also difficult to see how the Corporal's comment invaded the province of the jury. She did not opine that W.C. was credible or that he was telling the truth. *Compare to Bohnert v. State*, 312 Md. 266, 277 (1988) (stating that "the credibility of a witness and the weight to be accorded the witness' testimony are solely within the province of the jury"); *accord Fallin v. State*, 460 Md. 130, 154 (2018). Furthermore, the jury could look at the photograph and judge for itself whether Corporal Bassaro's assessment was accurate. *Tobias v. State*, 37 Md. App. 605, 616-17 (1977)

In short, the court did not abuse its discretion in permitting Corporal Bassaro to testify about Mr. K.'s resemblance to Robie. For that reason, the court did not abuse its discretion in admitting the photograph.

JUDGMENTS OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.