

Circuit Court for Cecil County
Case No. C-07-CR-16-000319

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3087

September Term, 2018

SHAWN ADAMS

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: February 4, 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.

Following a jury trial in the Circuit Court for Cecil County, Shawn Adams, appellant, was convicted of robbery, robbery with a dangerous weapon, using a firearm in the commission of a felony or crime of violence, theft, and possession of heroin. Mr. Adams presents two questions on appeal:

1. Did the trial court abuse its discretion by restricting defense counsel's cross examination of the [S]tate's rebuttal witness?
2. Was the circuit court required to merge the conviction for theft into the conviction for armed robbery?

Because we find no abuse of discretion in the court's ruling on the objection to defense counsel's cross-examination of the rebuttal witness, and because the merger issue is moot, we shall affirm the judgments.

On September 17, 2016, Nagindar Singh was working as a cashier at the Stop and Go store in North East when a young, white male entered the store, pointed a gun at him, and demanded cash and cigarettes. Mr. Singh complied. The robber was wearing gloves and his face was partially covered with what Mr. Singh described as "maybe a bandanna." Mr. Singh recognized the robber, by his voice and his eyes, as a regular customer of the store, but he did not know his name. Mr. Singh identified Mr. Adams in court as the customer whose voice and eyes he recognized.

Devkishan Manekporia, the son of the owners of the Stop and Go, reviewed footage from the store's surveillance system. He turned the footage over to police and told police that the robber looked like Mr. Adams, who was a frequent customer in the store. Mr. Manekporia explained that he had known Mr. Adams "for a good long time." He had talked with him and "hung out" with him outside the store, and he "knew about" Mr.

Adams’s daughter and the mother of his daughter. Mr. Manekporia stated, “there is just no way that it couldn’t be him when I saw [the surveillance video].”

A search warrant was issued for Mr. Adams’s home. During execution of the search warrant, police recovered a paper bag from underneath Mr. Adams’s bed that contained a shirt that was “seen from the video,” as well as a pair of gloves and “handkerchiefs or bandannas[.]” A handgun was found in a bag in Mr. Adams’s father’s room.¹ At trial, Mr. Singh identified the shirt that was found in the bag in Mr. Adams’s room as the shirt that was worn by the robber. Mr. Singh testified that the gloves, gun, and a bandana that had been recovered in the search were the “kind of” things used in the robbery.

Mr. Adams testified in the defense portion of the case that he was not at the Stop and Go store on the day of the robbery. He stated that he was at home most of the day with his daughter, cousin, and grandmother, and that he left only to drive his girlfriend to work and pick her up after her shift was over.

The State called Corporal Stephen Yates of the North East Police Department as a rebuttal witness. Corporal Yates stated that he interviewed Mr. Adams after his arrest, and that Mr. Adams did not mention that there were witnesses who could corroborate his alibi. Corporal Yates then stated that he found it “odd and peculiar” that, when he asked Mr. Adams “specific questions about the Stop and Go[.]” Mr. Adams “acted like [the store] wasn’t even there” and “wouldn’t say the name of the store[.]”

¹ Police also recovered a packet of heroin from underneath a pillow on Mr. Adams’s bed.

On cross examination, defense counsel asked Corporal Yates why he found it “odd” that Mr. Adams did not mention the name of the store, and Corporal Yates responded that he had “phrased the question in a way that [Mr. Adams] would have to say the name” of the store, but that Mr. Adams “wouldn’t even do it,” which Corporal Yates felt was “showing deception.” Defense counsel then asked Corporal Yates what, specifically, he had asked Mr. Adams, but Corporal Yates did not recall the specific phrasing of the question. Defense counsel continued to ask Corporal Yates what question he had asked Mr. Adams that led him to suspect deception. The prosecutor objected, stating that the question had been asked and answered multiple times, and the court sustained the objection:

[DEFENSE COUNSEL]: Okay. I mean, if you’ve already said the name of the store, both of you know what you’re talking about, why would there be a necessity or why would you think it’s odd that he doesn’t - -

[CORPORAL YATES]: Because I phrased the question in a way that he would have to say the name of the place and answer my question that way, and he wouldn’t even do it, you know.

[DEFENSE COUNSEL]: Okay. How is it that you would phrase your question that way?

[CORPORAL YATES]: I don’t remember back then, but - -

[DEFENSE COUNSEL]: You don’t remember?

[CORPORAL YATES]: No.

[DEFENSE COUNSEL]: Well, it’s kind of important because you’re saying that my client is being deceptive. I’m simply asking you how you would have phrased the question so that you’re testing him to see whether he would say it?

[CORPORAL YATES]: Like, you know, just asking him, you know, what's - - what was the name - - what's the name of the store on the corner, you know, just trying to - - he's just diverting around the store, just - -

[DEFENSE COUNSEL]: So you're saying that you asked him the name of the store and he didn't tell you the name of the store?

[CORPORAL YATES]: Pretty much, yes.

[DEFENSE COUNSEL]: Well, when you say pretty much - - that's sort of a cut and dry kind of question. If I asked you what's the name of the store that got robbed, it's not pretty much; you either do or you don't.

[CORPORAL YATES]: I don't know how to best - - I'm telling you, it's just that he's diverting around the name of the store, just kind of indicating it's not even there. I don't know how to explain it to you more than that.

[DEFENSE COUNSEL]: Well, no, I'm not - - I'm not being combative or argumentative with you, I'm just trying to figure out what your basis is for saying is that he was being deceptive. You've accused him of - - basically of trying to deceive you. And what I'm trying to get at is, what kind of question you would have asked him that gave you the basis for that conclusion. That's all I'm doing.

[CORPORAL YATES]: Okay. And I didn't write my specific question down, so I don't want to tell you something that's not word for word. Okay?

* * *

[DEFENSE COUNSEL]: But what were the questions that you would have asked him that specifically set him up to draw the conclusion that he was being deceptive? That's a very serious accusation in this trial[.]

[PROSECUTOR]: Objection, your Honor. It's been asked, it's been answered. Actually, it's been asked and answered multiple times. He's indicated that he doesn't specifically remember, and he doesn't want to say something that he didn't specifically say. I think the jury gets it.

[THE COURT]: I'll sustain.

Mr. Adams contends that Corporal Yates’s opinion that Mr. Adams was “showing deception” during his post-arrest interrogation was “highly and unfairly prejudicial,” and that it was an abuse of the court’s discretion to “prevent[] defense counsel from further questioning the officer to fully and fairly challenge his opinion[.]” The State asserts that defense counsel was not prevented from asking further questions about how Corporal Yates drew his conclusion that Mr. Adams was being deceptive, but was simply prevented from continuing to ask what specific question(s) Corporal Yates had asked Mr. Adams. We agree with the State.

“[A] criminal defendant’s constitutional right to cross-examination is not boundless.” *Parker v. State*, 185 Md. App. 399, 426 (2009) (citation omitted). “Once the constitutional threshold is met, trial courts may limit the scope of cross-examination ‘when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.’” *Peterson v. State*, 444 Md. 105, 122-23 (2015) (citation omitted). “Generally speaking, the scope of examination of witnesses at trial is a matter left largely to the discretion of the trial judge and no error will be recognized unless there is clear abuse of such discretion.” *Parker*, 185 Md. App. at 427 (citation omitted). “The question is ‘whether the trial judge imposed limitations upon cross-examination that inhibited the ability of the defendant to receive a fair trial.’” *Id.* at 426 (citation omitted).

Corporal Yates responded to defense counsel’s repeated inquiries about the specific question(s) he had asked Mr. Adams during the interrogation by stating that he did not recall exactly how the question was phrased, but that he “pretty much” asked Mr. Adams

about the name of the store. The court did not abuse its discretion by sustaining the State’s objection to the repetitive inquiry.

The second issue presented by Mr. Adams, whether the court erred in failing to merge his conviction for misdemeanor theft into the conviction for armed robbery, is moot. Mr. Adams was sentenced to 18 months’ imprisonment for the theft conviction, to be served concurrently to his sentence for armed robbery, and he began serving that sentence on September 23, 2016. The State concedes that the convictions should have been merged for sentencing purposes, and we agree. *See Smith v. State*, 412 Md. 150, 166 (2009) (noting that “misdemeanor theft is a lesser included offense of robbery with a dangerous weapon.”) But, because Mr. Adams has completed his sentence for the theft conviction, his claim of error is moot. *See Barnes v. State*, 423 Md. 75, 88 (2011) (holding that, after a defendant serves his or her full sentence, the issue of whether the sentence is illegal is moot because the court can “no longer fashion an effective remedy.”)²

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

² Mr. Adams contends that, although the concurrent sentence for theft does not lengthen his period of incarceration, he is adversely affected by the failure to merge the convictions because “it will appear on his record as a separate conviction, and will make his criminal history and the collateral consequences that follow a little worse.” As we have explained, however, “merger of a conviction for the lesser included offense into the conviction for the greater offense is *for sentencing purposes only* and results in a single sentence for the greater offense[.]” but “[t]he conviction for the lesser offense survives the merger.” *Moore v. State*, 198 Md. App. 655, 692 (2011). Accordingly, even if the conviction for theft had been merged for sentencing purposes, Mr. Adams’s criminal record would still reflect that conviction.