

Circuit Court for Baltimore City
Case No. 116039008

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1891

September Term, 2016

MONTE JETER

v.

STATE OF MARYLAND

Meredith,
Reed,
Davis, Arrie W.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: May 31, 2018

*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.

On August 8, 2016, a jury in the Circuit Court for Baltimore City found Monte Jeter (“Appellant”) guilty of possessing a firearm after having been convicted of a disqualifying offense. Appellant was subsequently sentenced to fifteen years, with all but three and a half years suspended. Moreover, Appellant was placed on supervised probation for five years. Appellant filed this timely appeal asking this Court to vacate his sentence, in doing so, he presents two questions for our review:

- I. Did the circuit court err in permitting the State to impeach appellant with his prior conviction for distribution of a controlled dangerous substance?
- II. Did the trial court err in admitting evidence that the gun had an obliterated serial number?

For the reasons that follow, we answer the first question in the negative and the second in the affirmative. Nevertheless, we hold the trial court’s admission of the evidence as harmless, and thus, affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In the early morning of January 13, 2016, Baltimore City Police Officers executed a search and seizure warrant for 537 North Kenwood Avenue in Baltimore City, Maryland. Officers based this warrant on a confidential source stating “an individual regularly sells CDS” from the home. When officers arrived, they knocked on the door and after waiting approximately twenty-seconds used a battering ram to knock down the door, and entered the residence. Upon entry, one of the officers, Detective Reginald Jones, saw Appellant “hop off” of a futon in the living room and run towards an adjacent room. Officers searched the house and found three other adults and an infant. Occupants were moved into the

kitchen and Appellant was handcuffed and read his *Miranda* rights. As Appellant was being read his rights, another officer began searching the premises.

During the search, officers found a revolver on the floor between the wall and the back of the futon. The revolver was located on the side of the futon where Appellant had been sitting. At no time did officers see Appellant reach for the revolver, nor did they observe the gun prior to their search. During trial, Detective Jones stated that Appellant remarked "... [he] found that gun when [he] moved [to the house]." Along with the gun, the police found One-hundred and Sixteen Dollars, a bag containing 4.5 grams of suspected heroin, one gel cap of suspected heroin, one digital scale with white powder and green plant residue, one digital scale with green plant residue, various packing materials, and mail addressed to Appellant. The gun and the contraband were sent to forensics for further examination.

During trial, Jennifer Ingrahamson, a forensic scientist for the Baltimore City Police Department, testified that while the gun was operable, it was in poor condition. It had corrosion in several places, black tape around the handle, and the cylinder was unaligned for firing purposes. Further, over Appellant's objection, testimony showing that the gun's serial number had been obliterated, was entered into evidence. Another forensic scientist, Natalie Delonardo, testified that there had been no fingerprints recovered from the gun. It was stipulated that Appellant had a prior conviction that prohibited him from possessing a firearm.

Appellant testified in his own defense during trial. He stated that the residence in which he had been staying was a boarding house operated and maintained by a landlord.

He further testified that for a year, he occupied Apartment D on the second floor. According to Appellant, residents moved in and out frequently and engaged in various types of activity inside of the house – “some shacked up, some got high.” During the night the police entered the house, Appellant was in the living room because the residents of the house were having a party and he was on the couch having sex with a young woman. He further testified that he ran when police entered because he thought it was his girlfriend coming into the house.¹ Additionally, he testified that at that time, he had been ill, drunk, hallucinating, and vomiting. When he entered the adjacent room, he collapsed onto the floor and began convulsing – a result of his epilepsy. The young woman with whom he was engaged in sexual activity, told the police something was wrong with Appellant’s heart. Thus, officers transported him to the hospital.

Appellant testified that he had never seen the gun before, and he did not recall being read his *Miranda* rights. He further testified that because of his physical incapacity, he did not recall the detective asking him about the gun, or saying that he had found the gun when he moved into the house. On cross-examination, Appellant was asked about his prior testimony at the pretrial hearing and, over Appellant’s objection, was impeached with a 2003 conviction for distribution of a controlled dangerous substance.

After all of the evidence was presented, the jury found Appellant guilty of possessing a firearm after having been convicted of a disqualifying offense.

¹ The State’s brief states that Appellant testified that he ran into the kitchen because he was about to vomit and did not want to do so on the carpet.

STANDARD OF REVIEW

When reviewing a trial court’s decision to admit or exclude relevant evidence, this Court applies the abuse of discretion standard. *See Fulp v. State*, 130 Md. App. 157, 169 (2000) (“...in rulings which involve impeachment by prior convictions, appellate relief may be triggered only when a trial judge abuses his discretion.”). Relevant evidence is any evidence having a tendency to make the existence of a fact that is of consequence to the particular action more or less probable than it would be without the evidence. *See* Md. Rule 5-401. Thus, trial judges do not have discretion to admit irrelevant evidence. *See State v. Simms*, 420 Md. 715, 724 (2011). An abuse of discretion occurs when no reasonable person would have taken the view adopted by the trial court. Or when the judge’s decision is “violative of fact and logic.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997). However, whether evidence is relevant is a legal question that we review *de novo*. *Id.* at 725. Accordingly, evidence may be excluded if “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” substantially outweighs its probative value. Md. Rule 5-403.

DISCUSSION

I. Impeachment of Appellant with Prior Conviction

A. Parties’ Contentions

Appellant argues that the trial court abused its discretion, and made a reversible error, when it determined that the probative value of the prior conviction leaned in favor of admissibility. He maintains that his prior conviction of distribution of a controlled

dangerous substance was not as relevant to his testimony as crimes that involve an act of dishonesty. Moreover, he contends that the “past conviction said little about [Appellant’s] credibility” and that its probative value was diminished by its age – being nearly thirteen years old, prior to trial. He asserts that admitting the past conviction was highly prejudicial, because “admitting evidence that [Appellant] had previously been convicted as a drug dealer likely caused one or more jurors to think he may have possessed the firearm because he was involved in the drug trade.” Finally, he states that the information about his prior conviction was damaging because jurors were likely to infer that Appellant was still involved in the drug trade and the gun was a part of this enterprise.

Conversely, the State maintains that because the trial court assessed the relevant factors when determining the admissibility of Appellant’s prior convictions for impeachment purposes, the court did not abuse its discretion. We agree.

B. Analysis

Maryland Rule 5-609 creates a three-part test to determine whether a conviction is admissible for impeachment purposes. *See Jackson v. State*, 340 Md. 705, 712 (1995). For a prior conviction to be admissible, it must (1) “fall within the eligible universe,” to wit – it must be either an infamous crime, or a crime that is relevant to the witness’s credibility; (2) be less than fifteen years old; and (3) the trial court must “weigh the probative value of the impeaching evidence against the danger of unfair prejudice to the defendant” and determine that the former outweighs the latter. *Id.* at 712-12 (citations omitted). The purpose of Md. Rule 5-608 is to prevent a jury from convicting a defendant based on their past criminal record, “or because the jury thinks the defendant is a bad person.” *Bells v.*

State, 134 Md. App. 299, 306 (2000). As applied to Appellant, we will outline each in the discussion to follow.

Appellant concedes that the prior conviction for possession of narcotics with the intent to distribute is within the eligible universe of impeachable convictions. *See State v. Giddens*, 335 Md. 205 (1994) (“[The Court of Appeals of Maryland held] that a prior conviction for distribution of cocaine is relevant to credibility and as such is admissible for impeachment purposes, subject to the other conditions that exist in Rule [5-609].”). Further, although the crime is thirteen years old, Appellant argues that in “two more years...it would have been *per se* inadmissible under the rule.” (emphasis in original). Unfortunately for Appellant, this Court does not operate two years in the future. Thus, his conviction falls within the applicable age range to be admissible. In fact, in deciding that the first two factors applied to Appellant, the court ruled:

...[A]s the State has pointed out, the offense that is – conviction, distribution of a controlled dangerous substance, is considered an impeachable offense and it is within the 15-year period... therefore, I will permit the State to examine him concerning it and to admit it if [Appellant] denies the conviction.

Accordingly, Appellant’s sole claim on appeal is that the trial court failed to exercise its discretion in determining whether the prior conviction’s probative value outweighed its prejudicial effect. We disagree and explain.

Appellant contends that by admitting into evidence that he had been convicted of possession with an intent to distribute in the past, it likely caused some jurors to suspect that he may have possessed the firearm found in the boarding house. When considering the

admissibility of an Appellant's prior convictions for the purpose of impeachment, there are some factors provided by the Court of Appeals, in *Jackson v. State*, 340 Md. 705 (1995), which can aid this Court in its analysis. Those factors include: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the defendant's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the defendant's credibility. *Id.* at 717. These factors are not to be considered exclusively, but are merely useful in performing the balancing test required by the rule.

The first factor requires the trial court to examine whether the prior conviction is relevant to the witness's credibility because of its infamy. *See Jackson*, 340 Md. at 729 (“Where the prior conviction is for an infamous crime or one affecting credibility, the first factor invariably will favor admissibility.”). A crime is infamous where it is relevant to the witness's credibility. Those crimes include perjury, giving a false statement, criminal fraud, embezzlement, false pretense, or any other offense involving some element of deceitfulness, untruthfulness, or falsification bearing on the witness's propensity to testify truthfully. *See Correll v. State*, 215 Md. App. 483, 503-04 (2013). Here, a prior conviction for distribution of a controlled dangerous substance is an offense bearing on a witness's propensity to testify truthfully. *See Giddens*, 335 Md. 205, 217 (1994) (citing *United States v. Ortiz*, 553 F. 2d 782, 784 (2nd Cir.) (“Similarly, we believe that an individual convicted of cocaine distribution would be willing to lie under oath. ‘[A] narcotics trafficker lives a life of secrecy and dissembling in the course of that activity, being prepared to say whatever is required by the demands of the moment, whether the truth or a lie.’”).

The second factor follows the maxim that “the further in the past the crime, the weaker its relevance to present credibility.” *Jackson*, 340 Md. at 721. Essentially, the more recent the conviction the more probative value it has for purposes of impeachment. As mentioned, the prior conviction was thirteen years prior to trial, and as the State mentioned, Appellant has not “engaged in or had been convicted of subsequent offence, [therefore] the jury was less likely to engage in the kind of bad character reasoning that the rule is designed to prevent.” We agree.

The third, maintains that “the similarity between the past crime and the charged crime—weighs in favor of admissibility in the present case.” *Cure v. State*, 421 Md. 300, 330 (2011). Here, Appellant was charged with, *inter alia*, unlawfully possessing a controlled dangerous substance, possessing a firearm in sufficient circumstances to constitute a nexus to the drug trafficking crime, knowingly possessing a firearm after being convicted of a disqualifying crime, possessing ammunition, and possessing with an intent to use drug paraphernalia. In the prior conviction, Appellant was convicted of narcotics distribution. In the instant case, he was not charged with distribution of a controlled dangerous substance, but possessing with an intent to use drug paraphernalia. Therefore, the third factor sways in favor of admissibility.

Finally, the fourth and fifth factors, read in conjunction, greatly weigh in favor of admissibility in Appellant’s case. In *Jackson*, 340 at 721, the Court of Appeals stated that the two factors balance “the [Appellant’s] right to testify against the State’s right to impeach the witness on cross-examination. Where credibility is the central issue, the

probative value of the impeachment is great, and this weighs heavily against the danger of *unfair* prejudice.” *Id.* (emphasis in original).

In this particular case, there were potential issues of credibility which the trial court pointed out in its reasoning, stating:

All right. Well [Appellant’s] – I’ve heard [Appellant’s] testimony in connection with the pre-trial motion and, assuming that he will testify consistently it certainly diverges from Detective Jones’ testimony which will make [Appellant’s] credibility critical in this case. And, as the State has pointed out, the offense that is – conviction, distribution of a controlled dangerous substance, is considered an impeachable offense and it is within the 15 year period.

I further find that its risk of undue prejudice does not outweigh its probative value on the credibility [Appellant]. In particular, it’s a dissimilar type of offenses although there has been some reference to contraband being recovered in connection with this case, but it is sufficiently dissimilar and has probative value for his credibility and, therefore, I will permit the State to examine him concerning it and to admit it if [Appellant] denies the conviction.

Due to the inconsistencies between Appellant’s statements and what was testified to by the investigating officers, to wit, Appellant testified that he had never seen the gun prior to trial, where Detective Jones stated that Appellant found the gun when he moved in to the house. Then, subsequently admitted the firearm was his. Prior to the delivery of the verdict, the trial court gave a limiting instruction to the jury, advising them to only consider Appellant’s conviction “in deciding whether [Appellant] is telling the truth.” This is not an abuse of discretion.

The Court in *Jackson* noted, “[a]lthough trial judges are not obliged to detail every step of their logic” when determining whether a defendant’s prior convictions should be

admitted for impeachment, trial judges are urged “when discharging such duty to place specific circumstances and factors critical to the decision on record.” *Jackson*, 340 Md. 705, 717. (internal citations omitted). Here, the trial court discharged their duty by articulating on the record the reasons for granting Appellant’s prior conviction to be offered for impeachment purposes. We hold that the trial court properly considered all factors in determining that the use of Appellant’s prior conviction swayed in favor of admissibility. Thus, we find no abuse of discretion and will not vacate Appellant’s sentence.

II. Admission of the Un-redacted Firearms Report

A. Parties’ Contentions

Appellant contends that the trial court erred, and subsequently committed an abuse of discretion, in admitting the firearms report without redacting references that the serial number had been removed from the gun. Appellant argues that the admission was irrelevant and “any conceivable probative value was substantially outweighed by the danger of unfair prejudice.” He maintains those references were irrelevant because they “had no bearing on guilt or innocence for the crime charged.” In furtherance of that contention, he cites a third circuit case that held that firearms without serial numbers are valuable to those engaged in illicit activities. *See United States v. Marzzarella*, 614 F. 3d 85, 98 (3rd Cir. 2010). As such, he states, the law treats “obliterating a serial number as a serious offense...punishable by up to five years in prison or a \$10,000 fine or both.” Finally, he asserts “the information

that the serial number on the gun was obliterated implied that it was being used as a part of a criminal enterprise,” thus, causes a danger of unfair prejudice.

The State argues that the introduction of evidence that the serial number on the firearm was removed, caused Appellant no unfair prejudice. Moreover, the State contends “there simply was no evidence that [Appellant] engaged in other crimes with or without the firearm...” Further, the State maintains because the gun was in poor working condition, it was hardly the type of firearm that one would expect a drug dealer to use. In its argument stating that even if the court erred, the error was harmless, the State contends:

There is no reasonable possibility that the jury would find [Appellant] guilty of possessing the firearm where it would otherwise find the evidence lacking simply because the serial number had been obliterated. If there was insufficient evidence to believe that [Appellant] possessed the firearm, then, *a fortiori*, the evidence was insufficient to suggest that he had obliterated the serial number, a crime which he was not even charged.

We agree with Appellant. Merely because the gun’s serial number had been removed does not mean that Appellant possessed the firearm and/or removed the serial numbers. Therefore, we hold that the court abused its discretion because the evidence was not relevant. However, the error was harmless and thus does not warrant a vacation of his sentence.

B. Analysis

When reviewing a trial court’s admission of evidence, we must first consider whether the evidence is legally relevant, and if the evidence is relevant, whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair

prejudice, or other countervailing concerns. For the first consideration, we test for legal error, while the second, we review for an abuse of discretion. *See State v. Simms*, 420 Md. 705, 725 (2011) (citing *Thomas v. State*, 372 Md. 342, 350 (2002)).

Md. Rule 5-401 defines relevant evidence as having a 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. Relevance is generally a low bar:

To be relevant, it is not necessary that evidence of this nature conclusively establish guilt. The proper inquiry is whether the evidence *could* support an inference that the defendant’s conduct demonstrates a consciousness of guilt. If so, the evidence is relevant and generally admissible.

Thomas v. State, 397 Md. 557, 577 (2007) (emphasis in original) (internal citations omitted). Admission of the underacted serial numbers was not relevant because it neither made it more probable that Appellant was guilty, nor did the State indicate that admission of the obliterated serial numbers, was a fact of consequence to the determination of the action. As stated above, there was no evidence that Appellant removed the serial numbers. The fact that the numbers were obliterated would not help the trier of fact determine whether Appellant was in possession of the firearm. Nevertheless, the error was harmless. We explain.

Harmless Error

Upon appellate review, an error is harmless when the reviewing court is able to declare, beyond a reasonable doubt, that the error in no way influenced the verdict. Therefore, we must be “satisfied that there is no reasonable possibility that the evidence

complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict.” *Dorsey v. State*, 276 Md. 638, 659 (1976).

This Court cannot presume to substitute its knowledge for that of the jury. However, what we may presume is while the evidence regarding the obliterated firearm is irrelevant, we cannot say that it influenced the overall verdict. At some point during trial, the jury heard evidence that: (1) the gun was in the house when Appellant moved in; (2) Appellant had never seen the gun prior to its admission at trial; and (3) the gun belonged to Appellant. There were three stories – so to speak, that could have contributed to the jury’s guilty verdict and we do not posit that the admission of the obliterated serial numbers was a factor in that verdict.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**