UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1014

September Term, 2015

IN RE: A.M.

Berger,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: July 1, 2016

On May 27, 2015, following an adjudicatory hearing, the Circuit Court for Prince George's County, sitting as the juvenile court, found A.M., the appellant, "involved" in committing the delinquent acts of robbery, assault, and theft. In this appeal, the appellant presents the following questions for our review:

1. Did the trial judge err in admitting hearsay evidence?
2. Was the evidence insufficient to establish territorial jurisdiction?

Finding no error, we affirm.

BACKGROUND

Martha Nunes, testifying through an interpreter, stated that on November 29, 2014, she left her home[1] and was waiting to cross the street at a stoplight when three women approached her. One of the women approached her from behind and pulled her hair while another woman took her purse. The suspects fled immediately, and Ms. Nunes chased after them while calling for help. The suspect who was carrying Ms. Nunes' purse tripped and fell, and threw Ms. Nunes' purse aside.

The three suspects then ran inside a house while several bystanders called the police. When Detective Matthew Milburn and Detective Steven Jackson of the Prince George's County Police Department arrived on the scene, they conducted a "show up" by bringing each of the three suspects before Ms. Nunes and asking her if she could identify them. Ms. Nunes positively identified the appellant as the individual who took her purse. When Ms. Nunes recovered her purse, her wallet containing between $40 and $50 in cash was missing

[1] Ms. Nunes attempted to provide her address to the court, but the court interrupted her, stating, "Don't need the address."

from the purse, as was her passport. Detective Milburn then transported the appellant to the Prince George's County Police Station for questioning.[2]

STANDARD OF REVIEW

In a juvenile delinquency matter, an appellate court will "review the case on both the law and the evidence." Md. Rule 8-131(c). "In general, the rules of evidence, including the rules regarding hearsay, apply in juvenile adjudicatory hearings." *In re Michael G.*, 107 Md. App. 257, 265 (1995) (citation omitted). The Court of Appeals has clarified the standard of review in determining questions of hearsay:

> [T]he trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review. Accordingly, the trial court's legal conclusions are reviewed *de novo*, but the trial court's factual findings will not be disturbed absent clear error.

Gordon v. State, 431 Md. 527, 538 (2013) (internal citations omitted).

DISCUSSION

I.

The appellant contends that the trial court erred in admitting the testimony of Detective Milburn because he testified to information provided by individuals who were not present at trial. Thus, according to the appellant, the use of his testimony to prove that

[2] Detective Jackson testified that the appellant was not under arrest at this time. When asked by the detectives to be interviewed at the Prince George's County Police Station, the appellant agreed and accompanied Detective Milburn in his police vehicle to the station.

the robbery occurred in Prince George's County constituted inadmissible hearsay. Specifically, the appellant challenges the following testimony:

> [THE STATE]: And what if anything happened that day?
>
> [THE WITNESS]: We received a call to assist with a robbery investigation by MPDC. They advised that there was a robbery that occurred in the County and that a –
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [THE WITNESS]: -- that the victim had chased the suspect into the District, where they were then called and they had some people stopped that we needed to come take over the investigation because the robbery happened in the County.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Excuse me. What's the basis of the objection?
>
> [DEFENSE COUNSEL]: Offering information that is clearly hearsay for the matter asserted.
>
> THE COURT: What information?
>
> [DEFENSE COUNSEL]: The conclusion that a crime occurred in the County.
>
> THE COURT: That's what they do. They conclude something and they start investigating.
>
> [DEFENSE COUNSEL]: We're okay with it being offered as a basis for the action that was taken, but to the truth of the matter asserted -- The conclusion
>
> THE COURT: You're the one that said what it was offered for.
>
> [DEFENSE COUNSEL]: And we're objecting because I believe that Detective Milburn does not have personal knowledge of where whatever did happen.

> THE COURT: They generally don't, that's why they investigate.
>
> [DEFENSE COUNSEL]: Okay. So --
>
> THE COURT: That's why they're not called as a fact witness.
>
> [DEFENSE COUNSEL]: Objecting to his reference to incident occurring in the County.
>
> THE COURT: Okay. Overruled and Detective, please keep your voice up.

The State elicited similar testimony from Detective Jackson, and defense counsel likewise objected:

> [THE STATE]: Did the robbery occur at 5000 Rhode Island Avenue, Hyattsville, Maryland, Prince George's County?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Sustained.
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> [THE STATE]: Where did the robbery occur?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [THE WITNESS]: The robbery occurred at Chillum and Eastern; I guess that would be the closest intersection.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Basis?
>
> [DEFENSE COUNSEL]: This is not the detective's personal knowledge. I don't believe he's testifying that he was present at the scene or that he saw it.
>
> THE COURT: Overruled.

> [THE STATE]: Please continue.
>
> [THE WITNESS]: I responded to an address in D.C., 412 Anita Street, I believe, as an address to meet with D.C. with what they had had. They're saying that the robbery occurred in our jurisdiction and asked us to come.
>
> [DEFENSE COUNSEL]: Objection.
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> THE COURT: Overruled.
>
> [THE STATE]: And where did the robbery occur?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [THE WITNESS]: Chillum and Eastern, Chillum Road, Eastern Avenue, on the Prince George's County Maryland side.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.

Maryland Rule 5-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *Parker v. State*, 408 Md. 428, 436 (2009). Hearsay is inadmissible unless it falls within a specific exception to the hearsay rule or as otherwise provided by the rules or permitted by applicable constitutional provisions or statutes. *See* Md. Rule 5-802; *Stoddard v. State*, 389 Md. 681, 688 (2005).

Initially, defense counsel objected to Detective Milburn's testimony on the ground that the State was offering the testimony to prove that the robbery occurred in Prince George's County, and, therefore, that the testimony was hearsay. We agree that the

detectives' statements, if offered to prove that the robbery occurred in Prince George's County, would have fallen within the definition of hearsay provided in Md. Rule 5-801(c), and, therefore, would not have been admissible.

However, as the State argues, and as defense counsel conceded at trial during Detective Milburn's testimony, the detectives' statements were admissible as non-hearsay to explain the detectives' arrival on the scene, *i.e.*, to demonstrate that the detectives responded after receiving a call from the Metropolitan Police Department of the District of Columbia ("MPDC"). An out-of-court statement qualifies as non-hearsay and is therefore admissible so long as it is offered to show that a person relied and acted upon the statement, rather than to show that the facts in the statement are true. *See Morales v. State*, 219 Md. App. 1, 11 (2014). "In the context of an officer explaining why he or she arrived at a particular location, the officer should not be put in a false position of seeming to have just happened upon the scene; he should be allowed some explanation of his presence and conduct." *Id*. (internal quotations omitted). Accordingly, the detectives' statements that they were called to the scene by MPDC were admissible as non-hearsay to explain their presence on the scene.[3] The portion of their testimony pertaining to the location of the

[3] The State further argues that the detectives' testimony was admissible "for its truth under the excited utterance exception to the hearsay rule" since "any statement made by Nunes to either the D.C. or Prince George's County police qualified as a statement related to a startling event made while she was under the stress of the event." The State's suggestion, however, that the detectives' testimony as to the location of the robbery was based on information provided by Ms. Nunes is not supported by the record. The detectives testified that MPDC, not Ms. Nunes, advised them that a robbery occurred in Prince George's County. Moreover, there was no evidence that Ms. Nunes was the source of MPDC's information, as she testified that bystanders called the police (continued…)

robbery, however, was not admissible to prove that the robbery occurred in Prince George's County.

II.

Appellant contends that the juvenile court erred in denying her motion to dismiss because the State failed to introduce competent evidence to establish territorial jurisdiction. At trial, defense counsel argued:

> [DEFENSE COUNSEL]: … [W]e would make a motion to dismiss for failure to establish jurisdiction in this case. There was no direct testimony as to where this event occurred. The witness made no mention of the location of the incident. The only mention of a location was hearsay that we objected to with respect to something about an intersection of Chillum and Eastern Avenue and then as the Court is already aware, Eastern Avenue is the, depending on who is asked, is the dividing line between the jurisdiction of D.C. and Prince George's County. The only direct testimony as to where this event occurred in any sort of like circumstantial way was that both Detective Jackson and Detective Milburn testified that [appellant] was stopped by someone who didn't testify today at an address in D.C. So on that basis, we would move for dismissal for lack of jurisdiction.

The appellant contends that, absent the testimony of the detectives that the robbery occurred in Prince George's County, the State failed to produce any competent evidence to establish that the robbery occurred in Maryland. The State responds that the issue of territorial jurisdiction was not genuinely generated by the evidence. We agree with the State.

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while she was chasing the suspects. Therefore, there is no statement before us, hearsay or otherwise, requiring the determination of whether the excited utterance exception applies.

"It is fundamental that jurisdiction resides solely in the state where the crime is committed." *McDonald v. State*, 61 Md. App. 461, 468 (1985) (citations omitted). In Maryland, territorial jurisdiction is not an element of the offense that must be proven in every case. *See State v. Butler*, 353 Md. 67, 79 n.5 (1999). Rather, "[i]t is incumbent upon the appellant to do more than make a bare allegation that the crime might have occurred outside of Maryland in order to sufficiently generate the issue of lack of jurisdiction." *McDonald*, 61 Md. App. at 469. Once the evidence generates a genuine issue of territorial jurisdiction, the prosecution must prove, beyond a reasonable doubt, that the crime was committed within Maryland. *See Butler*, 353 Md. at 83.

The appellant fails to point to any evidence, as she must, indicating that the offense occurred outside of Maryland. "A bald, conclusory assertion that the offense was not committed within Maryland's territorial jurisdiction, however, is not, by itself, sufficient to create a dispute as to territorial jurisdiction – there must be some supportive evidence." *Butler*, 353 Md. at 79.

There must be more than a "mere possibility" that the crime did not take place in Maryland. *See Jones v. State*, 172 Md. App. 444, 457 (2007). In *Jones*, we concluded that although the issue was unpreserved, the evidence did not generate a genuine dispute as to jurisdiction because there was no evidence to establish that the car in which the victim was sexually assaulted traveled into the District of Columbia or Pennsylvania. *Id.* at 458. The mere fact, we explained, that it was physically possible for the car to have traveled outside of Maryland during the time period in question constituted "speculation, not evidence." *Id.* Likewise, in *McDonald,* 61 Md. App. at 468-69, the evidence failed to raise a dispute as to

jurisdiction where there was a five-hour gap between when the defendant and the victim had dinner at a restaurant in Montgomery County and when they returned to their home, which was also in Montgomery County. We held that the five-hour gap alone was insufficient to demonstrate that the defendant's assault of the victim could have happened in the District of Columbia or any other state. *Id.*

In cases finding that territorial jurisdiction was genuinely disputed, however, sufficient evidence existed to call into question the location of the crime. *See Butler*, 353 Md. at 84 (defendant generated a dispute as to territorial jurisdiction where he was convicted of murdering three victims in Prince George's County, where he and two of the victims were living, but the victims were found murdered in a car in the District of Columbia, and evidence indicated that a gun had been fired inside the car); *Painter v. State*, 157 Md. App. 1, 9-10 (2004) (where defendant was alleged to have stolen cattle from a farm in Maryland, evidence that he had sold the same at a livestock market in Pennsylvania raised a genuine jurisdictional dispute); *West v. State*, 369 Md. 150, 163-64 (2002) (although the victim was abducted in Maryland, her testimony that her abductors drove her to the District of Columbia, where she was subsequently sexually assaulted and forced from the car, required a finding of territorial jurisdiction in the District of Columbia).

In the present case, like in *Jones* and *McDonald*, the evidence failed to raise a genuine dispute as to whether the crime occurred outside of Maryland. Although the evidence does show that the appellant *was arrested* in the District of Columbia, there is no evidence that the appellant *committed the crime* in that jurisdiction. For purposes of territorial jurisdiction, the relevant location is that of the commission of the crime, not that

of the defendant's arrest. *See*, *e.g.*, *Butler*, 353 Md. at 79 (explaining that the issue of territorial jurisdiction should be committed to the trier of fact only "when evidence exists that the *crime may have been committed outside Maryland*[] . . . and [the] defendant disputes the territorial jurisdiction of the Maryland courts[.] (emphasis added)). The fact that the appellant was arrested in the District of Columbia is "speculation, not evidence[,]" that the crime occurred in another jurisdiction. *Jones*, 172 Md. App. at 458.

Moreover, it is well settled that the site of the commission of the crime may be established by circumstantial evidence. *See McDonald,* 61 Md. App. at 468 (citation omitted). In the case *sub judice*, there was sufficient circumstantial evidence from which the juvenile court, as the factfinder, could reasonably have inferred that the offense was committed in Prince George's County. For example, there was the testimony of Detectives Milburn and Jackson of the Prince George's County Police Department that they responded to a call from MPDC to investigate a report of a robbery that occurred in Maryland. Also, there was the testimony of Ms. Nunes, which was offered without objection, that the D.C. police "told me that I had to bring the case because it was from another state, something like that." Finally, there were numerous references to the fact that after Ms. Nunes positively identified the appellant, the investigation was transferred from MPDC to the Prince George's County Police Department. All of this evidence, when viewed in its totality, was sufficient to establish territorial jurisdiction in Maryland.

For the foregoing reasons, we hereby affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.