Circuit Court for Frederick County
Case No.: 10-K-16-059073

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2117

September Term, 2017

THOMAS DUANE JONES

v.

STATE OF MARYLAND

Leahy,
Shaw Geter,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: March 26, 2019

Thomas Duane Jones, Appellant, was convicted by a jury sitting in the Circuit Court for Frederick County of second-degree rape and human trafficking. The trial judge sentenced Jones to 45 years' imprisonment, with all but 25 years suspended and five years' probation. On appeal, in asking this Court to reverse the judgment of the Circuit Court, Jones presents the following questions for our review:

> 1. Was it error to allow Christopher Heid to testify as an expert witness on human trafficking?
>
> 2. Did the State elicit unfairly prejudicial evidence of other crimes?

For the reasons set forth below, we answer both questions in the negative and shall affirm the judgment of the Circuit Court.

FACTUAL BACKGROUND

In September 2016, Jones met a seventeen-year-old girl, C.H.,[1] who had run away from home, in Houston, Texas. Within hours of meeting, Jones asked C.H. to accompany him to Maryland for work, to which she agreed. Jones purchased C.H. a bus ticket and the two traveled to Frederick, Maryland, where they stayed in a room at a Super 8 motel. Initially, C.H. testified that Jones treated her "nice" and promised to find her a job. C.H. voluntarily had sexual intercourse with Jones, because, as she testified, she "trusted him."

While in Frederick, C.H. would occasionally go to work with Jones, traveling in a van, selling cleaning supplies door-to-door; otherwise, C.H. would remain at the Super 8 motel while Jones worked. Shortly after arriving in Maryland, Jones repeatedly

[1] In order to protect the identity of the victim, then a minor, we shall refer to her only by the initials of her first and last name. *See Thomas v. State*, 429 Md. 246, 252 n. 4 (2012).

pressured C.H. to engage in prostitution. When C.H. refused, Jones became "very aggressive" toward her, and at times, would slap, push, grab, yell and threaten her.

On September 29, 2016, C.H. was riding in Jones's work van, when Jones threatened to kill her and throw her "body in an alley." C.H. jumped from the moving van, sustained some "scratches" and asked a couple nearby to call the police. The police arrived, but did not remove C.H. from the situation. C.H. agreed to return to the motel with Jones because she "knew then if [she] went back that [she] would have a place to stay and things [would go] go back to normal."

After C.H. and Jones returned to the motel room that same day, C.H. testified, that Jones had expressed anger over the earlier police involvement. Jones then invited another man, Marvin Armstrong, a coworker of his, to the motel room; the two men proceeded to use "crack" in the bathroom. C.H. testified, that after using the drugs, Jones "was very paranoid, very anxious [and] irritated [,]" which scared C.H. C.H. also admitted to drinking alcohol and using marijuana that evening, after having been given them by Jones. Feeling uncomfortable by the situation, C.H. testified that she attempted to leave the room, but that Jones prevented her from doing so. Jones then told C.H. to "relax" as he and Armstrong proceeded to have vaginal intercourse with her; Jones then forced C.H. to perform fellatio on him and Armstrong.

The next morning, under the guise of retrieving some ice from a motel machine, C.H. went to the motel's front desk and called the police to inform them that she was in danger. Shortly thereafter, the police arrived and apprehended Jones.

Armstrong pled guilty to second degree assault and engaging in activity that facilitated prostitution, pursuant to Section 11-306 of the Criminal Law Article, Maryland Code (2002),[2] and testified that he had been working with Jones, selling cleaning supplies. Armstrong informed the court that C.H. did, in fact, on that day, jump out of the van and that Jones later prevented her from leaving the motel room. He testified, however, that he was too "drunk" to remember whether he had sex with her, but did admit to giving Jones $40 and $10 to C.H.

At the conclusion of a five-day jury trial, Jones was convicted of second-degree rape and three counts of human trafficking, which included detaining a minor for a sexual act, detaining a minor for sexual intercourse, and knowingly harboring a minor for prostitution. Further facts will be supplied as necessary in our discussion of the issues.

DISCUSSION

A trial court is afforded "wide latitude in deciding whether to qualify a witness as an expert or to admit or exclude particular expert testimony." *Massie v. State*, 349 Md. 834, 850–51 (1998) (citations omitted). We, therefore, review a trial court's decision to admit or exclude expert testimony for an abuse of discretion, *Rochkind v. Stevenson*, 454 Md. 277, 285 (2017) (citing *Rollins v. State*, 392 Md. 455, 499–500 (2006)), and a court's "action in admitting or excluding such testimony will seldom constitute a ground for reversal." *Taylor v. Fishkind*, 207 Md. App. 121, 137 (2012) (quoting *Bryant v. State*,

[2] Section 11-306 of the Criminal Law Article, Maryland Code (2002), "House of prostitution," has since been amended in 2018, additions to which are not relevant to the instant case. *See* Md. Code (2002, 2018 Supp.), § 11-306 of the Criminal Law Article.

393 Md. 196, 203 (2006)). A ruling regarding the qualifications of an expert, however, "may be reversed on appeal if it is founded on an error of law or some serious mistake, or if the trial court clearly abused its discretion." *Rochkind*, 454 Md. at 285 (quoting *Sippio v. State*, 350 Md. 633, 648 (1998)). We will "not affirm a decision within the discretion of the trial court if the judge acts in an 'arbitrary or capricious manner' or 'beyond the letter or reason of the law.'" *Id.* (quoting *Garg v. Garg*, 393 Md. 225, 238 (2006)).

Jones contends that the trial court abused its discretion in allowing Maryland State Police Corporal Christopher Heid to testify as an expert witness on the subject of human trafficking. In denying defense counsel's motion in *limine* to exclude Corporal Heid as an expert witness, Judge Scott Rolle of the Circuit Court for Frederick County, ruled:

> I think that Corporal Heid can testify as an expert. I think the threshold to testify as an expert is not really that high. Somebody who has more than general knowledge of a particular area, he certainly does. He's been trained in this, he does training in it, he's testifying in front of legislatures and Congress over it, he is sort of the sought after guy on human trafficking. So, he's an expert in it.
>
> The State indicated that they intend to offer him to give what will amount to an opinion that one of the – that because of certain reasons, the victims of human trafficking will lie when first giving information about their pimp or their trafficker I'll call it.
>
> I agree with the Defense that that steps across a line that I don't think is allowed in this case. However, you will be able to have him testify that, in his experience with the people he's interviewed, they often will lie at first, but to give a reason why, no. That the[y] do it, yes.

Jones avers that the trial judge abused his discretion in admitting Corporal Heid as an expert witness in human trafficking under Rule 5-702, because he was not qualified as such.

Expert testimony is governed by Maryland Rule 5-702, which provides that expert testimony "may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." Testimony elicited from an expert provides useful, relevant information when the trier of fact would not otherwise be able to reach a rational conclusion; such information "is not likely to be part of the background knowledge of the judge or jurors themselves." *State v. Payne*, 440 Md. 680, 699 (2014) (quoting David H. Kaye, David E. Bernstein, & Jennifer L. Mnookin, The New Wigmore: Expert Evidence § 1.1 (2d ed. 2010)). The trial judge, thus, determines whether to admit expert testimony based upon whether the witness could provide assistance to the finder of fact on the subject matter where a juror, lacking knowledge in a particular field, would resort to mere speculation and conjecture. *Payne*, 440 Md. at 699. In so doing, the trial judge "must evaluate" whether the expert is qualified, whether the expert testimony is appropriate for the particular subject, and whether a sufficient factual basis exists to support the expert's testimony. *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 182, *cert. denied*, 378 Md. 614 (2003).

In order to qualify as an expert, "one need only possess such skill, knowledge, or experience in that field or calling as to make it appear that [the] opinion or inference will aid the trier [of fact] in his search for the truth." *Morton v. State*, 200 Md. App. 529, 545 (2011) (quoting *Thanos v. State*, 330 Md. 77, 95 (1993)); *see also Davis v. Goodman*, 117 Md. App. 378, 411 (1997) ("A witness is qualified to testify as an expert when he exhibits such a degree of knowledge as to make it appear that his opinion is of some

value to the factfinder, regardless of where or how the knowledge was gained." (citations omitted)). As such, a witness may qualify as an expert as long as he or she "demonstrates a 'minimal amount of competence or knowledge' in the area in which [he or she] purports to be an expert." *Wood v. Toyota Motor Corp.*, 134 Md. App. 512, 521, *cert. denied*, 362 Md. 189 (2000) (quoting *Naughton v Bankier*, 114 Md. App. 641, 655 (1997)). A judge may consider any and all aspects of a witness's background when determining whether the witness qualifies as an expert on the subject matter. *Lewin Realty III, Inc. v. Brooks*, 138 Md. App. 244, 276 (2001), *abrogated on other grounds by Ruffin Hotel Corp. of Maryland, Inc. v. Gasper*, 418 Md. 594 (2011).

In the instant case, Judge Rolle did not abuse his discretion in qualifying Corporal Heid to testify as an expert witness on human trafficking. During a pre-trial hearing, Corporal Heid testified that he has been assigned, since 2011, to the Maryland State Police Child Recovery Unit, after having been a Trooper since 1995. The Child Recovery Unit, he noted, primarily focuses on locating missing children and investigating reports of human trafficking, "particularly as it relates to juveniles." Corporal Heid indicated that during his assignment he has interviewed over 100 juvenile girls in connection with prostitution and human trafficking investigations.

Corporal Heid also testified that he has attended a number of human-trafficking trainings and that he regularly serves as an instructor for human-trafficking courses put on throughout the State. He further testified that he has taught human-trafficking techniques and skills to officers in Maine, Delaware, and Arkansas. Corporal Heid also testified that he is a member of the Federal Bureau of Investigation's Child Exploitation

Task Force and the Maryland Human Trafficking Task Force, and as a result of those affiliations, has testified before the United States House Committee on the Judiciary on issues related to human trafficking. He also stated that he has served as a member of the Safe Harbor Work Group, a group which advises the General Assembly on issues involving human trafficking in the State and that he has opined on issues involving human trafficking in the media.

Judge Rolle qualified Corporal Heid as an expert witness on human trafficking based upon his testimony, a ruling with which we agree. Accordingly, we hold that Judge Rolle did not abuse his discretion.[3]

Jones further contends that the trial court erred in permitting the State to elicit unfairly prejudicial evidence of other crimes.[4] Specifically, Jones notes three instances in

[3] While Jones primarily attacks Corporal Heid's qualification as an expert, he also argues that the State impermissibly proffered the testimony of Corporal Heid "to explain away various contradictions" contained in C.H.'s pre-trial statements "by producing as an 'expert' an officer who could somehow explain away any contradictions as behavior that is typical for complainants in human trafficking." Jones posits that such expert testimony would impermissibly invade the province of the jury.

Because Jones, however, solely presented the issue as one challenging Corporal Heid's qualification as an expert witness and failed to properly preserve this subsidiary argument, we decline to address it. *See Health Services Cost Review Com'n v. Lutheran Hosp. of Md., Inc.*, 298 Md. 651, 664 (1984); *Jones v. State*, 379 Md. 704, 744 (2004).

Were we to address this issue, however, Jones's argument would be unconvincing. Jones fails to cite any instances in which Corporal Heid was permitted to testify regarding C.H.'s credibility, a matter about which the trial judge had ruled Corporal Heid could not testify. In fact, Judge Rolle sustained objections by the defense and struck his testimony when Corporal Heid began to opine regarding why victims of human trafficking may not be completely forthcoming when initially interviewed by law enforcement officers.

[4] Other crimes evidence is governed by Rule 5-404(b), which states:

(continued . . .)

which testimony was given that constituted "other crimes" evidence, which he argues, should have never been heard by the jury. The State, conversely, argues that Jones failed to object to some of the testimony he now appeals, and that, in any event, the testimony he now takes issue with did not constitute "other crimes" evidence. The State also contends that because the trial court did not admit testimony to which Jones objected, he cannot now complain because he acquiesced in the trial court's ruling by failing to request a mistrial.

Jones initially takes issue with the testimony of C.H. in which she made reference to his use of crack on the night of September 29, 2016. Before trial, Jones made a motion *in limine* to exclude evidence of his drug use, not on the basis that it was "other crimes" evidence, but because the risk of its unfair prejudice substantially outweighed its probative value. The trial court denied the motion reasoning that Jones's use of crack cocaine and C.H.'s "knowledge of how Mr. Jones behaves when he's on crack" was relevant to explain her "fear of the way that [Jones and Armstrong] were behaving," which went to "the level of force and her reasonableness and her fear of them given the circumstances."

(continued)

> Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, § 3-8A-01 is not admissible to prove the character of a person to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

The State, however, maintains that our review of the testimony under scrutiny is limited because defense counsel failed to lodge any objection to its admission:

> [THE STATE]: And at some point did Marvin Armstrong come into the room?
>
> [C.H.]: Yes.
>
> [THE STATE]: And what happened when he came into the room?
>
> [C.H.]: First they were in the bathroom doing drugs.
>
> [THE STATE]: Had you seen the defendant do drugs before this?
>
> [C.H.]: Yes.
>
> [THE STATE]: And did you know what kind of drug he was doing?
>
> [C.H.]: Yes.
>
> [THE STATE]: What was it?
>
> [C.H.]: Crack.
>
> [THE STATE]: And how would he act when he would use this drug?
>
> [C.H.]: He was very paranoid, very anxious, everything irritated him.
>
> [THE STATE]: How did it make you feel when he was using this drug?
>
> [C.H.]: Very scared.
>
> [THE STATE]: And so on the 29th when he and Marvin were using this drug, what were you doing?
>
> [C.H.]: I was sitting aside and I didn't know what to do.

There was no objection to the admission of this testimony as required by Rule 4-323(a), which necessitates an objection be made to evidence "at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent." If no timely

objection is proffered, the objection is waived. Md. Rule 4-323(a); *see Morton v. State*, 200 Md. App. 549, 540–41) ("[W]hen a motion in limine to exclude evidence is denied, the issue of the admissibility of the evidence that was subject to the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial.") (quoting *Klauenberg v. State*, 355 Md. 528, 539 (1999)); *see also Berry v. State*, 155 Md. App. 144, 172 (2004). As a result, absent an objection, we are precluded from considering whether the trial judge's actions regarding C.H.'s testimony on Jones's drug use constituted error. *See Fowlkes v. State*, 117 Md. App. 573, 588 (1997), *cert. denied*, 348 Md. 523 (1998).

Jones then argues that the testimony of DeLynda Brown ("Ms. Brown"), a forensic nurse examiner who interviewed and examined C.H., was unfairly prejudicial because it recounted at trial what C.H. had told Ms. Brown about Jones's drug use:

> [STATE]: Regarding the incident in the hotel room, did [C.H.] tell you anything else?
>
> [MS. BROWN]: She said that she was kept in a room and various men would come –
>
> [DEFENSE]: Objection, Your Honor.
>
> THE COURT: Overruled.
>
> [MS. BROWN]: Various men would come and she was forced, she was told that she had to have sex with them. If she kept refusing to have sex with them and then right before she came to us there was two gentlemen that came in the room and shut the door and she was forced, she said no but she was forced to have oral and intercourse with both gentlemen and then she, **they started doing drugs** and that's when she escaped and went down to get help and that's what brought her to me.
>
> [DEFENSE]: Again, objection, just a continuing objection.

THE COURT: Okay.

[DEFENSE]: None of this is relevant to her treatment.

THE COURT: The continuing objection is noted. Overruled. I will, however, approach.

(Bench conference follows:)

THE COURT: [Defense counsel], even though the testimony about the drug use is just in, I don't find that relevant to this testimony. I would move to strike, I mean I would strike that if you are asking me to do that.

[STATE]: I have no objection.

THE COURT: I don't know if that was part of your objection or not.

[DEFENSE]: Sure, yeah.

THE COURT: Then you want me to instruct the jury not to consider that?

[DEFENSE]: Instruct the jury, yes.

THE COURT: Okay.

***

THE COURT: Ladies and gentlemen, I'm going to ask you to disregard the statement about drug use. You are to not consider that from this testimony, understood? Thank you.

(emphasis added). The trial court struck the portion of Ms. Brown's testimony that pertained to Jones's drug use on the night of September 29, 2016.

When inadmissible evidence is entertained, a trial court may, as an acceptable cure, strike the testimony from the record and instruct the jury to disregard the stricken statements. *See Morales v. State*, 219 Md. App. 1, 12–13 (2014) (citing *Klauenberg*, 355 Md. at 545–46). In *Klauenberg v. State*, 355 Md. 528 (1999), Klauenberg appealed his

conviction of solicitation to commit the murder of Judge Joseph F. Murphy, Jr. At trial, during his sister's testimony, she recounted instances in which Klauenberg had beaten her and their father. *Klauenberg*, 355 Md. at 545. Defense counsel objected to this testimony and requested that it be stricken. *Id.* The trial judge sustained the objection and instructed the jury to disregard the sister's statements. *Id.* Nonetheless, on appeal, Klauenberg argued that despite receiving the remedy he requested at trial, his sister's testimony "obviously . . . could not be erased from the minds of the juror[,]" and as such, his conviction required reversal. *Id.* The Court held that the trial judge's actions did not constitute error because Klauenberg "received the remedy for which he asked," and as such, he had "no grounds for appeal." *Id.* at 545–56. Jones, like, Klauenberg, received the remedy for which he asked and, therefore, has no grounds to appeal based on the statements made by Ms. Brown as to his drug use.

Jones also seeks reversal of his conviction based on the testimony of Detective Putman in which he had referred to a "credit card scheme":

> [STATE]: Okay. And what did you do when you made contact with [Jones]?
>
> [DET. PUTMAN]: I was talking, I talked about the missing person that we were dealing with, a runaway from Texas.
>
> [STATE]: And what exactly did you ask him?
>
> [DET. PUTMAN]: I asked him if he had been involved in any sexual relationship with her and **also asked him about the credit card scheme that she had brought up.**
>
> [DEFENSE]: Your Honor, if we may approach?
>
> THE COURT: You may.

(Bench conference follows:)

[DEFENSE]: Your Honor, this was ---

THE COURT: I know. I know. I know.

[STATE]: I instructed him not to say anything. I don't know if he just forgot. Can I approach him and mention it to him again. I told him earlier not to mention this.

[DEFENSE]: We would move to strike.

[STATE]: Absolutely.

THE COURT: Absolutely we'll do that. Do you want anything else? Are you asking for anything else?

[DEFENSE]: I don't really care.

[STATE]: Your Honor, we apologize. Obviously, the next step would be whether or not a curative instruction would be appropriate.

[DEFENSE]: We're just asking to disregard the question.

THE COURT: I will absolutely do that. Okay. Now I'll make sure in the instructions it's very clear to do that as well, okay?

[STATE]: Do you –

[DEFENSE]: Thank you.

***

THE COURT: All right, ladies and gentlemen, you will disregard the last question and the last answer and please remember when the Court instructs you to disregard something, put it out of your mind, you never heard it and you're not to consider it at all in any aspect of this case. Thank you very much.

(emphasis added).

Again, upon Jones's counsel's request, Judge Rolle struck Detective Putman's statement pertaining to the "credit card scheme" and instructed the jury to disregard it. Jones cannot now request reversal and a new trial because he received the remedy that he requested.[5]

In conclusion, we affirm Jones's convictions.

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

[5] Jones, nonetheless, argues that the trial judge's curative instruction was "a patently insufficient remedy," and as such, "there was a manifest necessity for the trial court to have granted a mistrial, *sua sponte*." This argument, however, is without merit, because Jones never requested a mistrial. The trial judge "certainly was not going to have declared a mistrial *sua sponte*, without knowing whether" Jones "wanted one or not." *State v. Polley*, 97 Md. App. 192, 205 (1993) (citations omitted). As such, Jones cannot now contend that the trial judge abused his discretion in not declaring a mistrial in light of Detective Putman's testimony.