UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2538

September Term, 2014

GLENN V. RHODES

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Berger, J.

Filed: November 30, 2015

Following a bench trial before the Circuit Court for Montgomery County, Glenn Rhodes, appellant, was found guilty of carjacking, second-degree assault, and fleeing and eluding. The court sentenced Rhodes to a 25-year period of incarceration for the conviction for carjacking and suspended the sentences on the remaining counts. Rhodes appeals, presenting three questions for review, which we have rephrased, retaining their essence:

1. Whether the trial court erred in denying Rhodes's motion for judgment of acquittal on the carjacking count.

2. Whether the trial court erred in admitting witness testimony as to whether the vehicle was able to be put in motion.

3. Whether Rhodes's commitment record should be amended to reflect that the generally suspended sentences run concurrently with his carjacking sentence. [1]

[1] Rhodes phrased the questions presented as follows:

1. Did the trial court err in denying Mr. Rhodes's motion for judgment of acquittal as to carjacking when the evidence was insufficient to show:

   a) Mr. Rhodes used or threatened the use of force or violence; or

   b) Mr. Rhodes possessed or controlled the driver's vehicle?

2. Did the trial court commit reversible error by admitting a witness's testimony as to whether the driver's vehicle was able to be put into motion when:

   a) the State failed to introduce evidence sufficient to support a finding that the witness had personal knowledge that the vehicle's gear shift was in the "drive" position; and

Finding no error, we shall affirm the judgment of the circuit court.

BACKGROUND

On April 10, 2013, Montgomery County Police Sergeant James Brown conducted a random registration check of a black Honda Civic -- driven at the time by Rhodes -- in a shopping center in White Oak. When the check revealed the vehicle to be stolen, Brown radioed for additional units and pursued the vehicle.

At trial, Lieutenant Brown[2] testified regarding what transpired next:

> LT. BROWN: [A]t that point, I realized [Rhodes] stopped the car and he bailed out on foot. So I stopped my car, and I bailed out on foot. I ran through the bushes. Excuse me.
>
> [STATE'S ATTORNEY]: Then what happened?
>
> LT. BROWN: And probably 15, 20 feet away from him, there was a vehicle that was stopped at the red light, the Mazda. He actually dove through the driver's window. And I saw his feet hanging out of the driver's window.
>
> So I'm trying to scream on the air, saying where he was, because nobody could see him. And I open up the passenger

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> b) the witness's testimony was neither rationally based on his perception, nor helpful to a clear understanding of his testimony or determining whether Mr. Rhodes or the vehicle's driver depressed the accelerator?
>
> 3. Must Mr. Rhodes's generally suspended sentences for second-degree assault and fleeing and eluding run concurrently with his sentence for carjacking when his Commitment Record does not indicate whether these sentences are to run concurrently or consecutively?

[2] Although a Sergeant when the underlying events occurred, Officer Brown had been promoted to Lieutenant prior to Rhodes's trial.

door. As I open up the passenger door, I had one knee on the passenger seat. I've got my gun out. I can see his hands, so once I see his hands, I holster.

He's elbowing the, the person that was driving the Mazda, in the face and he's straddling the center console. So like the right side of his cheek is on the center console, but his left foot is actually pushing the gas, trying to get the car to go forward.

He's elbowing the victim and he's saying, "Get out, get out." He put his hand back on the steering wheel, "get out, get out, get out or move," I believe is the way he was screaming it. So—

[STATE'S ATTORNEY]: And then what, was the car in park, or if you—

LT. BROWN: No, no, the car was still running and it was in drive. So as I, as I was trying to get him out and I'm holstering this, he was elbowing the victim, and the car starts going forward. It moved forward about 15, 20 feet, and it ran into the front of a cruiser that had parked in front of the silver Mazda. If the cruiser wasn't there, it probably would have kept going.

[DEFENSE COUNSEL]: Objection.

THE COURT: Sustained.

LT. BROWN: So I, I was able to, I continue, I'm now elbowing the defendant—who's seated at the table on the left in the green jumpsuit—I'm elbowing him in the, in his neck, and he finally gave up from that.

I was able to put the car in park, I turned the ignition off, and then we started pulling the suspect out of the car. It was me and a couple other officers, and we pulled him out of the car and put him into custody.

At the close of evidence, Rhodes moved for judgment of acquittal. Regarding the carjacking count -- the only count challenged on appeal -- he asserted that "there doesn't

seem to be any evidence of [Rhodes] at any point in time, ever obtaining possession or control of the vehicle." Rather, he suggested that the evidence showed that it was unclear whether Rhodes or the Mazda driver caused the vehicle to move forward.

The court denied the motion and in finding Rhodes guilty of carjacking, the trial judge made the following findings:

> To me, the evidence is clear that there was a carjacking. The elements are that an individual may not take unauthorized possession or control of a motor vehicle from another individual who actually possesses the motor vehicle, by force or violence, or putting that individual in fear through intimidation or threat [of] force [or] violence.
>
> Well, clearly, Mr. Ulsch was just driving his car, sitting at a traffic light. Somebody jumps in through the window, total stranger. So there was no consent to any of that. So clearly, this was done by force or threat of force, by violence, by you know, kind of jumping in through the window, putting the person in fear.
>
> And I find, beyond a reasonable doubt—obviously, I'm measuring all these elements beyond a reasonable doubt—but that Mr. Rhodes actually took unauthorized possession or control.
>
> Because he had his hand on the steering wheel, he was pushing Mr. Ulsch away. And I find that Mr. Rhodes had his foot on the accelerator, so if you have your foot on the accelerator, and you have, you're fighting for control over the wheel, and you're causing the car to go forward, then you've taken unauthorized possession or control of the car.

Additional facts shall be presented as they become pertinent to the issue under discussion.

DISCUSSION

I. Motion for Judgment of Acquittal

On appeal, Rhodes again asserts that the State's evidence was insufficient to find him guilty of carjacking. He argues that there was no evidence to suggest that he (a) used or threatened the use of force or violence against the Mazda driver, or (b) possessed or controlled the vehicle. We will address each contention in turn.

We have summarized our standard of review when a conviction is challenged on sufficiency of the evidence grounds:

> The standard for our review . . . is whether, based upon the evidence presented, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The fact-finder possesses the ability to choose among differing inferences that might possibly be made from a factual situation, and the appellate court must give deference to all reasonable inferences that the fact-finder draws, regardless of whether the appellate court would have chosen a different reasonable inference.

Reeves v. State, 192 Md. App. 277, 302 (2010) (ellipses added) (internal alterations, quotation marks, and citations omitted).

Carjacking is prohibited by Md. Code (2002, 2012 Repl. Vol.) § 3-405(b)(1) of the Criminal Law Article ("CR"), which provides:

> An individual may not take unauthorized possession or control of a motor vehicle from another individual who actually possesses the motor vehicle, by force or violence, or by putting that individual in fear through intimidation or threat of force or violence.

The Court of Appeals has summarized the elements of carjacking as follows:

> (1) the defendant obtain unauthorized possession or control of a motor vehicle; (2) that the motor vehicle was in the actual possession of another person at that time; and (3) that the defendant used force or violence against that person, or put that person in fear through intimidation or threat of force or violence, in order to obtain the motor vehicle.

Harris v. State, 353 Md. 596, 614 (1999) (citing Maryland Criminal Pattern Jury Instruction MPJI 4:28A: Carjacking).

Here, the trial court found the defendant used force, and commented:

> Mr. Ulsch was just driving his car, sitting at a traffic light. Somebody jumps in through the window, total stranger. So there was no consent to any of that. So clearly, this was done by force or threat of force, by violence, by you know, kind of jumping in through the window, putting the person in fear.

Rhodes, however, asserts that to support a finding that he "used or threatened the use of force against" the Mazda's driver, the evidence would have to show that he "completely possessed or controlled" the vehicle, that he "forcibly removed [the driver] from his vehicle," or that he put the driver "in fear of bodily harm." He claims, however, that the evidence did not support such a finding. Although he admits that several witnesses described a "struggle" between him and the Mazda driver, he characterizes it as "inadvertent physical contact" in a small vehicle. Moreover, he insists that, given that he had no weapon, his words to the driver to "Get out, get out, get out or move," "Go," and "Drive" did not "rise to the level of threatening the use of force or violence."

The trial judge found that a "total stranger" suddenly dove through the car's open window, without the driver's consent. As such, the trial court determined such action was an act of "force or threat of force" which put the driver "in fear." We agree. A rational

trier of fact could reasonably conclude that that act, coupled with Rhodes's commands to "Get out, get out, get out or move" was done to obtain control over the vehicle. *Cf. Price v. State*, 111 Md. App. 487, 494 (1996) (finding force or violence element satisfied when defendant "walked up behind her and stated, 'Shut up, bitch' [with] one of [his] hands . . . near his waist [leading victim to] believ[e] he had a gun [such that victim] was actually in fear at that time[and] ran away and [defendant] was able to take her car.").

Rhodes next asserts that the evidence was insufficient to support a finding that he "possessed or controlled" the Mazda. He bases this contention on his claim that the evidence did not establish that he caused the vehicle to move. Rather, he maintains that the evidence showed that the driver, not him, "had complete control of the steering wheel" and that there was conflicting evidence as to whether he had a foot on the gas pedal.

The trial court, however, clearly credited Lieutenant Brown's testimony that Rhodes "put his hand back on the steering wheel" while "screaming" at the driver to "get out, get out, get out or move." Lieutenant Brown further testified that he observed Rhodes's left foot "pushing the gas, trying to get the car to go forward." Further, the driver testified that he had both of his feet on the brake, but Rhodes pressed the gas pedal, which caused the car to move forward. Accordingly, there was sufficient evidence from which a rational trier of fact could reasonably conclude that Rhodes caused the vehicle to move and, thus, controlled the vehicle, even if momentarily.

II. Officer Runkles's Testimony

Rhodes next challenges the trial court's decision to permit Officer Matthew Runkles -- another officer present during the pursuit and arrest -- to testify as to whether

the Mazda was able to be put into motion. The issue arose first during the State's direct examination of Officer Runkles:

> [STATE'S ATTORNEY]: And I want to ask you, what, if anything, did you hear coming from the Mazda Protégé?
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> OFFICER RUNKLES: When I ran up to the Mazda, and I eventually opened the driver's rear door, the engine to the Mazda was revving loudly.
>
> [STATE'S ATTORNEY]: And when you, and what did that mean to you?
>
> OFFICER RUNKLES: Well, as I ran—
>
> [DEFENSE COUNSEL]: Objection.
>
> OFFICER RUNKLES: —up to it—
>
> THE COURT: Overruled.
>
> OFFICER RUNKLES: As I ran up to it, the vehicle was in motion, and I observed, at the time, it was Sergeant Brown, now Lieutenant Brown, was hanging out of the passenger side of that vehicle, and that vehicle drove approximately 20 to 30 feet and struck another cruiser head on, so that vehicle was in motion. And a continuing revving engine meant that the engine was on, and the vehicle was still able to be in motion.

Defense counsel did not object again, and the State completed its direct examination. On the State's redirect examination, the issue was revisited:

> [STATE'S ATTORNEY]: When you said the car moved forward steadily—
>
> OFFICER RUNKLES: Yes, ma'am.
>
> [STATE'S ATTORNEY]: —would you characterize that as moving forward as if it just was in drive and no one had their foot on the brake or on the gas?

> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> OFFICER RUNKLES: No I don't believe so.
>
> [STATE'S ATTORNEY]: How would you characterize it instead?
>
> OFFICER RUNKLES: I believe that the gas was being depressed.
>
> [STATE'S ATTORNEY]: And you said that the engine was revving. Was that, did that coincide with the car moving forward?
>
> OFFICER RUNKLES: Yes.
>
> [STATE'S ATTORNEY]: And so it was your impression that the engine was revving due to a foot being on the gas?
>
> OFFICER RUNKLES: Yes.

Rhodes contends that the testimony that the engine was "revving loudly," and that Officer Runkles believed "that the gas was being depressed" were not based on his personal knowledge.[3] The State responds that the issue was not preserved for appellate review because Rhodes objected only after the question was posed and not after Officer Runkles's answer.

Contemporaneous objection to testimony is required to preserve an objection for appellate review. Md. Rule 4-323. But "there is no bright-line rule to determine when an

[3] Although unstated, it appears the prejudice from this alleged error is premised on Rhodes's mistaken belief that causing a vehicle to move is an element of carjacking. *See Harris v. State*, 353 Md. 596, 615 (1999) ("Unlike robbery, the carjacking statute requires no movement or asportation, only unauthorized possession or control.") (considering the precursor to CR § 3-405(b)(1), which contained no substantive difference).

objection should be made." *Prince v. State*, 216 Md. App. 178, 194 (2014). As a general rule, "an objection must be made when the question is asked or, if the answer is objectionable, then at that time by motion to strike." *Ware v. State*, 170 Md. App. 1, 19 (2006); *see also Ross v. State*, 276 Md. 664, 672 (1976) ("Unquestionably, a motion to strike out an answer is the correct action to take where an objection to a proper question is overruled but the answer is unresponsive or otherwise inadmissible[.]" (citing 1 J. Wigmore, Evidence § 18 (3d ed. 1940))). Here, the issue is whether counsel must object to improper testimony immediately after a trial court overrules an objection to a question intended to elicit that testimony.

We find *Ross v. State*, *supra*, instructive. In that case, the defendant objected to what he deemed an improper question but not to the witness's response. *Ross*, 276 Md. at 672. We held that because the objection to the question should have been sustained, the defendant need not move to strike the resultant answer. *Id.* at 673. The Court emphasized the closely intertwined nature of the question and answer. *Id.* at 672 ("We do not agree, however, with the hypothesis that the question itself was proper, and that therefore it was only the witness's response which was objectionable."). Indeed, we suggested that "[t]he critical question was nothing more than a thinly veiled effort to elicit the very answer which had been sought in the first instance." *Id.* at 673. As in *Ross*, the answer provided by Officer Runkles was precisely that sought through the State's Attorney's line of questioning. This was not a situation in which a narrow, proper question elicited an unexpected, irrelevant, and improper answer. It would be unnecessary for counsel to object

to what he or she deemed an improper question and then to object immediately to an answer that responded directly to that question.

Nevertheless, the trial court was free to consider an eyewitness account of the carjacking, based upon common sounds emitted by a vehicle and the velocity with which it moved, in arriving at its factual findings. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979) ("[It is] the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); *McMillian v. State,* 325 Md. 272, 281–82 (1992) ("The trial court's findings as to disputed facts are accepted by this Court unless found to be clearly erroneous after having given due regard to the lower court's opportunity to assess the credibility of the witnesses."). This is precisely the role of the trier of fact.

Moreover, any confusion Runkles's knowledge may have caused would certainly have been made harmless by the testimony of Lieutenant Brown, who testified that the vehicle was not in the park position and that Rhodes's foot was on the accelerator. Again, it is the province of the trial court to hear facts and to make factual determinations, and we will not disturb reasonable conclusions drawn from evidence properly before the court. *See Pinkney v. State*, 151 Md. App. 311, 327 (2003) (collecting cases that "emphasize a trial judge's or a jury's ability to choose among differing inferences that might possibly be made from a factual situation and the deference we must give in that regard to the inferences a fact-finder may draw").

III. Suspended Sentences

The final issue raised by Rhodes concerns his sentence for the three convictions. The court sentenced him as follows:

> So, on Count 1, carjacking, I'm going to sentence you to 25 years without parole. I have no choice.
>
> Count 3, I'm going to suspend sentence, generally, that's the assault count.
>
> And Count 7, fleeing and eluding, I'm going to suspend sentence generally.
>
> So you've got a 25-year sentence. I'm not going to suspend any of it. I'm not going to put you on probation. That it just a 25-year sentence, and that's that.

The commitment record reflects that he was sentenced to a 25-year sentence for the carjacking count and zero years for the assault and fleeing and eluding counts.

Rhodes now asks that his commitment record be amended to reflect that the two suspended sentences are to run concurrently with—and not consecutively to—his carjacking sentence. He argues that the failure of the commitment record to expressly reflect that the generally suspended sentences are to run concurrently was a "procedural misstep" and does not conform to Maryland Rule 4-351.[4] Rhodes cites no relevant case law in connection with his contention.

[4] Maryland Rule 4-351 provides, in part:

> (a) Content. When a person is convicted of an offense and sentenced to imprisonment, the clerk shall deliver to the officer into whose custody the defendant has been placed a commitment record containing:

Further, should Rhodes believe the trial court was mistaken in imposing the sentence, he could seek the trial court's revisory power under Maryland Rule 4-331(b). Moreover, the trial judge did not state that the sentences were to run consecutively. As such, the sentences should be interpreted to run concurrently. *See Nelson v. State*, 66 Md. App. 304, 314 (1985) ("Where, as here, the record does not reflect whether the sentences, when imposed, were meant to run concurrently or consecutively, with each other, we hold the sentences should be construed to be concurrent with each other").

Rhodes's commitment record does not run afoul of Maryland Rule 4-351. Because the trial court's sentence and commitment record reflect that he received no sentences for assault or fleeing and eluding and received only the 25-year sentence for carjacking, the commitment record need not be amended.

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

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* * *

> (4) The sentence for each count, the date the sentence was imposed, the date from which the sentence runs, and any credit allowed to the defendant by law; [and]
>
> (5) A statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence[.]