

Circuit Court for Harford County  
Case No. 12-K-15-1781

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1971

September Term, 2016

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WALTER M. DORSEY

v.

STATE OF MARYLAND

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Graeff,  
Berger,  
Battaglia, Lynne A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: July 5, 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.

A jury in the Circuit Court for Harford County convicted Walter Dorsey, appellant, of conspiracy to commit first degree murder.<sup>1</sup> The court sentenced appellant to life in prison.

On appeal, appellant presents three questions for this Court’s review:

1. Did the trial court abuse its discretion by admitting a photograph, found on a phone recovered from appellant, of a handgun that could not be linked to the crime?
2. Did the trial court abuse its discretion by not allowing the defense to inquire about the victim’s drug dealing and drug debts as an alternative theory of why he was killed?
3. Did the trial court abuse its discretion by admitting a gruesome and disturbing autopsy photograph?

For the reasons set forth below, we answer these questions in the negative, and therefore, we shall affirm the judgment of the circuit court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On August 12, 2015, Corporal Christopher Rothlingshofer responded to a call regarding a body that had been found at the Elks Lodge in Abingdon.<sup>2</sup> Corporal Rothlingshofer described the body as “badly decomposed,” and the body could not be identified at that time.

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<sup>1</sup> The jury acquitted appellant on the charges of first degree murder, second degree murder, and use of a handgun in the commission of a crime of violence.

<sup>2</sup> All law enforcement personnel in this case are members of the Harford County Sheriff’s Office, unless otherwise noted.

Dr. Pamela Southall, an expert in forensic pathology, performed an autopsy of the body. She determined that the cause of death was a single gunshot wound to the back of the victim's head. She recovered a bullet inside the skull and stated that it entered the skull "back to front and upward." The victim had cocaine and alcohol in his system, but Dr. Southall stated that some of the alcohol might be due to the decomposition of the body.

The State's theory was that Lauren Valiquet, the victim's wife, and appellant murdered the victim in the early morning hours of August 6, 2015, after arranging for the victim to meet Ms. Valiquet at a shopping center to see his children. The State argued that the motivation for the murder was jealousy and revenge for an incident that occurred one week earlier, when Ms. Valiquet arranged a meeting, appellant ambushed the victim, and the victim stabbed appellant.

Carl Best, Jr., the victim's father ("Best, Jr."), testified that, in June 2015, his son was married to Ms. Valiquet, and they and their two children lived in a home on Fuller Avenue in Baltimore County. In June, his son was sent to jail, but he was released a few weeks later. The victim did not return home to his wife and children, but instead, he went to live with his grandmother. On August 5, 2015, the victim told Best, Jr. that he was going to see Ms. Valiquet and his children that evening. Best, Jr. advised his son not to go because the meeting "sounded like a set-up."

Anna Smith, appellant's ex-girlfriend, testified that she ended her relationship with appellant in June 2015, when she discovered that appellant was cheating on her with Ms. Valiquet. Ms. Smith reached out to the victim, and they became friends, which upset appellant. Ms. Smith testified that the victim was not allowed to see his children. She

recalled an incident on July 28, 2015, where appellant advised that the victim had stabbed him and texted her: “Are you happy now?” Ms. Smith testified that Ms. Valiquet drove both a silver Toyota Corolla and a black Acura.

On August 5, 2015, Ms. Smith spoke with the victim between 2:30 and 3:00 p.m. He said that he was going to meet Ms. Valiquet and see his children that evening. Ms. Smith and the victim had another phone conversation at approximately 8:30 p.m.

Nakisha Pettaway, the victim’s cousin, testified that, approximately one week before the last time the victim was seen, he called and asked for a ride to McDonald’s to meet Ms. Valiquet and see his children. On the way to the McDonald’s, the victim had a phone conversation and asked Ms. Pettaway to take him to another restaurant instead. When they arrived at that restaurant, Ms. Pettaway recognized Ms. Valiquet’s black Acura and observed the victim walk toward that vehicle. Three or four minutes later, Ms. Pettaway observed the victim “walking fast” back to her car with blood on him and carrying a “big knife,” approximately 18 inches long. Ms. Pettaway had not seen the victim with a knife when he exited her vehicle.

On August 5, 2015, between 10:30 and 11:00 p.m., the victim again called Ms. Pettaway and asked for a ride to meet Ms. Valiquet and see his children. Ms. Pettaway took the victim to a friend’s house and dropped him off between 11:45 and 11:50 p.m. She spoke with the victim on the phone one more time shortly after midnight on August 6, 2015.

Rikki Lamb testified that, on August 5, 2015, she was living with Matthew Jacobs. Late that evening, Ms. Pettaway brought the victim to her house. Shortly thereafter, the

victim had a phone conversation with a female, during which he stated that he would meet the woman at the Parkville Shopping Center in fifteen minutes. Mr. Jacobs drove the victim to the shopping center and returned in three or four minutes, sufficient time for Mr. Jacobs to drive to the shopping center and back.

After the body was discovered, Detective Seth Culver, the lead investigator, used photographs of tattoos on the body and fingerprints to identify the victim as Travis Best, who previously had been reported missing. On August 14, 2015, Detective Culver interviewed Ms. Valiquet and appellant. Appellant initially stated that the last time he had seen the victim was in mid-July, after the victim had been released from prison. Appellant then stated that he had argued with the victim during a telephone call on July 28, 2015. Appellant subsequently stated that there had been a physical altercation, but no weapons were involved. He then stated, however, that the victim had stabbed him on July 28, 2015.

Detective Culver asked appellant about his daily routine, and appellant said that he “was home on Wednesday,” August 5, 2015. Detective Culver thought this was odd because he had not asked appellant about any particular day.

As part of the investigation, the police searched Ms. Valiquet’s Toyota Corolla. Detective Michael Pachkoski testified that the trunk, which was “virtually empty,” was “damp,” and a test indicated that the carpet contained a large patch of presumptive blood.

Testing on weather stripping found in the trunk revealed the presence of blood with the victim's DNA.<sup>3</sup>

The police recovered several cell phones. In Ms. Valiquet's Corolla, they found a cell phone belonging to Ms. Valiquet. During a search of the house on Fuller Avenue, a residence which Ms. Valiquet and appellant shared, the police found two cell phones linked to appellant. Police recovered text messages between Ms. Valiquet and appellant, indicating that they were communicating throughout the day on August 5, 2015, and into the early morning of August 6, 2015, ending shortly after midnight. Additionally, the police determined that, on August 9, 2015, both Ms. Valiquet and appellant had used their phones to search for the location of the "Elk's Lodge" on Google maps.

Maryland State Police Master Trooper David Dwyer, an expert in cell phone tower record analysis, testified that cell phone records demonstrated that, during the calls between Ms. Valiquet and appellant, they both were near the Parkville Shopping Center, as was the victim, who was communicating with Ms. Valiquet. The victim's phone showed that a call was made at 12:19 a.m. on August 6, 2015, and no further activity was recorded, which indicated that the victim's phone had been turned off, destroyed, or the battery died. The police also discovered that a license plate reader captured the tag number of Ms. Valiquet's

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<sup>3</sup> Jennifer Sampson Fena, who works as a Quality Assurance Manager at Bode Cellmark Forensics, testified that the odds of the DNA on the weather stripping being DNA from someone other than the victim were 1 in 300 sextillion for the Caucasian population, 1 in 6.2 sextillion for the African-American population, and 1 in 71 sextillion for the Hispanic population. Ms. Fena testified that a sextillion has 21 zeroes.

Corolla at 1:31 a.m. on August 6, 2015, travelling in an area close to the Elks Lodge where the victim’s body was found.<sup>4</sup>

## DISCUSSION

### I.

#### Photographic Evidence

Appellant contends that the circuit court abused its discretion by admitting a photograph of a handgun with “The Judge” imprinted on the barrel. The photo was created on appellant’s cell phone on May 19, 2015, sent to Ms. Valiquet’s cell phone on July 30, 2015, two days after Travis stabbed appellant, and accessed from appellant’s cell phone on August 5, 2015.

Appellant asserts that the photo was improperly admitted for two reasons. First, he asserts that it was irrelevant because it was not connected to the crime. Second, even if the photo had some relevance, appellant claims that it should have been excluded because it was “substantially more prejudicial than probative.”

The State contends that the circuit court properly exercised its discretion in admitting the photograph. It asserts that the photo was “highly relevant” because it showed that appellant “had access to a handgun—the type of weapon used to kill the victim.” Moreover, the timing of when appellant sent Ms. Valiquet the photo, shortly after the

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<sup>4</sup> The tag was captured by a stationary License Plate Reader (“LPR”), which had been installed at eastbound US-40 and Edgewood Road. The LPR takes two photographs of the license plate of every passing car, and the data is then transmitted to the Maryland Coordination Analysis Center. The data can then be accessed by law enforcement when, as here, it becomes pertinent to a criminal investigation.

victim stabbed appellant, suggested that appellant and Ms. Valiquet were “conspiring together to exact revenge against the victim.” And it argues that, because the photograph was accessed by both appellant and Ms. Valiquet near the time of the murder, it “was highly probative as to their respective states of mind at the time of the murder.” For these reasons, the State asserts that the “trial court properly concluded that the probative value of the photograph substantially outweighed any potential for unfair prejudice.”

In determining whether a photo is admissible, a court must determine: (1) whether the photo is relevant; and (2) if relevant, whether the probative value of the photo outweighed its prejudicial effect. *State v. Broberg*, 342 Md. 544, 555 (1996). Md. Rule 5-401 defines “[r]elevant evidence” as “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.” A determination whether evidence is relevant is a legal conclusion which we review de novo. *Smith v. State*, 218 Md. App. 689, 704 (2014).

Even if evidence is relevant, it is admissible “subject to the court’s exercise of discretion to exclude it ... ‘if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.’” *Odum v. State*, 412 Md. 593, 615 (2010) (quoting Md. Rule 5-403). We will not reverse a trial court’s determination that the probative value of a photograph is not substantially outweighed by unfair prejudice unless there has been an abuse of discretion. *Lovelace v. State*, 214 Md. App. 512, 549 (2013).



In making its ruling in this case, the circuit court noted that the evidence showed communications by cell phone between Ms. Valiquet and appellant, as well as between Ms. Valiquet and the victim. The court continued:

Evidence has also been provided in this case that, about a week prior to when Mr. Best went missing, he went to a location referred to as Valentino's to see Ms. Valiquet and his children, but instead, a violent assault occurred in which the evidence indicates at this point that Mr. Best stabbed [appellant] repeatedly in several areas of his upper body. It appears from the cell phone data that the incident occurred on or about the end of July, around July 30<sup>th</sup> or possibly the 29<sup>th</sup>, somewhere within that vicinity, and that on July 30<sup>th</sup> earlier in the day, based on the photos taken on Ms. Valiquet's phone, photos were taken of the injuries. While we don't see Mr. Dorsey's face, based on all the evidence presented thus far, it is a rational inference from the evidence that those injuries were the injuries [appellant] sustained as a result of the incident at Valentino's.

Now, State's Exhibits 40 and 41. Included in both 40 and 41 is a photo of a gun that was created in May of 2015. While the face of the person holding the gun is not apparent, the Court finds that that is of no significance since the purpose of this evidence is more in the meaning. The photo created in May was sent, based on the cell phone data, from a cell phone that the investigating detectives seized from [appellant] and it was sent July 30<sup>th</sup> later in the day of when Ms. Valiquet took the photos of [appellant's] injuries on her phone. The act of sending a photo of a gun, and in particular this gun with its label on it—there's the label of "Judge" on it—whether placed on it by some imaging or whether the gun itself has it, it can be rationally inferred by the jury to mean that some action was going to be taken using a gun and it has probative value that a possible plan was being put into place between [appellant] and Ms. Valiquet.

While the Court recognizes that because a gun was not recovered and there was no ballistic evidence to suggest a make or model and therefore it is prejudicial to [appellant] since there is no way to tie the photo of the gun to the actual gun that was used in this case, it is a rational inference that communication of the photo concerning the gun from [appellant's] phone to Ms. Valiquet on or about the time shortly after the Valentino's incident is that the two had taken acts in furtherance of a conspiracy. It also goes to [appellant's] intent. Therefore, the Court does find the probative value of the photo is not substantially outweighed by the danger of unfair prejudice to [appellant]. So based on that, those exhibits will be admitted into evidence.

We agree with the State that the circuit court did not err or abuse its discretion in finding that the photograph of the gun was admissible. To be sure, as appellant points out, no gun was recovered, so there was no evidence that the photo showed the gun used to kill the victim. That appellant had access to a handgun, however, the type of weapon used to kill the victim, was relevant, particularly when the evidence showed that the photo was sent to Ms. Valiquet’s cell phone on July 30, 2015, two days after the victim stabbed appellant, and less than a week prior to the time the evidence indicated that the victim was killed.<sup>5</sup>

As the circuit court found, the photograph was relevant to appellant’s state of mind, and it had “probative value that a possible plan was being put into place between [appellant] and Ms. Valiquet.” And we perceive no abuse of discretion in the circuit court’s finding that, although there was prejudice to appellant by admission of the photo, the probative value of the photo was not substantially outweighed by the danger of unfair prejudice to appellant. *See Stevenson v. State*, 222 Md. App. 118, 142 (the “trial judge is in the best position” to balance the probative value against unfair prejudice), *cert. denied*, 443 Md. 737 (2015).<sup>6</sup> The circuit court did not err or abuse its discretion in admitting the photo of the gun into evidence.

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<sup>5</sup> The victim made a final call on his cell phone at 12:19 a.m. on August 6, 2015, but his body was not recovered until August 12, 2015.

<sup>6</sup> *Banks v. State*, 84 Md. App. 582 (1990), upon which appellant relies, is inapposite. In that case, we held that the circuit court erred in admitting pictures of Banks holding a handgun because the pictures were irrelevant to the crime charged and were unfairly prejudicial. *Id.* at 592. Here, for the reasons stated, the photographs were relevant to the crimes charged.

## II.

### Cross-Examination

Appellant contends that the circuit court abused its discretion in preventing him from introducing evidence regarding the victim’s “drug dealing and drug debts as an alternative theory of why [the victim] was killed.” He asserts that the evidence could have suggested that the victim “died because he was engaged in a dangerous profession and owed debts related to drug dealing,” and the court’s ruling preventing him from eliciting this evidence deprived him of his constitutional right to present a defense.

The State contends that the circuit court properly exercised its discretion in precluding appellant from inquiring about “speculative evidence of the victim’s involvement with illegal drugs.” It argues that, “[g]iven the complete failure to connect the victim’s alleged drug dealing to his murder, the trial court properly concluded that evidence of the victim’s involvement with drugs was too speculative and that its marginal probative value was overwhelmed by its potential to confuse the jury.” We agree.

“In Maryland, the right of a criminal defendant to produce witnesses on his own behalf is guaranteed by the Sixth and Fourteenth Amendment of the U.S. Constitution and by Article 21 of the Maryland Declaration of Rights.” *Taneja v. State*, 231 Md. App. 1, 10 (2016), *cert. denied*, 452 Md. 549 (2017). This right is “in essence, the right to a fair opportunity to defend against the State’s accusations.” *Taliaferro v. State*, 295 Md. 376, 403 (1983) (quoting *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973)). Although fundamental, the right is not unlimited. “[T]he accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard

rules of evidence.”” *Taneja*, 231 Md. App. at 10 (quoting *Taylor v. Illinois*, 484 U.S. 400, 410 (1988)). *Accord Muhammed v. State*, 177 Md. App. 188, 274 (2007) (evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury), *cert. denied*, 403 Md. 614 (2008). A decision regarding whether evidence is too speculative to be admissible is a matter within the trial court’s discretion. *Taneja*, 231 Md. App. at 11-12.

Here, the issue was raised prior to trial in a motion in limine. Defense counsel requested that the defense be allowed to “introduce and question witnesses as to victim’s drug dealing, drug usage, and drug debt.” At the hearing on the motion, defense counsel stated:

[W]e would like to get into [the victim’s] drug debt and dealing. That does help establish, for the defense, an alternate theory of the case. If somebody is involved in this type of profession, it’s a rather dangerous profession and when you are into money owed to these types of people bad things can happen along the lines of what happened to [the victim]. It appears from what we have as the autopsy report, etc., how [the victim] was shot, it does look like it was done more of an execution style and I believe that would fit in more with a—I don’t want to say a revenge motive—more of a cold-hearted, you owe us money, you’re done, you know, from being shot in that way, as opposed to what the State is trying to show as more of a hot blooded type of crime here. It seems that this would give the defense an alternate theory to give to the jury, which I believe is appropriate in this type of case. Without it, it would hinder the defense’s ability to show the jury that there’s another way to go with this.

The circuit court asked if defense counsel had any specific information that someone else wanted to kill the victim, as opposed to general information that the victim was dealing drugs and owed money, and defense counsel said no. The court then ruled:

[O]n the proffer you’re giving me, this is extremely speculative that there may have been some mention that [the victim] was involved in drug dealing. It’s clear that he used drugs from the autopsy, but that, in and of itself, would not be sufficient to then

start presenting to the jury the possibility that maybe somebody else killed him. It's confusing. It's a confusing issue to the jury as you've presented it because it's so speculative as to whether or not there may have been someone else out there who may have actually committed this crime because this is someone who was involved in the drug world.

Based on what you have presented here, I don't find that it's relevant in this case. So I'm making that ruling now but I am willing to revisit that if there is more concrete information that may link some activity that this individual was involved in to another suspect that is not speculative in nature and that is relevant. I'd be more than willing to consider it again. But at this point, based on what you have presented to me, I don't find it relevant. I find it's too speculative. So your request on that issue is denied.<sup>7</sup>

In addressing whether there was an abuse of discretion here, this Court's opinion in *Worthington v. State*, 38 Md. App. 487, *cert. denied*, 282 Md. 740 (1978), is instructive. In that case, Worthington, who shot the victim several times with a pistol, was convicted of assault with intent to murder and unlawful use of a handgun. *Id.* at 488-89. During cross-examination of the victim at trial, defense counsel asked about the victim's gambling debt. *Id.* at 495. Counsel asserted that the inquiry was relevant to show that there were "a lot of people" besides Worthington who would have liked to hurt the victim, but counsel was unable to name any particular individuals who may have shot the victim. *Id.* at 496. The circuit court sustained the State's objection to the inquiry, and this Court affirmed. *Id.* at 497-98. We stated that, although the mere "existence of animosity by some members of the community toward [the victim] could raise an inference that they, rather than appellant, were the perpetrators of [the victim's] injuries, ... such a connection is, in the absence of

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<sup>7</sup> Defense counsel did not seek to revisit the issue at trial.

real evidence pointing towards appellant’s theory, totally speculative and tenuous.” *Id.* at 498.

Similarly, here, defense counsel admitted that he did not have specific information that someone wanted to kill the victim. In the absence of “real evidence” pointing to appellant’s “alternate theory” that the victim was killed as a result of his drug related activities, the circuit court did not abuse its discretion in determining that the proffered testimony was too speculative to be admissible. *Id.* at 498. *Accord Taneja*, 231 Md. App. at 12 (defendant may be precluded from introducing evidence that “‘merely cast[s] a bare suspicion upon another or raise[s] a conjectural inference as to the commission of the crime by another.’”) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 323-24 (2006)).

### III.

#### **Autopsy Photograph**

Appellant contends that the circuit court abused its discretion in admitting a “gruesome and disturbing” autopsy photo of the victim’s skull. He asserts that, when the “scant probative value” of the photo is weighed against the unfair prejudice caused by displaying a photo of a “‘very, very decomposed’ head,” it is clear that the court abused its discretion in admitting the photo.

The State contends that the “trial court properly exercised its discretion in admitting a photograph showing how the victim had been killed.” It asserts, contrary to appellant, that the photographs had “high probative value, and because the prosecutor took affirmative efforts to reduce any such potential for prejudice, the trial court properly exercised its discretion in admitting the photograph.”

“Determinations regarding the admissibility of evidence generally are left to the sound discretion of the trial court.” *Easter v. State*, 223 Md. App. 65, 74, *cert. denied*, 445 Md. 488 (2015). “[T]he general rule regarding admission of photographs is that their prejudicial effect must not substantially outweigh their probative value.” *Broberg*, 342 Md. at 552. Appellate courts rarely find an abuse of discretion in a trial court’s decision to admit photographs, even though photographs “may be more graphic than other available evidence.” *Hunt v. State*, 312 Md. 494, 505 (1988). *Accord Roebuck v. State*, 148 Md. App. 563, 599 (2002), *cert. denied*, 374 Md. 84 (2003).

Autopsy photographs of homicide victims are relevant to a broad array of issues, including “the type of wounds, the attacker’s intent, and the modus operandi.” *Roebuck*, 148 Md. App. at 597 (quoting *Broberg*, 342 Md. at 553). Photographs may be relevant even if they show something that has been presented in testimony because photographs can show “more clearly than words what the witnesses were attempting to describe.” *Broberg*, 342 Md. at 553-54 (quoting *Reid v. State*, 305 Md. 9, 21 (1985)).

Here, the circuit court found that the probative value of the photo substantially outweighed any prejudice. It stated:

This is a picture for the jury to be able to see exactly where this gunshot was. The State has charged the defendant with premeditated murder, and while there may very well be a report where it’s written, it is also a visual for the jury to see. So for all those reasons, the Court does find the probative aspects of this photograph . . . substantially outweigh any prejudice.

Appellant implicitly concedes that the photo had probative value, arguing that it had only “scant probative value.” As the trial court noted, the autopsy photo was used to help

the jury visualize the medical examiner's testimony regarding the cause and manner of the victim's death. It had probative value.

Although we agree with appellant that the photo was "disturbing," it was not unduly so. The State minimized the potential for unfair prejudice by admitting a single photograph of the skull that was printed in black and white. *See Earhart v. State*, 48 Md. App. 695, 712-13 (1981) (no abuse of discretion in admitting black and white autopsy picture of victim's head and neck that showed "strangulation marks on the neck and tended to corroborate the medical expert's opinion" on the cause of death). We perceive no abuse of discretion by the circuit court in admitting the autopsy photograph.

**JUDGMENT OF THE CIRCUIT COURT  
FOR HARFORD COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**