Circuit Court for Caroline County
Case No. C-05-CR-18-000126

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2988

September Term, 2018

KEVIN RUSSELL PARKER, JR.

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 10, 2020

Following a jury trial in the Circuit Court for Caroline County, Kevin Russell Parker, Jr., appellant, was convicted of second-degree murder and unauthorized removal of property. He raises two issues on appeal: (1) whether the circuit court erred in denying his request to instruct the jury on self-defense, and (2) whether the circuit court erred in preventing him from introducing certain statements that he made to the police following his arrest pursuant to the rule of completeness. For the reasons that follow, we shall affirm.

BACKGROUND

At trial, the State presented evidence that Howard Lanman, the victim, drove to Mr. Parker's house in Greensboro, Maryland to give Mr. Parker cocaine in exchange for a pair of earrings. Mr. Parker entered the victim's vehicle to complete the transaction. Thereafter, several witnesses observed the victim running down the street, holding his neck, and bleeding heavily. When they went to help the victim, they saw the victim's car drive away. The victim repeatedly told them that Kevin Parker was the person who had stabbed him. The victim, who had five cuts on his face, neck and arm, and nine stab wounds on various parts of this body, ultimately died from his injuries. The medical examiner testified that several of the stab wounds appeared to have been caused by a single-edged knife. Randy Little testified that he had given the victim a single-edged knife shaped like an AK-47 several days before the incident.

The same evening, Mr. Parker called his friend Shane Kurtz and asked if he could spend the night at his house because he had "got himself in a fight with a gentleman" "over $40.00." Mr. Kurtz agreed and, when Mr. Parker arrived at his house, he observed that Mr. Parker had a cut on his hand. The police arrested Mr. Parker at Mr. Kurtz's house the

next morning. They also located the victim's vehicle about 10 miles from Mr. Kurtz's house. The front, driver's side seat of the vehicle was covered with blood.

The police interrogated Mr. Parker after his arrest. During that interview he admitted that: (1) he had contacted the victim the day of the incident; (2) the victim had come to his house to exchange cocaine for a pair of earrings; (3) he had gotten into the car with the victim to complete the transaction; (4) no one else was in the car; (5) at some point the victim had gotten out of the vehicle; (6) he then drove away in the vehicle; and (7) as he was driving he threw a knife out of the car window. Based on information provided by Mr. Parker, the police recovered a knife on the side of the road just outside of Greensboro. Mr. Little testified that the knife recovered by the police was the same knife that he had given to the victim several days before the murder. No other weapons were recovered.

SELF-DEFENSE INSTRUCTION

Mr. Parker first contends that the trial court erred in refusing to instruct the jury on self-defense. In determining whether to instruct the jury on self-defense "whether there is evidence in the record pertaining to the defendant's mental state at the time of the incident is critical. Only if the record reflects, from whatever source, that, at the time, the defendant subjectively believed that he or she was in imminent danger of death or great bodily harm could the issue be generated." *State v. Martin*, 329 Md. 351, 362-63 (1993). Here, the best source of information regarding Mr. Parker's mental state would have been Mr. Parker himself. However, he did not testify at trial. Moreover, neither the State nor Mr. Parker presented evidence establishing what happened inside the victim's vehicle, such that the jury could have inferred Mr. Parker's actual and subjective mental state at the time of the

stabbing. Because the evidence did not establish all of the elements of self-defense, the court did not err in refusing to instruct the jury on that issue. *See generally Bynes v. State*, 237 Md. App. 439, 449 (2018) (noting that the evidence "must be generated not simply with respect to self-defense generally, but with respect to each of its constituent components specifically").

ADMISSIBILITY OF MR. PARKER'S STATEMENTS TO THE POLICE

During his interview with police, Mr. Parker stated that, after he entered the victim's vehicle, the victim pulled out a knife and tried to rob him, that he was cut on the hand during the attack, that he was able to get the knife from the victim, and that after getting the knife, he stabbed the victim. At trial, the State indicated that it intended to introduce other portions of Mr. Parker's recorded interview where he discussed what had happened before and after the murder. Anticipating that Mr. Parker might attempt to introduce the entire interview, the State filed a motion *in limine* to prevent him from doing so. In response to that motion, defense counsel argued that, if the State elected to play any portion of the video, it should be required to play the entire video under the rule of completeness.

The court considered the State's motion on the second day of trial. After hearing arguments from counsel, the court noted that "if the State were saying we'd just like to get the stabbing part and not the self-defense part, then that would clearly be a problem. But, if they're not, if they're willing to forego introducing an admission by the Defendant that he physically caused [the injuries], then I tend to think that is a separate [statement], notwithstanding the fact that this happened to be part of a longer interview[.]" However, the court subsequently indicated that because it had not heard the interview, and did not

know what other evidence might come in, its decision was "preliminary based upon . . . further objection or maybe some other developments[.]"

The next day, the State called Detective Sabrina Metzger, who was one of the officers who interviewed Mr. Parker, as a witness. Detective Metzger testified about what Mr. Parker told her had occurred before and after the murder. However, she did not testify about any of Mr. Parker's statements regarding what happened inside the vehicle. The State elected not to introduce any audio recording of Mr. Parker's interrogation. After the State concluded its examination of Detective Metzger, the court called a recess and provided the parties with an opportunity to make additional arguments regarding the admissibility of Mr. Parker's other statements during cross-examination. At this point, defense counsel informed the court that, subject to what transpired on cross-examination, he did not "have an active desire to play the recording." Defense counsel then proceeded to cross-examine Detective Metzger and did not ask her any questions about Mr. Parker's statements regarding self-defense.

On appeal, Mr. Parker now asserts that the court erred in prohibiting him from introducing his statement to the police that he had acted in self-defense. However, although the court initially stated that it did not believe the statement was admissible, it also informed the parties that its ruling was preliminary. Then, when the court provided defense counsel with an additional opportunity to address the admissibility of that statement following Detective Metzger's testimony on direct, defense counsel informed the court that he no longer had a desire to play the statement. And consistent with that stated plan, defense counsel did not attempt to introduce Mr. Parker's statements during cross-examination.

Consequently, he has waived the right to challenge the admissibility of his statements on appeal. *See Halloran v. Montgomery Cnty. Dept. of Pub. Works*, 185 Md. App. 171 (2009) ("When a party has the option of objecting, his failure to do so while it is still within the power of the trial court to correct the error is regarded as a waiver estopping him from obtaining a review of the point or question on appeal." (citation omitted)).[1]

JUDGMENTS OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[1] We note that, even if Mr. Parker had only failed to preserve, rather than affirmatively waive, this claim, we would not exercise our discretion to review it for plain error pursuant to Maryland Rule 8-131(a).