Circuit Court for Prince George's County
Case No. CT180187X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2608

September Term, 2018

CHRISTOPHER EMMERSON RENNIE

v.

STATE OF MARYLAND

Beachley,
Wells,
Gould,

JJ.

Opinion by Gould, J.

Filed: March 26, 2020

A jury in the Circuit Court for Prince George's County convicted Christopher Emmerson Rennie, of multiple crimes relating to his illegal possession of a firearm. The trial court sentenced Mr. Rennie to a total of 15 years' imprisonment, suspending all but six years, after which he timely filed a notice of appeal.

Mr. Rennie asks us to consider whether the trial court erred by: (1) permitting the State to elicit that he had multiple unspecified convictions; and (2) improperly excluding non-hearsay testimony. We hold that Mr. Rennie waived his first argument by stipulating to the fact that he had multiple convictions. For that same reason, any alleged error in that regard was harmless. We also hold that Mr. Rennie waived his objection to the exclusion of the challenged testimony by failing to proffer the substance of the excluded testimony at trial. We therefore affirm the convictions.

BACKGROUND FACTS AND LEGAL PROCEEDINGS

On November 20, 2017, Officer Kenneth Santos of the Prince George's County Police Department was on routine patrol in Lanham when he observed a Chevrolet Impala displaying expired registration tags. Officer Santos initiated a traffic stop; the driver, later identified as Mr. Rennie, was the only occupant of the vehicle.

As Officer Santos approached the vehicle, Mr. Rennie rolled down the driver's side window, which enabled the officer to smell marijuana emanating from inside. Officer Santos also saw "little Ziploc Baggies scattered around" the car.[1]

[1] Mr. Rennie acknowledged to the officer that he used the Ziploc Baggies to portion out marijuana for his personal use.

Officer Santos asked Mr. Rennie to step out of the car. He then searched the vehicle, finding a small baggie containing what appeared to be marijuana and a digital scale in the center console of the vehicle and a zipped bookbag in the trunk. When he opened the main compartment of the bookbag, Officer Santos saw an unloaded handgun, a .38 caliber magazine, and thirteen .38 caliber handgun rounds. Inside a smaller compartment, Officer Santos found Mr. Rennie's checkbook. After learning from a background check that Mr. Rennie was disqualified from possessing a handgun, Officer Santos placed him under arrest.

Mr. Rennie was then interviewed by another officer, Detective Bradley Alexander. After waiving his Miranda rights,[2] Mr. Rennie gave Detective Alexander a recorded statement.[3] Mr. Rennie said that approximately three months earlier, a friend had left a different gun in his car while they were running an errand (the "September incident"). When the police subsequently pulled Mr. Rennie over and searched his car,[4] they found his friend's gun.

Mr. Rennie explained that he initially intended to take the fall for his unnamed friend, but then changed his mind. When Mr. Rennie told this friend that he was going to come clean, the friend threatened that Mr. Rennie would "have some problems if [Mr.

[2] See Miranda v. Arizona, 384 U.S. 436 (1966).

[3] The recording was played for the jury during trial.

[4] Mr. Rennie did not explain the reason for this police search during the interview.

Rennie] put his name out there." Thus, at the time of the interview, charges were pending against Mr. Rennie in Baltimore relating to the possession of that firearm.

Nonetheless, despite the threat, Mr. Rennie explained that he had decided that very day to tell his lawyer the friend's name, and intended to do so when he was pulled over. Anticipating the need for protection from his friend's veiled threats, a female friend bought him the gun found in his vehicle. Mr. Rennie conceded, "[s]o the gun that was in the car, yeah, that was mine. But I got it for protection in case he came to me."

At trial, the parties stipulated that Mr. Rennie had been "previously convicted of crimes that disqualify him from possessing a regulated firearm."[5] Thus, the central issue was whether Mr. Rennie had possession of the firearm found in the Impala. On this point, Mr. Rennie changed his story.

Mr. Rennie explained that in November 2017, he had left his bookbag in a mini-van rented by a "Mr. Turner"—the friend he had previously mentioned during the interview with Detective Alexander. Subsequently, on November 20, Mr. Rennie was driving a rented Impala that had also been previously driven by Mr. Turner. Mr. Rennie testified that when he was stopped on November 20, 2017, he was unaware that his bookbag had been placed in the trunk of the Impala or that the gun, which belonged to Mr. Turner, was inside.

[5] The parties originally stipulated that Mr. Rennie was "previously convicted of *a crime* that disqualifies him from possessing a regulated firearm." (Emphasis added). The prosecutor later clarified to the judge that Mr. Rennie had two previous convictions—possession with intent to distribute and second-degree assault. The stipulation was then changed to indicate the conviction for these "crimes."

On cross-examination, Mr. Rennie said he did not mention Mr. Turner by name to Detective Alexander during his recorded statement because Mr. Turner had made threats against him and his family, and he was afraid. He explained that he had "covered for" Mr. Turner regarding the September incident, in which the other gun had been found in the vehicle he had been driving. Mr. Rennie stated that he had planned to "give [Mr. Turner] up" for both the September incident and the November gun charges. When asked to explain this change of heart, Mr. Rennie explained that it was in response to a conversation he had had with the police. The court sustained the State's objection when Mr. Rennie was asked what the officers had said to him.

The jury convicted Mr. Rennie of possession of a firearm after a disqualifying criminal conviction, illegal possession of a regulated firearm, possession of firearms, wearing, carrying and transporting a handgun in a vehicle/public, and illegal possession of ammunition.

Mr. Rennie now appeals, contending that the trial court erred by allowing the jury to hear that he had "multiple convictions." He also argues that the court erred by refusing to allow him to testify that, after the police officers informed him that Mr. Turner was being investigated for other crimes, Mr. Rennie decided that he would give the authorities Mr. Turner's name. He reasons that this would have explained why, at trial, he would have felt safe revealing Mr. Turner's identity and the inconsistencies in his statements.

DISCUSSION

ADMISSION OF THE "MULTIPLE CONVICTIONS" TESTIMONY

Mr. Rennie contends that the trial court erred in permitting the State to advise the jury that he had "multiple" prior convictions and then in stating directly to the jury that he had "more than one" conviction. The court's comments, he argues, violated Maryland Rule 5-404(b)[6] and may have caused one or more jurors to convict him simply because they believed he had a propensity to commit crimes. We hold that Mr. Rennie waived this contention by allowing a stipulation to be presented to the jury that stated that he had more than one conviction. For this same reason, any statement by the State or the court that Mr. Rennie had "multiple" convictions was harmless.

During the direct examination of Officer Santos and at the State's request, the court read into the record the stipulation that Mr. Rennie had been "previously convicted of a crime that disqualifies him from possessing a regulated firearm." Subsequently, the prosecutor advised the court outside of the presence of the jury that she wanted to "put on the record" the specific convictions that were the subject of the stipulation. She explained to the court that Mr. Rennie had a conviction of second-degree assault in Calvert County

[6] Md. Rule 5-404(b) provides that "[e]vidence of other crimes, wrongs, or other acts including delinquent acts as defined by Code, Courts Article § 3-8A-01 is not admissible to prove the character of a person in order to show action in the 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, absence of mistake or accident, or in conformity with Rule 5-413."

and a conviction of possession with intent to distribute drugs in Frederick County. Defense counsel agreed to the accuracy of the prosecutor's assertion.

Once Mr. Rennie declared his intent to testify, the prosecutor stated she planned to impeach his credibility with his previous conviction for possession with intent to distribute, and Mr. Rennie did not object. Counsel then engaged in a lengthy discussion with the court, again out of the jury's presence, regarding the State's intention to also mention Mr. Rennie's previous assault conviction, "[j]ust for his knowledge and background" of the criminal justice system, to show that he was not naïve regarding police questioning and was therefore not likely coerced into making his inculpatory statement to Detective Alexander. Defense counsel agreed that the prosecutor could ask Mr. Rennie if he had ever been locked up or questioned by detectives, but given the stipulation that had already been read to the jury, objected to the question, "have you been convicted of second degree assault" because it's effect would be to impermissibly impeach him with a misdemeanor that was more than 15 years old. Defense counsel also represented that Mr. Rennie would not suggest that he had been coerced or pressured into making his statement, thus negating the State's need to rebut such testimony with evidence of the assault conviction.

Later, when counsel disagreed about the wording of the verdict sheet, they discussed Mr. Rennie's prior convictions and agreed to change the stipulation to read, "The parties, through undersigned counsel, hereby stipulate that the defendant was previously convicted

of crimes that disqualify him from possessing a regulated firearm." The following colloquy then occurred:

> [PROSECUTOR]: Just to be clear, I'm allowed to say he has multiple convictions, one of such being the possession with intent to distribute?
>
> THE COURT: I don't remember where we were on that. I don't remember if those were your [exact] words.
>
> [PROSECUTOR]: Right. So, I wasn't going to say crime of violence, felony or anything like that. But, we've already stipulated that he has committed crimes, he has been convicted under several—he has crimes of disqualifying him.
>
> THE COURT: That's what we're going to say. That's what we are saying.
>
> [PROSECUTOR]: We are stipulating to that. So, there should be no issue with me saying--and he's on the stand, you have been convicted of multiple crimes; is that correct? Yes. One of those crimes being possession with intent to distribute, correct? Yes. Because that's impeachable, possession with intent to distribute is impeachable. The second degree assault is not impeachable. That was [defense counsel's] concern.
>
> However, I'm just trying to attack his argument if he's trying to say he's like a young person that's confused, caught up and just didn't know what was going on. No, he has a background. He knows exactly what is going on here.
>
> [DEFENSE COUNSEL]: If he says that he was confused, and didn't know what was going on, then you can ask him that. But he's not going to say that.
>
> THE COURT: So we'll address it at that time.

During the State's cross-examination, after Mr. Rennie acknowledged that he had told Detective Alexander he had obtained the gun found in his car on November 20, 2017 for protection, the prosecutor asked:

> Q. Now, you have several convictions in your background; is that correct?
>
> A. Not several.

[DEFENSE COUNSEL]: Objection to several.

[PROSECUTOR]: Multiple convictions.

THE WITNESS: Not multiple.

BY [PROSECUTOR]:

Q. Do you have more than one?

A. I have one, CDS possession.

Q. Do you have more than one conviction?

BY [DEFENSE COUNSEL]: Objection.

THE COURT: It is more than one, it is an S.

[DEFENSE COUNSEL]: What is that?

THE COURT: More than one, it is an S.

THE WITNESS: I have two.

THE COURT: Okay.

[PROSECUTOR]: All right.

Mr. Rennie now argues that the trial court erred in permitting the State to elicit testimony that he had more than one prior conviction. He also argues that the court compounded its error by stating directly to the jury that Mr. Rennie had numerous convictions.

Mr. Rennie has, however, waived the right to raise this issue on appeal. "Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection." DeLeon v. State, 407 Md. 16, 31 (2008); see also Hunt v. State, 321 Md. 387, 433 (1990) (quotation omitted) ("[A] party waives his objection to testimony by

subsequently offering testimony on the same matter"). The parties stipulated that Mr. Rennie had been "previously convicted of *crimes* that disqualify him from possessing a regulated firearm." (Emphasis added). The stipulation was presented to the jury without objection, and Mr. Rennie testified that he knew he was not permitted to possess firearms because of his previous two convictions. Mr. Rennie has therefore waived the right to complain that the court permitted the prosecutor to state—and even repeat—that he had "more than one conviction."

For much the same reason, even if the court had erred in permitting the prosecutor to elicit such testimony (and in repeating it), any such error was harmless beyond a reasonable doubt. See Dionas v. State, 436 Md. 97, 108 (2013) (quotation omitted) (in a criminal case, an error is harmless when a reviewing court, after independently reviewing the record, is satisfied beyond a reasonable doubt "that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict"). Admission of improper evidence may be harmless when that evidence was merely cumulative of other evidence properly admitted. See Potts v. State, 231 Md. App. 398, 408 (2016) (quotation omitted) ("Evidence is cumulative when, beyond a reasonable doubt, we are convinced that there was sufficient evidence, independent of the [evidence] complained of, to support the appellant['s] conviction [ ]. In other words, cumulative evidence tends to prove the same point as other evidence presented during the trial[.]").

Here, the prosecutor's questioning, and the trial court's repetition of the fact that Mr. Rennie had more than one prior conviction, were merely cumulative of the evidence

that had already been introduced without objection by the stipulation agreed upon by the parties. Accordingly, even if the trial court erred in allowing evidence of Mr. Rennie's convictions to come in thorough cross-examination, such an error was harmless beyond a reasonable doubt.

FAILURE TO ADMIT TESTIMONY
REGARDING THE INVESTIGATION INTO MR. TURNER

Mr. Rennie also contends that the trial court erred when it improperly prohibited him from testifying that police officers had told him, after he had declined to name Mr. Turner as the owner of the gun during his statement to Detective Alexander, that they had been investigating Mr. Turner. In his view, the statement was admissible not for its truth, but for its effect upon him—that is, he then felt safe implicating Mr. Turner because Mr. Turner was already under police investigation. Thus, this testimony would have presumably explained the inconsistencies between his statements, thus rehabilitating his credibility in front of the jury.

During his statement to Detective Alexander, Mr. Rennie admitted that the handgun Officer Santos found in the trunk of his rental car belonged to him. At trial, however, he recanted that admission and implicated Mr. Turner, suggesting that he had initially protected Mr. Turner for fear of retaliation.

On cross-examination, the prosecutor asked Mr. Rennie why he had changed his mind and decided to implicate Mr. Turner. Mr. Rennie responded:

> After I spoke to a couple of police officers and they told me instead of taking the charge for him that can get me in a lot of trouble, taking me away from my family, I should give him up.

Later during cross-examination, the prosecutor elicited the following from Mr. Rennie:

> Q. You said you were covering for [Keith Turner], but on this video you said you were about to give up his name.
>
> A. But, I still mention that I was going to give up his name. I mention it over and over.
>
> Q. Exactly. That doesn't make sense, right? Because why are you going to give up his name on the one part, but implicate another person on another part[?]
>
> A. Because I was still contemplating how I was going to do that. And it is not until Anne Arundel County Police came to me in the jail—
>
> Q. I'm not asking about Anne Arundel—
>
> [DEFENSE COUNSEL]: I think he can answer a question.
>
> THE COURT: All right.
>
> So please let the witness answer the question completely, so the objection is sustained.
>
> THE WITNESS: When I got pulled over and ended up going to jail in Upper Marlboro. Anne Arundel County Police came to me and recommended that--it has something to do with Keith Turner.
>
> [PROSECUTOR]: Objection. Hearsay to whatever someone tells him. It is hearsay.
>
> THE COURT: Hold on, hold on. Her objection is sustained. You can't say what other people told you.

The prosecutor then moved on to another line of questioning without further comment from defense counsel.

Mr. Rennie failed to proffer to the court the potential relevance of the excluded testimony and therefore did not preserve this issue for our review. Md. Rule 5-103(a) provides, in pertinent part:

> (a) Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and
>
> ***
>
> (2) In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered. The court may direct the making of an offer in question and answer form.

"The most common method of preserving a claim that the trial court erred is to proffer the substance and relevance of the excluded evidence." Devincentz v. State, 460 Md. 518, 535 (2018) (citation omitted). A proffer makes "the grounds for a different ruling manifest to the trial court at a time when the court can consider those grounds and decide whether to make a different ruling." Id. (quotation omitted). The proffer must sufficiently establish that the examination will likely reveal information relevant to the proceedings. Grandison v. State, 341 Md. 175, 208 (1995). In other words, the party trying to introduce the evidence must establish a relevant relationship between the expected testimony and the nature of the issue before the court. Id.

The relevance of the excluded testimony must be determined by the proffer made to the trial court, and not based on arguments first raised on appeal. The Court of Appeals has stated about a theory not raised at the time the witness is on the stand:

> We are hard put to say that it was preserved as a basis for overturning [the defendant's] conviction on the ground that the trial judge failed to allow his counsel to pursue it. A trial court is not required to imagine all reasonable offshoots of the argument actually presented to [it] before making a ruling on admissibility.

Peterson v. State, 444 Md. 105, 148 (2015) (quotation omitted) (cleaned up). To preserve the issue for appeal, the proffer must also include the "substance and importance of the expected answers" to the excluded questions. Conyers v. State, 354 Md. 132, 164 (1999).

A proffer is not required in all instances. If what the examiner is trying to accomplish is obvious, we may excuse the absence of a proffer and consider the issue on appeal. Waldron v. State, 62 Md. App. 686, 698 (1985). If, on the other hand, the expected answer to counsel's proposed question and its relevance are not obvious because the witness could have answered the question "in any number of ways," a proffer will be required. Merzbacher v. State, 346 Md. 391, 416 (1997).

Here, Mr. Rennie made no proffer as to the substance or relevance of the statement in question. The anticipated testimony as set forth in Mr. Rennie's brief—that he was no longer afraid to implicate Mr. Turner because a police officer told him Mr. Turner was under investigation in another county—was not obvious from the context in which the question was posed.[7] In the absence of a proffer, therefore, the argument, raised for the first time on appeal, fails. Accordingly, the trial court did not abuse its discretion in sustaining the objection to Mr. Rennie's testimony.

JUDGMENTS AFFIRMED;
COSTS TO BE PAID BY APPELLANT.

[7] Indeed, Mr. Rennie had earlier testified to something else entirely, that is, that he decided to "give [Mr. Turner] up because a couple of police officers" said he should, to avoid incarceration.