UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1950

September Term, 2015

TROY McLEAN

v.

STATE OF MARYLAND

Meredith,
Leahy,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 29, 2016

In the early morning of January 18, 2014, in the Coppin Heights neighborhood of Baltimore City Arlington Sydnor was discovered with grievous injuries, apparently the result of a stabbing. He later died from his injuries. Appellant Troy McLean was indicted for murder, armed robbery, possession of a dangerous weapon, and theft among other charges, and received a trial by jury in the Circuit Court for Baltimore City. On September 4, 2015, he was convicted of second-degree murder, possession of a dangerous weapon with intent to injure, and reckless endangerment, and was sentenced to 33 years of imprisonment. McLean appealed, and now presents two questions for our review:

1. "Is the evidence insufficient to sustain the conviction for carrying a dangerous weapon openly with intent to injure where the State failed to prove that the weapon was not a penknife without switchblade?"

2. "Did the circuit court err in admitting an expert opinion that was not disclosed in discovery?"

For the following reasons, we affirm the judgments of the circuit court.

BACKGROUND

The following was described by witnesses at McLean's trial. On the night of January 17, and into the morning of January 18, 2014, the victim, Arlington Sydnor, attended a party at Mr. Avon Jackson's home, which was the residence of the mother of Sydnor's child. Eric Washington and appellant, Troy McLean, also attended the party. Early in the morning, Washington and McLean went to get something to eat at a market around the corner, while Sydnor went to sleep on the downstairs sofa bed at the home.

After Washington and McLean knocked on the front door and woke up the Jacksons, Sydnor was asked to leave.

Washington testified that the three men started walking down the street, but that he fell behind because his back locked up. After Washington caught up to Sydnor and McLean, he asked them what they were doing, and McLean told him to "mind [his] motherfucking business." McLean then told Sydnor to give what looked to be a credit card to Washington. Washington was unwilling to be a part of the situation, and told Sydnor "don't hand me nothing." Washington then saw McLean slap Sydnor's face and tell him to "roll out." Sydnor ran back in the direction of the party, and Washington and McLean continued to walk down the street. Before long, Washington received a phone call from Jackson, offering to take him home. Jackson picked up Washington and drove him home, but did not give McLean a ride.

A short time later, at approximately 5:00 a.m., Department of Transportation worker Eddie Walker came upon Sydnor lying in the middle of the road, alive, but barely breathing. Sydnor had been stabbed six times on the side of his face and neck. Assistant Medical Examiner Donna Vincenti testified that Sydnor died of these stab wounds. Over McLean's objection, Vincenti gave her opinion that the stab wounds that she observed on Sydnor's head and neck "could be consistent with . . . a folding knife or a pocket knife[.]"

Another attendee at the party, Jeffrey Faw II, testified that everyone in his group of friends, including McLean, carried knives. He described his knife as a "fold-up knife" that he purchased at a gas station, and testified that McLean carried the same kind of

knife. He had seen McLean with this kind of knife the week of January 18, 2014. The murder weapon, however, was not found, and McLean was not found in possession of a knife.

On May 15, 2014, McLean was indicted on charges of murder, armed robbery, assault, possession of a dangerous weapon, and theft. The circuit court held a jury trial on September 1-4, 2015, and at the close of the State's case, McLean moved for acquittal. The court granted McLean's motion for acquittal on the count of theft, and sent the remaining counts to the jury. On September 4, 2015, the jury found McLean not guilty of first-degree murder, guilty of second-degree murder, guilty of possession of a dangerous weapon with intent to injure, and guilty of reckless endangerment.[1] On November 3, 2015, McLean received a sentence of 30 years' imprisonment for second-degree murder, and 3 years' imprisonment for his conviction for possession of a dangerous weapon.[2] McLean filed a notice of appeal on the day of his sentencing.

DISCUSSION

I. Sufficiency of Evidence

When a jury is the trier of fact in a criminal matter, appellate review of the sufficiency of the evidence is available "'only when the defendant moves for judgment of acquittal at the close of all the evidence and argues precisely the ways in which the

[1] The court declared a mistrial as to count 3, robbery with a dangerous weapon, because the jury could not reach a unanimous decision.

[2] The reckless endangerment conviction was merged for sentencing purposes.

evidence is lacking.'" *Hobby v. State*, 436 Md. 526, 540 (2014) (quoting *Anthony v. State*, 117 Md. App. 119, 126 (1997)). "A criminal defendant who moves for judgment of acquittal is required by Md. Rule 4-324(a) to 'state with particularity all reasons why the motion should be granted[,]' and is not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *State v. Lyles*, 308 Md. 129, 135-36 (1986)).

McLean now argues that "there was . . . a lack of evidence to prove that the knife was not a penknife without a switchblade," as required by *Mackall v. State*, 283 Md. 100, 113 (1978). The State argues that McLean did not preserve this argument because it was not made "with particularity" in McLean's motion for acquittal.

We agree with the State. McLean's argument in the trial court focused on the alleged paucity of evidence for *carrying* a dangerous weapon or *carrying it openly*. In his motion for acquittal, McLean argued:

> And for the dangerous weapon count - there's been no indication that - no witness testified that they saw Mr. McLean with a dangerous weapon, that he was carrying a dangerous weapon that night, that he carried it openly. Mr. Washington never testified that he observed Mr. McLean use a dangerous weapon. For those reasons, we're asking for a motion for judgment of acquittal on the dangerous weapon count.

He did not argue that, even if there was evidence that showed that he was openly carrying a weapon, the State did not prove that that weapon was a "dangerous weapon,"

as he does now on appeal.[3] Because McLean did not state with particularity all reasons why his motion should have been granted, Md. Rule 4-324(b), McLean has failed to preserve this argument for our review.

II. Disclosure of Expert Testimony

We review the record *de novo* to determine whether a discovery violation occurred. *Thomas v. State*, 168 Md. App. 682, 693 (2006) (citing *Cole v. State*, 378 Md. 42, 56 (2003)), *aff'd on other grounds*, 397 Md. 557 (2007). Maryland Rule 4-263(d)(8) requires the State to disclose the substance of any conclusions made by an expert with whom the State consulted:

> Disclosure by the State's Attorney. Without the necessity of a request, the State's Attorney shall provide to the defense:
>
> * * *
>
> (8) Reports or statements of experts. As to each expert consulted by the State's Attorney in connection with the action:
>
> (A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;
>
> (B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and
>
> (C) the substance of any oral report and conclusions by the expert[.]

[3] Although McLean may be correct that the State is required to prove beyond a reasonable doubt that the weapon was a dangerous weapon under *Mackall v. State*, 283 Md. 100 (1978), he did not make this argument in his motion for acquittal. In the cases McLean relies upon, *Mackall v. State*, 283 Md. 100 (1978), *Washington v. State*, 293 Md. 465 (1982), and *Biggus v. State*, 323 Md. 339 (1991), the Court did not consider whether the appellants adequately preserved their sufficiency arguments. Thus, these authorities do not control the outcome of this case.

"[T]he scope of pretrial disclosure requirements under Maryland Rule 4-263 must be defined in light of the underlying policies of the Rule." *Williams v. State*, 364 Md. 160, 172 (2001) (Citations omitted). These policies include "providing adequate information to both parties to facilitate informed pleas, ensuring thorough and effective cross-examination, and expediting the trial process by diminishing the need for continuances to deal with unfamiliar information presented at trial." *Id.* In this respect, the mandatory disclosure provisions of Rule 4-263 assist defendants in preparing their defense and to protect them from unfair surprise. *Id.* With respect to expert opinions, the purpose of the rule "is to afford the defendant a fair opportunity to discover the 'reports and statements' of experts consulted by the State[.]" *Patrick v. State*, 329 Md. 24, 31 (1992).

McLean contends that the court erred in admitting expert testimony from the assistant medical examiner, Dr. Vincenti, that was not disclosed during discovery. The State argues that the court did not err because the substance of Dr. Vincenti's testimony was disclosed in the autopsy report, which was given to the defense.

Dr. Vincenti's conclusions, described in the autopsy report, stated that Sydnor's cause of death was multiple stab wounds to the head and neck. The report stated that each of the stab wounds had a depth of between one-half inch and two and one-half inches, and that the stab wounds were each under one-inch in length. Dr. Vincenti determined that his death was a homicide.

At trial, the State questioned Dr. Vincenti about the nature of Sydnor's wounds and the cause of his death:

[STATE]: **Now, in your medical opinion, Dr. Vincenti, would these wounds be consistent with a folding knife or a pocket knife?**

[DEFENSE]: Objection, Your Honor.

THE COURT: If you know.

[Dr. Vincenti]: **It could be consistent with that.**

[DEFENSE]: Your Honor, may we approach?

THE COURT: Sure.

(Counsel and the Defendant approached the bench and the following ensued:)

[DEFENSE]: Your Honor, the testimony, I would argue, is conclusory. And we were — we did file a motion. It's something that should have been provided under 4-263. She's going to — none of that was provided in advance. So I'm objecting to that testimony and would ask that it be stricken as a violation of 4-263.

THE COURT: And what was not provided? That she was going to ask that question?

[DEFENSE]: No, the information she testified about, it could have been a —

THE COURT: Well, you were provided in discovery that — I don't know, was Mr. — let's see who it was.

[DEFENSE]: Faw.

THE COURT: That Mr. Faw was going to testify that Mr. McLean usually carried a knife. Okay? So you're saying that the State also needed to provide to you in discovery that she might ask the medical examiner if carrying a folding knife might be consistent with the — or a folding knife would be consistent with the wound? Is that what you're saying?

[DEFENSE]: Yes.

[STATE]: May I just —

THE COURT: Why?

[STATE]: It's not conclusive. (Inaudible). There's no conclusion as to (inaudible) –

THE COURT: That's why you've got cross-examination.

Overruled.

* * *

[STATE]: And Dr. Vincenti, you stated that the wound was possibly — was consistent, possibly consistent, with a folding knife or a pocket knife. . . . Why were you able to make that opinion?

* * *

[Dr. Vincenti]: Um, just looking at the size of the wounds in relation to each other, A through F, of the stab wounds, taking into consideration the length on the skin of each one of then and the depth of each one of them.

(Emphasis added).

On cross-examination, McLean's counsel clarified Dr. Vinceti's opinion on the type of murder weapon:

[DEFENSE]: Doctor, did you write anywhere in your autopsy report what your opinion was as to the murder weapon?

[Dr. Vincenti]: No.

[DEFENSE]: Because you can't say for certain what the murder weapon was?

[Dr. Vincenti]: Correct.

(Emphasis added).

Dr. Vincenti's autopsy report classified the wounds that Sydnor received as "stab wounds," repeatedly described the wounds as such throughout the eight-page report, and stated that the cause of death was "multiple stab wounds to the head & neck." The wounds measured less than three inches in length. In short, the State disclosed the salient information, i.e., "the 'reports and statements' of experts consulted by the State[,]" *Patrick*, 329 Md. at 31, that formed the basis of Dr. Vincenti's conclusions. Through this

report, McLean was aware of her conclusion that a *knife* caused Sydnor's death. Dr. Vincenti's testimony did not substantially differ from the conclusions in her report, and, importantly, defense counsel's cross-examination revealed the confidence, or lack thereof, that the medical examiner had in her opinion of what particular knife caused the injuries—she could not "say for certain what the murder weapon was." In consideration of the purpose of Rule 4-263—to assist defendants in preparing their defense and to protect them from unfair surprise—we hold that the circuit court did not err in allowing Dr. Vincenti's testimony on whether a "fold-out knife" could have caused Sydnor's wounds.

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