Circuit Court for Prince George's County
Case No. CT171015B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3005

September Term, 2018

DAKARI DUDLEY

v.

STATE OF MARYLAND

Berger,
Gould,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 27, 2020

A jury, sitting in the Circuit Court for Prince George's County, convicted Dakari Dudley, appellant, of armed robbery, conspiracy to commit armed robbery, second-degree assault, and theft under $1,000. For the armed robbery conviction, the court sentenced appellant to 20 years of imprisonment, with all but six years suspended, and five years of probation.[1] Appellant presents one question for our review, which we have rephrased for clarity:

> Did the trial court err and/or abuse its discretion in admitting evidence that appellant kept guns in a safe?

Finding no error or abuse of discretion, we shall affirm the judgments of the circuit court.

BACKGROUND

The sole issue before us is whether evidence was improperly admitted at trial. Accordingly, we shall recite only the facts that are relevant to that ruling.

The State charged appellant and a co-conspirator, Ezhara Buie, with the armed robbery of Yohanes Rezene, and a joint trial was held.[2] The State's theory of the case was that appellant had "vendetta" against Mr. Rezene's friend, Elliot Strickland, because appellant thought that Mr. Strickland had stolen his safe. Appellant could not find Mr. Strickland, so he decided to retaliate against Mr. Rezene, instead. To that end, appellant conspired with Ms. Buie to lure Mr. Rezene into bringing cash to a specific location, where appellant then robbed Mr. Rezene at gunpoint.

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[1] The remaining convictions were merged for sentencing purposes.

[2] As stated above, appellant was also charged with and convicted of robbery, second-degree assault, conspiracy to commit armed robbery, and theft under $1000.

The defense theory of the case was that Mr. Rezene falsely accused appellant of robbing him because Mr. Rezene had a "grudge" against appellant. The defense did not introduce any evidence in its case but focused on the lack of physical or forensic evidence tying appellant to the crime.

Mr. Rezene testified that on March 28, 2017, he was communicating via social media with Ms. Buie about an iPhone 6 that Ms. Buie was trying to sell. Ms. Buie agreed to sell the phone to Mr. Rezene for $250 and told him to meet her at her friend's house to complete the transaction. When Mr. Rezene arrived at the address provided by Ms. Buie, carrying $250 in cash, two cars blocked him in. Ms. Buie and appellant were in one of the vehicles. While Ms. Buie remained in the vehicle, appellant got out, pointed a handgun at the driver's side window of Mr. Rezene's vehicle, and told Mr. Rezene to get out of the car. Mr. Rezene asked appellant what it was about, and appellant responded, "you know what this is about. This is about the safe."

Mr. Rezene got out of his car, at which point four of appellant's "associates" exited the second car. Appellant took $250 in cash from Mr. Rezene's back pocket, then "stepped aside" while appellant's associates searched Mr. Rezene's vehicle, including the trunk, and then went through Mr. Rezene's pockets and took his car keys and cell phone. Mr. Rezene told appellant that he did not know what appellant was talking about, and suggested that appellant should call Mr. Strickland. At that point, appellant "gave the go-ahead," and the four associates "proceeded to jump" Mr. Rezene. Mr. Rezene broke free from the assault and escaped.

Mr. Strickland testified that appellant lived in a house with Mr. Strickland and Mr. Strickland's father for a year or two. Appellant moved out of the house several weeks before Mr. Rezene was robbed.

On the day of the robbery, appellant called Mr. Strickland and said that a safe had been stolen from the house that they shared and claimed that only three people knew about the safe: Mr. Strickland, Mr. Strickland's friend, Silas, and another person named "Meecho."[3] Mr. Strickland told appellant that he did not know anything about the safe. Appellant said that he "was going full beserker mode" until the safe was found. Appellant called Mr. Strickland five or six more times that day and accused him of stealing the safe.

At some point that same day, appellant sent a text message to Mr. Strickland and Mr. Strickland's father. A redacted version of the text message was admitted into evidence, over defense counsel's objection to references that the missing safe contained guns. In pertinent part, the message stated as follows:

> Just talked to your son, he just lied and said that I pointed a gun at them which is a lie because they were in the safes!! He just lied on me which leads all of us to believe they took and are lying. I don't have any guns because Elliot and Silas took them, they were in the safe . . you son lied and we asked him "well Elliot did you ask Silas if he took it?["] Elliot's response was no I didn't ask, we further asked well how do you know Silas didn't take it . . . Elliot's response is he doesn't know if Silas took it . . . lol, then when I first called Silas they said, bro, I would never do that . . . all traits of lies . . . and then to top it off . . . Elliot just said I had [a] gun, when I don't have any cause they took them all and I have 5 people with me who will . . . say the same . . . it's out of my hands, it didn't belong to

[3] There does not appear to be a connection between the victim, Yohanes Rezene, and either Silas or Meecho.

> me . . . money is already being [spent] to find Elliot and Silas . . . it has nothing to do with me . . . either return it or every day will be a nightmare . . . this is a war you aren't ready [for]!
>
> 6 thousand and it did not all belong to me!!! So Sid [Mr. Strickland's father] Silas and Elliot are in the hole 6k to [people] that have absolutely nothing to [lose] . . . Elliot tell us where you are so we can all discuss this . . .
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> And they will [be] looking for you, v is Riding around lookin for now [sic], There will be an entourage later on to visit and Silas I'm shaking every tree . . . Tell me where you are Elliot so we can talk . . . It's cool I'm bout to put it on you.

Mr. Strickland called Mr. Rezene's phone at about 9:00 that night. Appellant answered Mr. Rezene's phone, and told Mr. Strickland that, "because he couldn't get" Mr. Strickland, he would "take" Mr. Rezene "in [his] place."

DISCUSSION

To be admissible at trial, evidence must be relevant. Md. Rule 5-402. Evidence is relevant if it "has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence.'" *Williams v. State*, 457 Md. 551, 564 (2018) (quoting *Fuentes v. State*, 454 Md. 296, 325 (2017)); Md. Rule 5-401. "Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Id.* (citing *State v. Simms*, 420 Md. 705, 727 (2011)). A ruling that evidence is relevant is reviewed de novo. *Id.*

"It is not enough, though, for evidence to be relevant." *Smith v. State*, 218 Md. App. 689, 704 (2014). Relevant evidence should be excluded "if the probative value of the evidence 'is substantially outweighed by the danger of unfair prejudice.'" *Id.* (quoting Md.

Rule 5-403). The "balancing between probative value and unfair prejudice is something that is entrusted to the wide discretion of the trial judge." *Newman v. State*, 236 Md. App. 533, 556 (2018) (quoting *Oesby v. State*, 142 Md. App. 144, 167 (2002)). A trial court's decision "to admit relevant evidence over an objection that the evidence is unfairly prejudicial[] will not be reversed absent an abuse of discretion." *Collins v. State*, 164 Md. App. 582, 609 (2005).

Appellant contends that any statements in the text message that referred to guns in the safe were irrelevant to any issue in the case, and therefore, the trial court erred in admitting them. Alternatively, appellant asserts that the court abused its discretion in admitting the evidence because any relevance was outweighed by the danger of unfair prejudice.

The State asserts that information that the safe contained guns, as well as money, was "directly relevant to the jury's assessment of whether [appellant] was sufficiently motivated" to rob Mr. Rezene, as retribution against Mr. Strickland. The State further asserts that the probative value of the evidence, which was used to establish motive, and for no improper purpose, was not outweighed by a potential for unfair prejudice. We agree with the State.

As we have explained, although motive is not an element that the State is required to prove, motive is, nonetheless, "most assuredly a factor in the burden of persuasion," and "may influence a jury in deciding which inferences to draw." *Ross v. State*, 232 Md. App. 72, 90 (2017). *See also Harris v. State*, 81 Md. App. 247, 280 (1989) ("Proof of motive . . . is almost invariably proof of intent" and, "moreover, is one way of proving

identity."), *rev'd on other grounds,* 324 Md. 490 (1991). Indeed, as the court instructed the jury in this case, "presence of motive may be evidence of guilt."[4] *See e.g. Jackson v. State*, 87 Md. App. 475, 486 (1991); Maryland Criminal Pattern Jury Instruction 3:32. Accordingly, whether appellant had a motive for the robbery was an issue for the jury's consideration, and any evidence tending to prove motive was relevant.

The State offered appellant's text message into evidence to prove motive. The message tended to demonstrate that appellant was irate because he suspected Mr. Strickland of stealing the safe that contained both money and guns. Then, "to top it off[,]" Mr. Strickland falsely accused appellant of pointing a gun at him, which appeared to spark further outrage because all of the guns that appellant owned were apparently in the stolen safe. Appellant was spending money to find Mr. Strickland and was "shaking every tree." Appellant threatened that a war would ensue and that every day would be a "nightmare" until the safe was returned. This evidence tended to make it more probable than not that appellant had a motive to rob Mr. Strickland's friend, Mr. Rezene: that is, as vengeance for the actions of the elusive Mr. Strickland and/or to facilitate a search of Mr. Rezene's vehicle for the safe. Accordingly, the court did not err in determining that evidence that the safe contained guns was relevant.

Furthermore, we find no abuse of discretion in the court's determination that the probative value of that evidence was not substantially outweighed by a danger of unfair prejudice. To constitute an abuse of discretion, "[t]he decision under consideration has to

[4] Appellant did not object to the court's instruction on motive.

be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Mack v State*, 244 Md. App. 549, 573 (2020) (emphasis omitted) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)). A finding that a trial court abused its discretion in admitting evidence over an objection based on unfair prejudice "should be reserved for those rare and bizarre exercises of discretion that are, in the judgment of the appellate court, not only wrong but flagrantly and outrageously so." *Newman*, 236 Md. App. 556 (quoting *Oesby*, 142 Md. App. at 167-68).

We have previously explained that there is a "critical distinction" between prejudice and "unfair prejudice." *Newman*, 236 Md. App. at 550. "[P]arties have a right to introduce prejudicial evidence." *Id.* (emphasis omitted) (quoting Joseph F. Murphy, Jr., Maryland Evidence Handbook (3d ed., 1999), § 506(B), p. 181). Indeed, "[a]ll competent and trustworthy evidence offered against a defendant is prejudicial. If it were not, there would be no purpose in offering it." *Id.* at 549 (emphasis omitted) (quoting *Oesby*, 142 Md. App. at 144).

"The fact that evidence prejudices one party or the other, in the sense that it hurts that party's case, is not the undesirable prejudice referred to" in Maryland Rule 5-403. *Id.* at 550 (quoting Lynn McLain, Maryland Evidence (3d ed., 2013), § 403.1(b), p. 650). Evidence is considered unfairly prejudicial only "if it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged." *Odum v. State*, 412 Md. 593, 615 (2010) (citation omitted). The danger presented by such unfair prejudice outweighs the probative value of evidence "when the evidence produces such an emotional response that logic cannot overcome prejudice or

sympathy needlessly injected into the case." *Newman*, 236 Md. App. at 550 (quoting Murphy, *supra*, at 181). "The more probative the evidence is of the crime charged, the less likely it is that the evidence will be unfairly prejudicial." *Odum*, 412 Md. at 615.

We cannot say that, on the record before us, evidence that there were guns in the safe was likely to produce such an emotional response in the jury that the jury may have ignored the evidence pertaining to the armed robbery of Mr. Rezene. Indeed, even if the court had sustained appellant's objection, which was limited to references to guns *in the safe*, the jury would still have heard evidence that appellant allegedly had a gun and had pointed it at Mr. Strickland.[5] The prejudicial effect of information that the safe contained guns would not have substantially outweighed the probative value as to motive such that the court abused its discretion in admitting it, especially where there was no evidence that appellant possessed the guns unlawfully or that his ownership of guns was otherwise connected to criminal activity. *Cf. Klauenberg v. State*, 355 Md. 528, 551 (1999) (evidence that two guns and 600 rounds of ammunition were found in the home of the defendant, who was on trial for soliciting a murder, was not a "bad act" for purposes of Maryland Rule 404(b) because there was "no indication that [the] firearms were obtained or possessed illegally[,]" or that the guns were to be used in the murder).

Appellant concedes that possession of guns is not necessary illegal, but argues that, because he was on trial for armed robbery, evidence that he kept guns in a safe reflected

[5] Appellant did not object to the reference in the text message to Mr. Strickland's accusation that appellant pointed a gun at him.

"adversely" on his character and created a danger that the jury would "engage in propensity or bad character reasoning," and infer that he is a "violent person and, therefore, more likely to have committed the crime charged." He points to *Smith, supra,* and *Banks v. State*, 84 Md. App. 582 (1990) in support of his position. Neither case informs our decision because, in this case, evidence that appellant kept guns in his safe had greater probative value and less potential for prejudice than the evidence of guns in *Banks* and *Smith.*

In *Smith,* the defendant was charged with the shooting death of his roommate. *Smith,* 218 Md. App. at 696. One of the issues on appeal concerned the admissibility of evidence that the defendant owned eight firearms, and that ammunition was found in his apartment. *Id.* at 703. We noted that there was nothing in the record to establish how the evidence was relevant to the defendant's guilt, holding that, "[w]ithout a more direct or tangible connection to the events surrounding *this shooting*, the evidence of other weapons and ammunition owned by [the defendant] failed the probativity/prejudice balancing test, and the trial court erred by admitting it." *Id.* at 706.

Here, the probative value of the evidence of guns in the safe had relevance to the issue of guilt, where the evidence of guns in *Smith* had none. Consequently, *Smith* is not instructive, as any amount of prejudice generated by connecting the defendant to guns would inevitably have a greater tendency to tip the scales in favor of inadmissibility.

In *Banks*, the defendant was on trial for selling cocaine to an undercover narcotics officer. *Id.* at 583-84. The officer testified that the defendant was the person who sold him cocaine, based on his own observations during the transaction. *Id.* at 589. Then, to establish how the officer confirmed that the defendant was the person who sold him

cocaine, the State offered into evidence, over defense objection, two photographs of the same man, "wearing a Panama-type Fedora and displaying a handgun." *Id.* at 584-85. One of the photographs showed the man holding handgun in one hand and pointing to it with the other hand, while looking at the gun with what we described as apparent "admiration." *Id.* at 585 n.2. The other photograph showed the man holding the gun "in an offensive manner, pointed upward, with his left hand on his hip." *Id.* The officer identified the person in the photographs as the person who sold him the cocaine. *Id.* at 585. We held that, under those circumstances, the "low" probative value of the photographs was "far outweighed" by their "extremely prejudicial" nature, reasoning that "handguns and the distribution of cocaine, or other narcotics, go together, or at least are equated together[.]" *Id.* at 592.

Here, the probative value of the evidence at issue, which was to establish motive for the crime, was greater than that of the photographs of the defendant in *Banks*, which were apparently used to only bolster the officer's identification of the defendant. The fact that, in this case, the State was not required to prove appellant's motive has no effect on the probative value of the evidence. *See Newman*, 236 Md. App. at 551 (where, as in this case, "the resulting prejudice is legitimate rather than 'unfair,' the fact that the State's case may not, in terms of its sufficiency, desperately need the evidence in question does not diminish in the slightest the weight of the evidence's probative value.") [6] Moreover, the potential

[6] In his reply brief, appellant asserts that evidence that the safe contained money had more probative value than evidence that the safe contained guns, and therefore, the court should have admitted evidence of the money but excluded evidence of the guns. To the extent that appellant's argument is that, in light of evidence that the safe contained money,

prejudicial effect of the photographs in *Banks*, which depicted the defendant, an alleged narcotics dealer, looking at a gun with apparent admiration and holding a gun in an "offensive" pose, was greater than the evidence that appellant had guns which were stored in a safe, especially where there was no connection between the guns in the safe and any criminal activity.

In sum, we conclude that the evidence that the safe contained guns was relevant to an issue before the jury, and the probative value of that evidence was not substantially outweighed by the potential for unfair prejudice. Accordingly, we conclude that the court did not err or abuse its discretion in admitting the evidence.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

the State did not need to introduce evidence that the safe also contained guns, we note that such an argument is not pertinent where, as here, the evidence of guns was not unfairly prejudicial. *See Newman*, 236 Md. App. at 551 (quoting *Oesby*, 142 Md. App. at 166 (emphasis omitted) ("Probative value does not depend on necessity. When we are talking only about the legitimate prejudice that inevitably results from competent evidence enjoying a special or heightened relevance, there is no downside to making a strong case even stronger.").

The correction notice(s) for this opinion(s) can be found here:

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