Circuit Court for Montgomery County
Case No. 133204C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2994

September Term, 2018

ARTHUR ARCHULETA

v.

STATE OF MARYLAND

Graeff,
Arthur,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: March 27, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Arthur Archuleta was indicted by the Grand Jury for Montgomery County on five counts of second-degree assault and theft. The jury acquitted appellant of theft, but because the jury was unable to reach a unanimous verdict on the five charges of second-degree assault, the trial court declared a mistrial. Following a retrial, the jury acquitted appellant of three counts of second-degree assault and convicted him of two counts of assault. Appellant presents the following questions for our review:

> "1. Was the evidence sufficient to convict Appellant of the fifth count of assault where the State only elicited testimony about the first four counts from the alleged victim?
>
> 2. Did the court err in restricting Appellant's ability to cross-examine the State's witnesses?"

Finding no error, we shall affirm.

I.

The following facts were presented at trial. In 2014, Joel Elgin, who was 26 years old, moved into the house of appellant, who was in his mid-60s, after appellant promised to help Mr. Elgin with his finances. Mr. Elgin was appellant's neighbor and testified that he looked up to appellant as a "grandfather" figure. At the time, Mr. Elgin had thousands of dollars in unpaid debts and a low credit score. Mr. Elgin also has autism, ADHD, and multiple health problems, including depression, anxiety, and vertigo. Appellant agreed to help directly pay off Mr. Elgin's high-interest car loan, and in exchange, Mr. Elgin agreed to pay rent to and do household chores for appellant. Mr. Elgin also found employment to become financially independent and to help pay off his debt to appellant.

While living with appellant, Mr. Elgin alleged that appellant assaulted him at least five times. First, in August 2017, Mr. Elgin alleged that appellant hit him in the head with a can of starter fluid while they worked to start a lawn mower. Second, on an unspecified date, Mr. Elgin alleged that appellant punched and slapped him in the face after accusing him of taking the wrong meat out of the freezer to thaw. Third, some time between September 25 and October 5, 2017, appellant allegedly dug his nails into and shook Mr. Elgin's head after confronting him with a small purchase that Mr. Elgin made.[1] Fourth, in early October after the previous incident, appellant allegedly punched Mr. Elgin in the face and hit him in the head with a frying pan after expressing dissatisfaction with the answers that Mr. Elgin gave him to unspecified questions. Fifth, on October 14 or 15, 2017, Mr. Elgin alleged that appellant punched him in the face while they were in appellant's kitchen. Appellant denied that these assaults occurred.

During opening arguments, the State told the jury that Mr. Elgin would describe five incidents of assault by appellant. Mr. Elgin testified on direct examination about the first four incidents. When the State asked Mr. Elgin to describe "the most recent" incident, Mr. Elgin described the assault with the frying pan that allegedly occurred before the October 14 or 15 assault.

Mr. Elgin did not testify about the October 14 or 15 assault on direct examination. The evidence presented to support his claim that this incident occurred included testimony

[1] Mr. Elgin gave appellant permission to open his mail as a condition of living with appellant. The small purchase showed up on Mr. Elgin's bank statement. The record is unclear as to why precisely appellant was angry with the purchase, but presumably it was because he deemed it wasteful.

from two witnesses and photographs of Mr. Elgin's injuries. The first witness, a family friend of Mr. Elgin, testified that she saw injuries on Mr. Elgin's face on October 17 when he called her expressing a desire to move out of appellant's house. The second witness, Detective Theresa Durham, testified that she saw injuries on Mr. Elgin's face when she met him on October 18. During Detective Durham's testimony, the court played a recording of Detective Durham's interview with Mr. Elgin about the alleged October 14 or 15 assault. The court allowed the recording to be used to rehabilitate Mr. Elgin's credibility and explained the purpose of this evidence to the jury as follows:

> "Ladies and gentlemen, I'm going to allow counsel to play . . . three portions of a recorded statement that Mr. Elgin gave to the detective . . . prior to trial. I'm allowing you to hear these statements only to help you decide whether or not to believe the trial testimony of Mr. Elgin. These statements are not admitted to show that what Mr. Elgin told the Detective at the time he gave his interview is true."

Mr. Elgin also testified that he told friends whom he met online about appellant's conduct towards him. He testified that he felt socially isolated living with appellant and that both this and appellant's alleged abusive behavior motivated him to move out.

During cross-examination of Mr. Elgin, defense counsel tried to question him about his assertion that he felt socially isolated while living with appellant and had impaired social and cognitive function. Without objection, defense counsel questioned Mr. Elgin about his work at Sears and AAA car centers as a mechanic. Defense counsel also tried to ask Mr. Elgin if he ran advanced software on his computer to show that Mr. Elgin was able to understand and work through complex problems. The State objected to the relevance of this question, and the court sustained the objection as follows:

> "THE COURT: What's the relevance of whether his hard drive was partitioned or not?
>
> [DEFENSE COUNSEL]: . . . If I'm allowed to bring up his computer skills, it would show that he is not a limited person.
>
> THE COURT: So he's a savant. So what?
>
> ***
>
> THE COURT: Let's say he can do calculus better than me? So what? It's probably not hard. What's the germaneness of his ability to partition a hard drive?
>
> [DEFENSE COUNSEL]: It's not just the partition of hard drives. That he was capable of running two different operating systems, one of them using Linux.
>
> THE COURT: What does that have to do with his social skills?
>
> [DEFENSE COUNSEL]: It doesn't have anything to do with his social skills.
>
> ***
>
> THE COURT: That's the objection.
>
> [DEFENSE COUNSEL]: It does have to do with his ability to comprehend things around him and work through problems. Surely if he can use Linux he can work through it.
>
> THE COURT: Yes. For those who have no understanding of . . . human beings, social skills, cognitive abilities, autism spectrum this guy could probably program a rocket to go to Mars. He probably couldn't figure out the Avis counter at the airport. What difference does that make?"

Defense counsel tried to ask Mr. Elgin if he had traveled alone to Canada shortly after moving out of appellant's house to show that he was able to navigate social situations. The State objected to this question, and the court sustained on relevance grounds as

follows:

> "THE COURT: . . . [T]hese other extrinsic acts of the witness[,] how are they relevant to anything?
>
> [DEFENSE COUNSEL]: . . . If he can travel by himself to another country for a convention that says a whole lot about his social skills.
>
> THE COURT: Why do you say that?
>
> [DEFENSE COUNSEL]: He can navigate airports. He is obviously going there for very social purposes.
>
> THE COURT: That's like saying that the female who graduated first in the class from Harvard was unable to be a domestic violence victim because she's so darn smart and we all know that unfortunately happens all the time. An[d] the one has nothing to do with the other.
>
> ***
>
> Professor Epstein from Georgetown in terms of why victims do and don't report made it clear. The literature establishes that one's IQ or ability to do certain things has nothing to do with one's ability quote unquote to be a domestic or partner violence [victim].
>
> ***
>
> The literature says no. Objection is sustained."

Defense counsel tried to impeach Mr. Elgin's claim that appellant was a "bad person." Defense counsel elicited information about how appellant helped Mr. Elgin find his job at Sears and taught him to do home repair. Defense counsel also sought to ask him if they had done charity work together. The State objected to this question, and the court sustained the objection as "collateral."

Furthermore, defense counsel tried to establish that Mr. Elgin had a motive to lie

about the alleged assaults because appellant had taken title to Mr. Elgin's car and Mr. Elgin still owed him money for paying off the car loan. The State objected to this line of questioning, and the court sustained the objection as follows:

> "[DEFENSE COUNSEL]: Joel, who has the car now?
>
> [MR. ELGIN]: [Appellant] does.
>
> [DEFENSE COUNSEL]: And why is that?
>
> [MR. ELGIN]: Because the title is in his name.
>
> [THE STATE]: Objection.
>
> ***
>
> THE COURT: Maybe I'm confused. I thought you told me at one point . . . that [Mr. Elgin] grabbed the car.
>
> [DEFENSE COUNSEL]: Yes. That's correct.
>
> THE COURT: Okay. So then something happened after that?
>
> [DEFENSE COUNSEL]: While this matter was pending [appellant] . . . got the car back.[2]
>
> ***
>
> THE COURT: . . . You're getting into the intricacies of the legal proceeding. [The jury] do[esn]'t know what . . . that is.
>
> [Defense Counsel]: I mean I think it's . . . enough to know that [appellant]—
>
> THE COURT: Sued [Mr. Elgin]?
>
> [DEFENSE COUNSEL]: —sued him and got the car back.

[2] While not captured in the transcript (noted as "(unintelligible)"), it appears that defense counsel informed the judge at this point that appellant sued Mr. Elgin for possession of the car, which explains the rest of the interaction.

> THE COURT: Well, I think it's gone far enough. . . . [U]nder *Callaway v. State* I've given you lots of latitude to intrinsically impeach the guy and you've done it terrifically. So objection sustained."

Defense counsel then tried rephrasing the questions about Mr. Elgin's debt to appellant on the car. The State again objected, and the court sustained the State's objection as follows:

> "[DEFENSE COUNSEL]: All right. Joel, in September and October of 2017 [appellant] started asking you when you were going to make some payments towards that car. Right?
>
> [THE STATE]: Objection.
>
> ***
>
> [DEFENSE COUNSEL]: I'm allowed to present a defense theory that he actually moved out because [appellant] was asking him for money.
>
> ***
>
> THE COURT: What his theory of the case is [that] this guy is making all this up because he doesn't want to pay back the car loan. Now, that may not be true but why can't they put that out there? . . . [N]ot as a defense to the assault but to disbelieve the witness.
>
> [THE STATE]: I understand that but the form of it is improper.
>
> ***
>
> THE COURT: Why?
>
> [THE STATE]: Because [it's] introducing self-serving hearsay statements . . . .
>
> ***

> THE COURT: So I'm going to sustain the objection as to form. Allow you to rephrase it. If you want to show that this guy has a quote unquote ulterior motive fine . . . you have to do it without putting in the hearsay piece. I think that's fair."

Defense counsel then asked Mr. Elgin, "In fact, you moved out because [appellant] was coming after you for money. Right?" The State objected, and the court sustained the objection, directing defense counsel to rephrase the question. Finally, defense counsel asked Mr. Elgin, "*You moved out because you didn't want to pay [appellant]?*" Mr. Elgin responded, "*Correct.*"

After the State rested its case, appellant moved for judgment of acquittal on one count of assault, claiming that the evidence presented for the fifth incident was insufficient and that Mr. Elgin only testified about the fifth incident on cross-examination. The court determined that the evidence was sufficient to establish appellant's guilt beyond a reasonable doubt on the fifth count and denied the motion as follows:

> "Well, he did testify . . . with varying degree of specificity . . . [about] the five events from which the jury could but is not required to find beyond a reasonable doubt that a battery occurred. They may disagree and they may say they're not satisfied. Motion denied."

Appellant was convicted of the third and fifth assaults and sentenced as stated above, and this appeal followed.

II.

Before this Court, appellant makes two arguments. First, he argues that the jury had "no non-speculative basis" to decide if five assaults occurred because the State failed to

elicit sufficient evidence of the final alleged assault on October 14 or 15, 2017. Appellant maintains that Mr. Elgin's failure to testify as to the final assault on direct examination and his reference during testimony to the fourth assault with the frying pan as the "most recent" incident undermines Mr. Elgin's claim that a fifth assault occurred. Appellant also argues that the injuries that the two witnesses observed and that were documented in the photographic evidence are consistent with the injuries that Mr. Elgin described receiving during the fourth assault. Appellant also notes that the recording of Mr. Elgin describing the October 14 or 15 assault to Detective Durham is not sufficient because it was offered not to prove the truth of the matter asserted but to rehabilitate Mr. Elgin's credibility. In appellant's view, this testimony and evidence was insufficient to support the jury's verdict.

Second, appellant argues that he was prejudiced by the court's restrictions on his cross-examination of Mr. Elgin. Appellant maintains that he was denied the opportunity to reach the constitutional threshold of inquiry regarding Mr. Elgin's credibility. In appellant's view, the court should have allowed him to question Mr. Elgin on (1) his technological capabilities (partitioning his computer) to show that he was able to comprehend complex problems, (2) his international travel (navigating airports and attending a convention) to demonstrate his social skills, (3) the charity work that he allegedly performed with appellant to rebut his characterization of appellant as a "bully" or "a bad person" who isolated and controlled him, and (4) why and how appellant secured title to his car to show that he had a possible motive to fabricate the assault charges to avoid paying his debt to appellant.

In response, the State argues that there was sufficient evidence to convict appellant

of the fifth assault charge. The State argues that there was enough evidence for the jury to draw reasonable inferences that an assault occurred on October 14 or 15. In particular, the State maintains that the injuries that the two witnesses observed on Mr. Elgin on October 17 or 18 could be attributed reasonably to an assault that had occurred "a couple days earlier" instead of the fourth assault in early October. Similarly, the State argues that the jury could have inferred reasonably from the photographs of Mr. Elgin's injuries that they were the result of a more recent assault. From this, the State concludes, the jury had sufficient evidence to convict appellant of the October 14 or 15 assault.

Regarding appellant's cross-examination claim, the State argues that appellant "was able to elicit ample evidence" regarding Mr. Elgin's credibility and appellant's character. The State notes that appellant (1) elicited information about Mr. Elgin's work and social history to show that he was not necessarily socially isolated or unable to understand complex problems, (2) elicited information regarding Mr. Elgin's past favorable opinions of appellant to impeach the State's claim that appellant was a bad person, and (3) could have used Mr. Elgin's admission that he moved out to avoid making further debt payments to appellant to establish a possible motive for Mr. Elgin to fabricate the assault charges. The State concludes that appellant was not prejudiced by the court's decision to exclude the questions and evidence at issue because appellant had done enough to attack Mr. Elgin's credibility.

III.

We review appellant's sufficiency of the evidence claim based on whether, after

viewing the evidence, including inferences fairly deductible therefrom, 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. *Jackson v. Virginia*, 443 U.S. 307, 320 (1979); *Derr v. State*, 434 Md. 88, 129 (2013); *Twine v. State*, 395 Md. 539, 554 (2006). We do not conduct an independent review of the record or make determinations about the credibility and weight of evidence. *Titus v. State*, 423 Md. 548, 557 (2011).

We hold that the evidence in this case was sufficient to support appellant's conviction on the assault count stemming from the October 14 or 15 incident. When viewed in the light most favorable to the State, the evidence adduced of the October 14 or 15 assault—the testimony of the two witnesses who saw Mr. Elgin a few days after the incident and the photographs of Mr. Elgin's injuries—was enough for a reasonable juror to conclude that an assault occurred within the timeframe alleged by Mr. Elgin. Whether this evidence was credible is not for us to decide. *See id.* The jury's decisions to give credence to the witnesses' testimony and to infer from the photographs that the injuries were recent and consistent with a fifth assault were a reasonable assessment of the evidence. Moreover, although Detective Durham's interview with Mr. Elgin about the alleged October 14 or 15 assault was not admitted for the truth of the matter asserted, the jury was permitted to use that evidence to assess Mr. Elgin's truthfulness. We will not second guess the jury's weighing of these factors.

We next consider whether the court unconstitutionally deprived appellant of his right to cross-examine the victim. We review a court's decisions about cross-examination as a mixed question of law and fact. *See Peterson v. State*, 444 Md. 105, 124 (2015).

Maryland Rule 5-611[3] allows a trial court to control witness interrogation and evidence presentation in a manner that is timely and effective and avoids witness harassment. Rule 5-611 limits cross-examination to "the subject matter of the direct examination and matters affecting the credibility of witness." Decisions to regulate cross-examination that involve "judgment calls . . . as to whether particular questions are repetitive, probative, harassing, [or] confusing" are reviewed for abuse of discretion. *Peterson*, 444 Md. at 124. Decisions to regulate cross-examination that involve a court's application of legal rules are reviewed with less deference. *Id.* We must consider "whether the cumulative result of those decisions" meets the constitutional "threshold level of inquiry" of the State's witnesses

[3] Maryland Rule 5-611 provides in pertinent part as follows:

> "(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.
>
> (b) Scope of cross-examination.
>
> > (1) Except as provided in subsection (b)(2), cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. Except for the cross-examination of an accused who testifies on a preliminary matter, the court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.
> >
> > (2) An accused who testifies on a non-preliminary matter may be cross-examined on any matter relevant to any issue in the action."

afforded to a criminal defendant. *Id.*

Appellant points to four instances in which the court restricted defense counsel's cross-examination of the victim on the grounds that they were not relevant or collateral. Evidence is admissible if it is relevant, and relevant evidence makes the existence of a material fact more or less probable. Md. Rule 5-401, 5-402. Even if evidence is relevant, the court can exclude it if "its probative value is substantially outweighed by the danger of unfair prejudice," if it would confuse the jury, or if it would cause "undue delay." Md. Rule 5-403. We therefore review the court's decisions on these questions for abuse of discretion.

We hold that the court did not abuse its discretion in limiting the cross-examination of Mr. Elgin. Defense counsel elicited sufficient information about the issues on which he desired to cross-examine the witness, and the court did not deprive appellant of the ability to confront and cross-examine the victim.

Concerning Mr. Elgin's computer capabilities, the court's ruling excluding defense counsel's line of questioning about Mr. Elgin's knowledge of computers was not an abuse of discretion. Defense counsel sought to tie Mr. Elgin's computer skills to his ability to handle complex social problems but elicited other clearer examples of Mr. Elgin's social skills, such as:

- He worked at AAA;
- He worked at Sears for several years;
- He worked at Giant Food;
- He commissioned digital art on-line;
- He was in a "long distance relationship" with a woman;
- He had regular contact with a close family friend;

- He had dinner with his family once a week; and
- He worked 60–80 hours a week.

The jury certainly heard evidence that Mr. Elgin was not socially isolated or unable to understand complex issues.

The court did not abuse its discretion in excluding as irrelevant a question about Mr. Elgin's trip to Canada. To the extent that the question was meant to attack Mr. Elgin's credibility as a victim with impaired cognitive function and to imply that he had enough social awareness to recognize and escape from his abusive situation, the jury heard evidence of the victim's capabilities to address technical, multi-step problems. The jury heard about the victim's ability to perform oil changes and tire repairs and his knowledge of how car engines operate. This was sufficient for defense counsel to argue that appellant was not so cognitively impaired that he could not recognize and escape from his situation.[4]

The court did not abuse its discretion in limiting the cross-examination related to Mr. Elgin's charity work with appellant. The record is not clear as to appellant's purpose in attempting to show that appellant was "a good person." Appellant complains that the trial court erred in sustaining as collateral the State's objection to the question, "And the two of you worked on a charity together called Christmas in April?" Defense counsel asked the question ostensibly to refute the State's assertion in its opening statement that appellant was a bad person. Appellant, however, was obviously not charged with being a

[4] The trial court, referring to scientific literature on this topic, observed that a victim's cognitive ability is unrelated to the victim's ability to escape an abusive situation. Whether this argument is scientifically sound, however, is separate from whether appellant elicited enough evidence to make the argument in the first place.

bad person—there is no such criminal charge. Appellant did not proffer the relevancy of the evidence. If offered to rebut the State's characterization of appellant in its opening statement, the evidence would not be admissible as a matter of law because an opening statement "is not evidence and generally has no binding force or effect." *Malekar v. State*, 26 Md. App. 498, 502 (1974) (quoting *Wilhelm v. State*, 272 Md. 404, 412 (1974), *abrogated on other grounds by Simpson v. State*, 442 Md. 446 (2015)). If offered to attack Mr. Elgin's credibility by showing that he thought that appellant was a good person, then the question is still not relevant. Given the facts of this case, how Mr. Elgin viewed appellant has no bearing on whether appellant committed violence against Mr. Elgin. In addition, the jury heard evidence tending to show that appellant "was not a bad person," such as:

- Mr. Elgin "looked up to him and he was like a really good example";
- Appellant was a longtime churchgoer;
- Appellant's advice helped Mr. Elgin get the Sears job;
- Appellant helped raise Mr. Elgin's credit score from 300 to 700;
- Appellant paid off Mr. Elgin's payday loans, credit card debt, and car loan;
- Appellant charged Mr. Elgin no interest on his loan repayments;
- Appellant charged Mr. Elgin no rent for some time period; and
- Appellant taught Mr. Elgin how to do home improvements.

Finally, we turn to the questions as to how appellant obtained lawful possession of Mr. Elgin's car. The trial court found that the intricacies of the legal proceeding in connection with the car were too collateral and would confuse the jury. The court did not abuse its discretion in excluding these questions. The jury heard from Mr. Elgin himself that he moved out because he did not want to pay appellant. Appellant thus had evidence to enable him to argue that Mr. Elgin had a financial incentive to fabricate the claims.

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