Circuit Court for Baltimore City
Case No. 24-C-21-001570

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1882

September Term, 2022

ROBERT REESE

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

Arthur,
Reed,
Tang,

JJ.

Opinion by Reed, J.

Filed: May 27, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On May 22, 2019, Robert Reese, the Appellant, was riding his skateboard along the Inner Harbor Waterfront Promenade in Baltimore when his skateboard hit a loose brick and he fell. The Appellant brought a negligence claim against the Mayor and City Council of Baltimore, the Appellee. The case went to trial on December 5 and 6, 2022. At trial, the Appellee called Ronald Hunter, a superintendent of the Maintenance Division for the Baltimore City Department of Transportation. On cross-examination, the Appellant attempted to introduce a Service Request Summary Report to impeach Mr. Hunter's testimony. The Appellee objected to the admission of the report, and the trial judge sustained the objection and excluded the report. At the end of the trial, the jury found by a preponderance of the evidence that the Appellee's negligence was not the proximate cause of the Appellant's injuries and the Court entered judgment in favor of the Appellee. The Appellant then appealed the verdict based on the exclusion of the report.

In bringing his appeal, Appellant presents one question for appellate review:

> I. Did the trial court err in refusing to allow the Appellant to enter into evidence a Service Request Summary Report for impeachment purposes?[1]

For the following reasons, we affirm the decision of the Circuit Court for Baltimore City.

[1] The Appellant's question presented, as originally phrased was: "Did the trial court err in refusing to allow Appellant to introduce or question Mr. Hunter on the Service Request Summary Report dated August 3, 2018, which would have impeached his prior testimony?"

FACTUAL & PROCEDURAL BACKGROUND

On May 22, 2019, the Appellant rode his electric skateboard home along the Inner Harbor Waterfront Promenade in Baltimore, Maryland (the "Promenade"). He was travelling in the middle of the pathway approaching the Rusty Scupper restaurant. The front tire of his skateboard hit a loose brick on the Promenade and the Appellant fell on the ground. The loose brick had popped out of the ground and scraped against the skateboard. An ambulance took the Appellant to the hospital for injuries to his elbow and shoulder. The Appellant had surgery on his arm and remained in a continuous state of pain for six months. After eighteen months his continuous aching went away, but by the time of trial, the Appellant still had regular aches and pain when he used his arm.

On April 13, 2021, the Appellant filed a complaint against the Appellee alleging that the Appellee was negligent in their maintenance of the Promenade. Specifically, the Appellant alleged that the Appellee breached its duty to keep the Promenade in a safe and unhazardous condition, failed to maintain the location in a proper manner, failed to provide warnings of dangerous conditions, and acted carelessly, recklessly, and negligently regarding the maintenance of the location.

The case proceeded to trial on December 5, 2022, before the Honorable Judge Gregory Sampson of the Circuit Court for Baltimore City. During the trial, the Appellee called Ronald Hunter to the stand, the Superintendent of the Department of Transportation Maintenance Division for the City of Baltimore. Mr. Hunter described how he is

responsible for maintenance crews that manage the brickwork in the Inner Harbor. In the years leading up to the incident in this case, Mr. Hunter said that his crew members would be at the Promenade at least once or twice a week. His crews were equipped with some material for small fixes, but larger projects would usually be outsourced and the areas would be blocked off until the projects could be completed. Mr. Hunter said, "if they see something that they can fix right away it's fixed instantly."

Based on this testimony, Appellant's counsel attempted to impeach Mr. Hunter's testimony using a Service Summary Report (the "SRS Report") from August 3, 2018.[2] This SRS Report stated that the Waterfront Promenade had several bricks missing in the walkway, specifically missing bricks "near the water" and another issue nearer to the volleyball courts. Appellant's counsel showed the document to Mr. Hunter and asked if he had seen it before, and Mr. Hunter said, "I mean, yeah, this is how they come up, the service requests that I have seen." The Appellee objected when the Appellant began to question Mr. Hunter about the document, arguing there was no proper foundation. When asked by

[2] The Appellant had previously shown the SRS Report to Mr. Hunter at his deposition. The Appellant asked if these bricks were ever repaired, and Mr. Hunter said in response:

> I was looking for if it was closed out or not. See, I wouldn't know. This was a service request that was sent to tech, DOT tech. This type is a footway complaint so that wouldn't come to me, that would have went to DOT tech.

The "tech" is referring to the Transportation Engineering and Constriction (TEC) division of DOT, which is separate from the Maintenance Division where Mr. Hunter works. The Appellant followed up with Mr. Hunter asking, "we can't tell if this complaint was ever corrected; is that right?" to which Mr. Hunter responded, "Yes, to my knowledge, yes." During this deposition, the Appellant did not establish that Mr. Hunter had any personal knowledge of the incident detailed in the SRS Report.

Judge Sampson, the Appellant's counsel said that the purpose of the testimony was to show "[t]here [was] missing bricks exactly where our client fell and they did nothing a year before." Appellant's counsel described it as impeachment evidence because it contradicted Mr. Hunter's testimony that "if the crews see a missing brick they take care of that immediately."

Judge Sampson tried to determine whether Mr. Hunter had personal knowledge about the contents of the SRS Report or if the Appellant was only relying on the text of the SRS Report. He told the Appellant:

> Now this is a document. This is a document within the purview of the Department of Public Works or whatever they are calling it these days. The question is how does this document come in. Can it come in through this witness? The question then becomes whether this witness is the proper individual to have this document come in. If he has knowledge of this document prior to today you can ask him about it and then the document comes in. If he does not have knowledge of this document he can't verify as to what this document is nor what it says. So that's my ruling. So if he has knowledge of this document, fine, it can come in. If he doesn't have knowledge of the document it doesn't come in.
> . . .
> There is a way to get a document that is held by the City of Baltimore for any agency to have that come in without this controversy.
> . . .
> It's not a question to what he testified, the question is whether he is aware of this document. The question is whether he is aware of it. If he is not aware of this document then it can't come in.
> . . .
> If the City of Baltimore relied on it then - - We all know how documents come in through business records.
> . . .
> And that's my only issue. I don't have any issue with the document itself. I have an issue with how this document is properly admitted into evidence.

Judge Sampson continued:

> You are certainly free to use it as an impeachment. The question is is [sic]

how it comes in and whether it properly comes in. There is a custodian of records. I mean if you have a document from the custodian of records saying that, and you have the cover sheet and all this other stuff, it's going to come in and then you can use it for impeachment. If you don't, it won't.

The Appellant then returned to questioning Mr. Hunter about the document:

Mr. J. Plaxen [Appellant's Counsel]: Mr. Hunter I have here what is marked as Plaintiff's Exhibit 14. Are you familiar with this type of document?

A: Yes, sir.

Q: Okay. Can you identify what this document is?

A: It's a service request. Usually these kind of come through the 311 system where somebody, a citizen, a school, whoever, may put it into 311 and this is how it come to me, well not on paper form, on a computer.

Q: Okay. So these requests they come to you?

A: Yeah, they come - - Well, not actually to me. My supervisors can see them, anybody who looks in the 311 system can see it.

Q: All right. And these service request reports they come to your department specifically?

A: Well they come to all the departments according on the nature of where it go, if it's brick work or street repair or a pothole then it will come to me, and they sort it out by sectors. So if it was over east side it wouldn't come to me it would go to Sector 1, but if it's in my sector it will come to me.

Q: What was this request for?

Mr. Heinrich [Appellee's Counsel]: Objection.

The Court: Counsel, objection sustained.

Q: Have you seen this document before?

A: I mean I have seen documents like this. This one, which says 403 Key Highway - -

> **The Court:** Let me ask you this, are you familiar with this document and the contents of this document?
>
> **Mr. Hunter:** Can I take a moment to read it?
>
> **The Court:** Yes, sir.
>
> **Mr. Hunter:** Okay. And this - - No, because this document wouldn't come to me. This document says - -
>
> (Simultaneous speaking.)
>
> **The Court:** All right. Thank you. Objection is sustained.

After the court sustained the objection, the Appellant ended the cross-examination.

At the end of trial, the jury did not find by a preponderance of the evidence that the Appellee's negligence was the proximate cause of the Appellant's injuries. Judge Sampson then entered judgment in favor of the Appellee. The Appellant filed his timely appeal on December 28, 2022.

DISCUSSION

A. Parties' Contentions

The Appellant argues the SRS Report was permissible impeachment evidence that would contradict the testimony from Mr. Hunter. He argues that the SRS Report contradicted Mr. Hunter's assertions about his department being proactive in their repairs of the Inner Harbor Promenade. Even if Mr. Hunter was not familiar with the document, then the SRS Report could still be used as extrinsic evidence of a contradiction.

The Appellee argues the SRS Report was properly excluded from evidence. First, the Appellant failed to lay a foundation or authenticate the Report. Additionally, the Appellee contends the Report would have been improper impeachment evidence because

the SRS Report did not properly show a contradiction with Mr. Hunter's testimony. Finally, even if there was an abuse of discretion by the trial court, any error was harmless.

B. Standard of Review

"[W]hether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court" and we review the trial court's decision under the abuse of discretion standard. *Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 48 (2016) (quoting *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619 (2011)).

However, the circuit court's determination that a piece of evidence is relevant or irrelevant is reviewed *de novo* because it is a legal conclusion. *Williams v. State*, 457 Md. 551, 563 (2018). Trial judges have wide discretion "in weighing relevancy in light of unfairness or efficiency considerations, [but] trial judges do not have discretion to admit irrelevant evidence." *Perry*, 447 Md. at 48 (quoting *State v. Simms*, 420 Md. 705, 724 (2011)).

Even if the circuit court errs in its evidentiary ruling, this Court will not reverse the lower court for harmless error. *Id.* at 49 (citing *Crane v. Dunn*, 382 Md. 83, 91 (2004)). The complaining party must show that the error was prejudicial and "likely to have affected the verdict below." *Id.* (quoting *Crane*, 382 Md. at 91). Our inquiry focuses on "not the possibility, but the probability, of prejudice." *Id.* (quoting *Crane*, 382 Md. at 91).

C. Analysis

The Appellant attempted to introduce the SRS Report to impeach the testimony of Mr. Hunter. The Maryland Rules outline various methods of impeaching witnesses. Md.

Rule 5-616(a). Under those Rules, "[t]he credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at: . . . (2) Proving that the facts are not as testified to by the witness[.]" Md. Rule 5-616(a)(2). The Appellant was trying to show the jury a contradiction with Mr. Hunter's testimony that if his employees "see something that they can fix right away it's fixed instantly." The Appellant claimed that this SRS Report "verifies they did nothing" because the document should have shown the date they responded. The contradiction would be evidence that on a prior occasion a brick was identified as missing and was not fixed instantly.

Under the Maryland Rules, if the purpose of impeachment is contradiction, then extrinsic evidence providing that contradiction "ordinarily may be admitted only on non-collateral matters. In the court's discretion, however, extrinsic evidence may be admitted on collateral matters." Md. Rule 5-616(b)(2); *see also McLaughlin v. State*, 3 Md. App. 515, 524–25 (1968) ("A witness may not be impeached by testimony or cross-examination in respect to facts that are collateral, irrelevant or immaterial to the issues of the case.") (citations omitted). "Evidence is 'extrinsic' when it is 'proved through another witness, or by an exhibit not acknowledged or authenticated by the witness sought to be contradicted.'" *Anderson v. State*, 220 Md. App. 509, 519 (2014) (quoting Lynn McLain, 6 *Maryland Evidence State and Federal* § 607:3, at 553 (3d ed. 2013)). This rule barring extrinsic evidence on collateral matters is "aimed at preventing inconvenience, loss of time, unfair surprise to the witness and confusion of the issues." *Id.* at 521 (quoting *Smith v. State*, 273 Md. 152, 159 (1974)).

To determine whether extrinsic evidence is collateral for impeachment purposes,

we look to the "test of collateralness" that the Supreme Court of Maryland articulated in *Smith v. State*:

> In sum, the test of collateralness-whether the fact as to which the error is predicated could have been independently shown in evidence-actually means whether that fact could have been shown in evidence from the standpoint of relevancy. It is only in the context of relevancy that the rule accomplishes its underlying objectives. *The test, therefore*, and we think it is foreshadowed by our earlier decisions, *is whether the fact as to which the error is predicated is relevant independently of the contradiction*; and not whether the evidence would be independently admissible in terms of satisfying all the rules of evidence. This conclusion is bolstered by the grouping of the word 'collateral' with the words 'irrelevant' and 'immaterial' in those cases which have applied this rule.

Smith, 273 Md. at 162 (citations omitted) (emphasis added); *see also Anderson v. State*, 220 Md. App. 509, 520–21 (2014) (citing *Smith* and its articulation of the "test of collateralness" and explaining its relationship to Rule 5-616(b)(2)).

The SRS Report the Appellant wished to enter was extrinsic evidence of a potentially missing brick back in August of 2018, separate from the loose brick that caused the Appellant's injuries. Therefore, to use the SRS Report as impeachment evidence, the Appellant needed to show that it was admissible under Md. Rule 5-616(b)(2). This requires determining whether the matter the Appellant was trying to create a contradiction with was collateral or not. The fact as to which the error is predicated here is whether there was a prior incident in which the Appellee failed to repair damage to the Inner Harbor Waterfront, to contradict Mr. Hunter's testimony that if his employees "see something that they can fix right away it's fixed instantly." Applying the "test of collateralness" the issue is whether the Maintenance Division's failure to repair a different brick on a different date is relevant independent of the contradiction. If it is relevant, then this is a non-collateral matter and

the SRS Report would be admissible, and if not then the court would have discretion to admit or exclude the evidence.

The Appellant had sued the Appellee for negligence in their maintenance of the Inner Harbor Waterfront. "As a general rule, a municipality has a duty to maintain its public works in good condition." *Colbert v. Mayor & City Council of Baltimore*, 235 Md. App. 581, 588 (2018) (citing *Smith v. City of Baltimore*, 156 Md. App. 337, 383 (2004)). If a person is injured "because the municipality failed to maintain its public works and the municipality had actual or constructive notice of the bad condition that caused the damage, the municipality may be held liable in negligence." *Id.* (citing *Smith*, 156 Md. App. at 383). Part of the Appellant's case therefore required proving that the Appellee had actual or constructive notice of the specific condition, which was the defect in the sidewalk that caused the Appellant to fall.

Actual notice has been defined in Maryland as "knowledge on the part of the corporation, acquired either by personal observation or by communication from third persons, of that condition of things which is alleged to constitute the defect." *Id.* (citation omitted). "A municipality is charged with constructive notice when the evidence shows that—as a result of the 'nature' of a defective condition or the 'length of time it has existed'—the municipality would have learned of its existence by exercising reasonable care." *Id.* (quoting *Hartford Cas. Ins. Co. v. City of Baltimore*, 418 F.Supp.2d 790, 793 (D. Md. 2006)). The Appellant argues that the SRS Report was relevant to this issue because it showed a prior occasion on which there was a problem with bricks that was not resolved. The SRS Report would not further an actual notice argument because the SRS Report

concerned a different brick than the one that caused the Appellant to fall, so it did not give the Appellee any knowledge of the "condition of things which is alleged to constitute the defect." *Id.* Instead, the SRS Report would need to be relevant to an argument of constructive notice.

We have previously heard cases on constructive notice for municipalities. In *Colbert*, there was no dispute of fact a water main controlled by the City of Baltimore had flooded the basement of the appellant's home. *Colbert*, 235 Md. App. at 585. However, the City said they had no actual or constructive knowledge of a defective condition in the water main. *Id.* at 585–86. The appellant had entered documents showing there were a number of incidents and water leaks on her street in the months leading up to the pipe flooding her home. *Id.* at 586. The court found that the appellant's evidence fell short of establishing actual or constructive notice of a defective condition in the water main. *Id.* at 589. The service records did not show a link between the prior repairs and problems in the water main at issue in the case. *Id.* at 590. The court did not find that the appellant had presented evidence that put the City on notice of a defect. *Id.*

Just like in *Colbert*, the Appellant's evidence here falls short of establishing constructive notice because the Appellant cannot show a link between the prior repairs or failure to repair and the particular brick at issue in this case. This SRS Report was filed nine months prior to the accident in this case, on August 3, 2018. The SRS Report concerns missing bricks, while this case involves a loose brick. Lastly, the SRS Report concerned a slightly different area of the Promenade, detailing that the issue was "near the water" and another issue was nearer to the volleyball courts. The Appellant did not argue that these

missing bricks were in the same location as the middle of the pathway approaching the Rusty Scupper restaurant, where the Appellant described himself falling. The gap in time between the SRS Report and the Appellant's incident, the difference in the nature of the defective condition, and the difference in location all undermine the relevance of these bricks for showing constructive notice. Just as the reports in *Colbert* did not put the City on constructive notice of a defect in that case, the SRS Report is insufficiently connected to the present case to create an issue of constructive notice.

We have previously stated that "the question is not whether the appellant's *credibility* was a collateral issue; it is whether *the fact or matter that was being used to impeach his credibility* was a collateral issue." *Anderson*, 220 Md. App. at 524 (emphasis in original). In this case, Mr. Hunter's credibility was at issue, but the issue is whether the SRS Report and the truth of the Department's actions were relevant in this particular trial. The comment on the SRS Report states that it was linked to a separate service request summary report. There was no evidence presented or proffered whether that linked report was resolved or if the bricks remained unrepaired. There was also no evidence presented or proffered that the issue remained unresolved even up to the time of the Appellant's injuries. Without that evidence, the SRS Report has very minimal probative value on the Appellant's point of showing that an issue went unresolved and would instead create an additional factual issue of whether this separate incident involving missing bricks was resolved.

This lack of relevance is furthered by concerns regarding the foundation to admit the document. To admit a document into evidence, a foundation must be properly laid. The

Maryland Rules of Evidence state:

> Except as otherwise provided by Rule 5-703, a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony.

Md. Rule 5-602. Even in the context of impeaching a witness, to prove a prior inconsistent statement through extrinsic evidence, the foundational requirements must be met "to accord the witness the opportunity to reflect upon the prior statement so that he may admit it or deny it, or make such explanation of it as he considers necessary or desirable." *Jones v. State*, 178 Md. App. 123, 136 (2008) (quoting *Devan v. State*, 17 Md. App. 182, 193 (1973)). "It is required that a witness be informed, sometime during the course of his testimony, that his interrogator is aware of and relying upon a statement the witness is claimed to have made at a particular time and place, to a particular person." *Devan*, 17 Md. App. at 193.

At trial, Mr. Hunter was handed the SRS Report and then he testified he was not familiar with the specific SRS Report, though he was familiar with these kinds of reports generally. At Mr. Hunter's deposition, he was similarly asked about this same SRS Report and whether the bricks mentioned in it had been repaired. Mr. Hunter said that the document "type is a footway complaint so that wouldn't come to me, that would have went to" the Transportation Engineering and Constriction (TEC) division of DOT, which is separate from the Maintenance Division. During this deposition, the Appellant did not establish that Mr. Hunter had any personal knowledge of the incident detailed in the SRS Report.

Without that personal knowledge, when asked about whether the complaint was corrected Mr. Hunter was unable to "admit it or deny it, or make such explanation of it as he considers necessary or desirable." *Jones*, 178 Md. App. at 136. For example, in *Jones*, the State cross-examined a witness about prior statements he made to the police that implicated the Appellant. *Id.* at 137. When the witness denied making those statements, the State called the police officer who spoke with the witness to the stand to testify to those statements to impeach the witness. *Id.* at 137–38. This Court held that this was a proper impeachment because the witness was given an adequate opportunity to reflect upon the statement and discuss it while on the stand. *Id.* at 138; *accord McCracken v. State*, 150 Md. App. 330, 342–44 (2003) (finding error when the State introduced rebuttal testimony that the defendant said his gun was loaded without first giving the defendant to explain, admit, or deny his own statement on cross examination). This case differs from *Jones* and other cases where the impeachment involves evidence with which the witness had personal knowledge. In *Jones*, the impeachment evidence involved the witness's own statements, while here, the impeachment evidence is a report that Mr. Hunter denied having any personal knowledge of because the report was not one that would go to him.

Appellant's counsel described the SRS as impeachment evidence because it contradicted Mr. Hunter's testimony that "if the crews see a missing brick they take care of that immediately." Therefore, Mr. Hunter's own personal knowledge of a report allegedly contradicting his statement would be vital to its probative value in impeaching

his credibility.[3] The trial court focused on this issue in its ruling. Introducing the document without a witness who has personal knowledge of the incident at issue would create a new unknown about the missing bricks that does not further the issue of showing actual or constructive notice about the brick that the Appellant tripped on. His lack of personal knowledge about the issue means Mr. Hunter could not admit or deny any of the issues alleged in the SRS Report. When this document already involves a collateral issue of missing bricks at a different time and a different location, the lack of personal knowledge only minimizes what little probative value the SRS Report had because Mr. Hunter would be unable to testify to its contents, like whether the issue was ever fixed.

Whether or not a brick was replaced nine months before the incident at issue, when that brick was different than the brick the Appellant alleged caused his injuries is a collateral matter in the Appellant's case. While the actions taken by Mr. Hunter's department would be relevant to attacking the credibility of his statement that if his employees "see something that they can fix right away it's fixed instantly," it is not independently relevant to the case. As a result, under Rule 5-616(b)(2), the SRS Report

[3] This is not to suggest that personal knowledge by the witness is required for impeachment. One of the methods of impeachment is "Extrinsic evidence of a witness's lack of personal knowledge or weaknesses in the capacity of the witness to perceive, remember, or communicate may be admitted if the witness has been examined about the impeaching fact and has failed to admit it, or as otherwise required by the interests of justice." Md. Rule 5-616(b)(4). Under this rule, if proper foundation is laid about the impeaching fact showing that the witness does not have personal knowledge may be admitted for that purpose. However, issues of memory related to collateral facts are not proper subjects of inquiry. *See, e.g.*, Bryant v. State, 4 Md. App. 572, 580–81 (1968) (finding no abuse of discretion in barring impeachment evidence of the memory of the witness' whereabouts the day before trial).

was extrinsic evidence on a collateral matter.

That means it was left to the court's discretion to admit this extrinsic evidence on a collateral matter. Md. Rule 5-616(b)(2). The trial court properly exercised its discretion in excluding the SRS Report from evidence. For the reasons described above, the document did not effectively impeach Mr. Hunter's statement because the SRS Report does not show that the issue was never resolved. Further, this rule is "aimed at preventing . . . confusion of the issues." *Anderson,* 220 Md. App. at 521 (quoting *Smith,* 273 Md. at 159). Introducing the SRS Report would create a new issue of fact for the jury to consider, whether the missing bricks in a different location nine months before the Appellant's injuries were replaced, without a witness with personal knowledge being able to testify about that issue's resolution. The trial court was permitted to exclude the document from evidence because it was on a collateral matter.

CONCLUSION

Accordingly, we affirm the decision of the Circuit Court for Baltimore City.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELANT.