

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 166

September Term, 2014

JUNE STANSBURY

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: July 17, 2015

*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.

June Stansbury, the appellant, was charged with a multitude of crimes stemming from a multi-victim robbery that was perpetrated in Baltimore City on February 27, 2012. A jury in the Circuit Court for Baltimore City found the appellant guilty of one count of attempted first-degree murder, one count of attempted second-degree murder, one count of burglary in the first degree, one count of conspiracy to commit first-degree burglary, one count of burglary in the fourth degree, one count of conspiracy to commit fourth-degree burglary, one count of possession of a handgun, two counts of robbery with a deadly weapon, two counts of attempted robbery with a deadly weapon, two counts of conspiracy to commit robbery with a deadly weapon, and five counts of use of a handgun in the commission of a crime of violence.¹

The appellant was sentenced to life imprisonment for attempted first-degree murder, plus four concurrent twenty-year sentences, the first five years of each to be served without the possibility of parole, for four of the appellant's convictions for using a handgun in a crime of violence. He was also sentenced to 20 years consecutive, the first five years to be served without the possibility of parole, for the remaining count of use of a handgun in the commission of a crime of violence.²

¹The jury found the appellant not guilty on one count of attempted first degree murder and two counts of robbery with a dangerous weapon.

²The circuit court also imposed eight concurrent ten-year sentences for the appellant's convictions for first-degree burglary, armed robbery, attempted armed robbery, and conspiracy to commit those offenses; and one concurrent thirty-year sentence for the appellant's conviction for attempted second-degree murder. The court merged appellant's other convictions for the purposes of sentencing.

The appellant noted a timely appeal, presenting one question, which we have simplified as follows: Did the trial court err in admitting a recorded jail call? Discerning no reversible error or abuse of discretion, we shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

On the night of February 27, 2012, Derrick Saunders, DeAndre Mason, Jerome Mason, Jamira Mason, Jameera Swinson, and LaQuania Hardin went to a club together and then returned to Saunders’s apartment.³ At some point, Saunders and DeAndre drove to a local store. They returned to the apartment building about ten minutes later. Two men, brandishing guns, approached DeAndre and Saunders and forced them to their knees, demanding money and valuables. The assailants took DeAndre’s cell phone and car keys.

Saunders convinced the gunmen that he had money at his apartment. While one assailant and Saunders walked to Saunders’s apartment, the other gunman stayed behind holding DeAndre at gunpoint. Soon thereafter DeAndre heard a gunshot and the gunman who had been holding him at gunpoint “just took off.” DeAndre could not provide a description of the gunman who had stayed outside with him, but both DeAndre and Saunders identified the appellant as the gunman who went to the apartment with Saunders.

At Saunders’s apartment, Jerome opened the door. Saunders ran upstairs, leaving the appellant to follow him into the living room where Jamira, Swinson, and Hardin were sitting.

³For consistency and ease of identification, we shall refer to the Mason siblings by their first names.

The appellant ordered Jamira, Swinson, and Hardin to lie face-down on the floor. The appellant took items including cash, cell phones, and car keys from them. Jerome began laughing at the appellant, hoping to distract him from Saunders.

In his bedroom, Saunders looked for a weapon, but could not find one. The appellant ordered Saunders to bring him a pillow so that he could shoot Jerome. While grabbing a pillow, Saunders was able to get a knife from his backpack. Saunders held the knife under the pillow as he returned to the living room. When he handed the pillow to the appellant, Saunders charged him with the knife, stabbing the appellant in the neck. The appellant fired his gun, shooting Saunders through the side, and grazing Jerome's face. The appellant then fled down the stairs and out of the apartment building.

DeAndre, returning to the apartment, found his injured friends. One of the victims called 911. Saunders was taken to The Johns Hopkins Hospital where he was treated for the gunshot wound and a knife wound on his hand. DeAndre, Jerome, Jamira, Swinson, and Hardin all went to the police station to give statements. DeAndre, Jerome, and Swinson each independently selected a photograph of the appellant as the gunman from an array. Jamira was not shown a photo array, but gave a detailed description of the gunman's black and red Nike shoes. Two days after the incident, Saunders gave the police a statement that included a physical description of the appellant and identified the appellant as the gunman via a photo array. At the appellant's trial, the witnesses testified that the appellant was the person who shot Saunders and robbed them on February 27, 2012.

Tiffany Brown, with whom the appellant was in a romantic relationship at the time of the robbery, testified that on the night of February 27, 2012, the appellant arrived at her home, covered in blood, with a very serious stab wound to his neck. He passed out from blood loss while in the shower. Brown, who was a licensed practical nurse, bandaged the appellant's wound and cared for him in her home for the next few days. Brown's son hid the appellant's gun until the appellant's friend came to get it. Brown stored the blood-covered clothes and shoes the appellant had been wearing in a trash bag. She later gave the bag of clothes to the police during their investigation. Brown also directed the officers to a nearby storm drain where she had disposed of other items the appellant had given her that evening. From the storm drain, the police recovered a set of keys that were determined to belong to Saunders. Brown later provided a recorded statement to the police in which, among other things, she related overhearing the appellant make a phone call a few days after the shooting, in which the appellant said "it was six people and it was a home invasion and a home robbery that he had done that had gone bad."

The police took photographs and collected blood samples from items in Saunders's home and the bloody clothes that were provided by Brown. The appellant's DNA was identified on a pair of jeans, a black sweatshirt, and on the blade of the knife Saunders had used to stab the gunman.

The appellant testified on his own behalf. He stated that Saunders invited him to his home on February 27, 2012, so that Saunders and his friends could purchase marijuana from

him. While at Saunders's apartment, the appellant got into an altercation with one of Saunders's friends. During the tussle that followed, the appellant was stabbed in the neck. The appellant testified that he fired one shot in self-defense and then ran out of the house to get away. A friend of his who had some medical experience stitched his wound with dental floss. He was scared to go to the hospital because he had "just shot somebody." He did not think his neck wound was that serious. He was arrested on March 2, 2012, and at that time was transported to the hospital for medical treatment of his neck wound, which was infected.

DISCUSSION

The appellant contends the trial court erred as a matter of law by admitting the recording of a telephone call he made while he was in jail awaiting trial. He maintains that the content of the call was not relevant to facts at issue in his case. In the alternative, the appellant contends that, to the extent the evidence was relevant, its probative value was far outweighed by its unfair prejudice. He asserts that the error of admitting the recording was not harmless because the recording was so ambiguous and confusing that the jurors were forced to speculate as to its meaning, and further, that the recording was the only evidence the State presented of witness intimidation.

The State responds that the statements the appellant made in the recorded call supported a reasonable inference that, using intermediaries, he had attempted to influence witnesses not to testify against him. The State maintains that this was relevant evidence of the appellant's consciousness of guilt. The State also asserts that the trial court did not abuse

its discretion in determining that the evidence was not unfairly prejudicial. Alternatively, the State asserts that, given the facts in dispute at trial and the overwhelming evidence against the appellant, any error in admitting the recorded call was harmless beyond a reasonable doubt.

After jury selection, but before opening statements, defense counsel moved to preclude the State from introducing into evidence two recorded jail calls made by the appellant.⁴ The second jail call, made on March 5, 2013, is the subject of this appeal. In pertinent part, during that call the appellant directed an unidentified woman with whom he was speaking to call “Timmie.” The woman used another phone to call “Timmie” and informed him that she was “calling for June.” The appellant then directed the woman what to say to “Timmie,” instructing “Timmie” to call “Rell” to get “Rell to holler at his home boys and tell his people to do right.” The appellant repeated that he wanted “Timmie” to “holler at the little dude . . . the little dude who is hollering at his house at, in the house and shit. The dude that he was hollering at in the house, the two little buckets yo. Tell him to talk to the two little buckets. . . [and the appellant] want[s] them to do right by [him].”

After reviewing the transcripts of the jail call, and considering the parties’ arguments, the trial court determined that, insofar as “a reasonable mind could infer from this that do

⁴The substance of the relevant recordings is not recorded in the hearing or trial transcripts and the transcripts of the jail calls used at trial are not included in the record. We rely on the transcript of the motions hearing, at which the attorneys and the trial judge read portions of the jail call transcripts. The parties did not, and do not, contend that the content of the call was misrepresented.

right could conceivably mean get these people from stopping to testify,” the call was relevant. The court further concluded that the relevance of the evidence was not outweighed by its prejudicial effect, so long as the recording was properly redacted to remove all potentially prejudicial references to the appellant’s incarceration and other irrelevant matters.

Defense counsel thereafter renewed his objection to the admission of the jail call recording immediately prior to its admission. The trial court overruled both objections and permitted the State to play the properly redacted recorded call, which was admitted as State’s Exhibit 58-B.

“Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.” 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 than it would be without the evidence.” Md. Rule 5–401. “Trial judges generally have ‘wide discretion’ when weighing the relevancy of evidence.” *State v. Simms*, 420 Md. 705, 724 (2011) (quoting *Young v. State*, 370 Md. 686, 720 (2002)). “While trial judges are vested with discretion in weighing relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence.” *Simms*, 420 Md. at 724. “Thus, we must consider first, whether the evidence is legally relevant, and, if relevant, then whether the evidence is inadmissible because its

probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5–403.”⁵ *Id.* at 725.

“A person’s post-crime behavior often is considered relevant to the question of guilt because the particular behavior provides clues to the person’s state of mind.” *Thomas v. State*, 372 Md. 342, 352 (2002). Relevance may be established by inference, with the “probative value” of the evidence being dependent upon “the degree of confidence” in the inferences. *Id.* Thus, even a weak inference may be sufficient to establish that evidence is “relevant,” but a strong inference will weigh more than a weak inference in a trial court’s balancing of probative value against unfair prejudice.

We discern no error in the trial court’s determination that the recorded call was relevant to prove that the appellant was guilty of the charged offenses. In the recorded call, the appellant refers to “the situation in the house with the home boy” in the context of a recent bail review hearing. It is clear from the record that, just before the call was made, the appellant had attended a bail review hearing in the instant case. This yields the legitimate inference that, in the recorded call, the appellant is talking about the February 27, 2012 home invasion and robbery for which he was then awaiting trial. The appellant requests that

⁵Md. Rule 5–403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

“Timmie” talk to “Rell” and “his peoples” about “do[ing] right” by the appellant. The appellant also asks “Timmie” to go speak with “the little dude who is hollering . . . in the house and shit” and “the two little buckets.” This conversation supports a reasonable inference that the appellant wanted his friends to speak to the victims to attempt to influence their testimony to his benefit. That, in turn, supports a reasonable inference of consciousness of guilt. Accordingly, the recorded call was relevant evidence.

We agree with the appellant that there were other inferences the jury reasonably could have drawn from the recorded conversation. The existence of alternative interpretations of the evidence, however, does not negate the value of the version that was offered by the State. Defense counsel was afforded every opportunity to argue competing inferences for the jury’s consideration. It was the jury’s prerogative to decide which interpretation of the evidence was best supported by the evidence presented and, ultimately, what weight to afford the evidence in deciding the issue of guilt.

We next consider whether the trial court abused its discretion in weighing the probative value of the recorded call against any unfair prejudice that might result to the appellant from its admission. The appellant suggests the recorded conversation was ambiguous and, therefore, any inferences drawn from the evidence were too weak to outweigh the potential prejudice and the danger of confusing the jury.

Rule 5-403 only requires the exclusion of relevant evidence that is unfairly prejudicial. Evidence is unfairly prejudicial when “it might influence the jury to disregard the evidence

or lack of evidence regarding the particular crime with which [the defendant] is charged. Such evidence is likely to arouse an emotional reaction which might unfairly influence the fact-finder's decision." *Harris v. State*, 81 Md. App. 247, 286 (1989) (quoting Lynn McLain, *Maryland Evidence* § 403.1, at 298 (1987)), *rev'd on other grounds*, 324 Md. 490 (1991). "[P]rejudice . . . means more than damage to [the appellant's] cause What is meant here is an undue tendency to persuade the jury to decide the case on an improper basis, usually an emotional one." *Weiner v. State*, 55 Md. App. 548, 555 (1983).

In this case, before playing the recorded call for the jury, the parties redacted the statement to ensure that there were no improper references to the appellant's pre-trial incarceration, or any potentially prejudicial bad acts. Thus, the only remaining "prejudice" that could come from the introduction of the recording was the inference that the appellant was attempting to tamper with the witnesses. Based on the evidence presented, we conclude that the trial court's finding that any prejudice to the appellant from the admission of the recorded call was not "unfair" prejudice, was not "flagrantly [or] outrageously" wrong, and therefore, was not an abuse of discretion. *See Oesby v. State*, 142 Md. App. 144, 167-68 (2002) (discussing wide latitude afforded to the trial court under the abuse of discretion standard). The fact that "this jail call stood as the State's only evidence of witness tampering or intimidation" does not make it unfairly prejudicial. Either the jury adopted the inferences suggested by the State, which made the evidence *fairly* prejudicial, or the jury drew the inferences the appellant preferred, which made the evidence either exculpatory or

meaningless. The appellant does not suggest any interpretation of the evidence that would have had “an undue tendency to persuade the jury to decide the case on an improper basis . . .” *Weiner*, 55 Md. App. at 555.

In any event, even if the trial court erred in admitting the jail call recording, its error was harmless beyond a reasonable doubt. ““Every error committed by a trial court is not grounds for a new trial. Reversible error will be found and a new trial warranted *only* if the error was likely to have affected the verdict below. . . . If [the error] is merely harmless error, [then] the judgment will stand.”” *Conyers v. State*, 354 Md. 132, 160 (1999) (alteration in original) (quoting 5 Lynn McLain, *Maryland Evidence* § 103.22 at 49). A trial court’s error is harmless when a reviewing court is ““satisfied 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.”” *Dionas v. State*, 436 Md. 97, 108 (2013) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). In weighing harmless error, we consider, “whether the trial court’s error was unimportant in relation to everything else the jury considered in reaching its verdict.” *Dionas*, 436 Md. at 118 (footnote omitted).

In the instant case, the evidence against the appellant was overwhelming. The appellant admitted that, on the night of the robbery, he was in Saunders’s home and that he shot Saunders. Multiple witnesses consistently described the events of that night and identified the appellant as the person who robbed them at gunpoint. The appellant sustained a serious injury to his neck, but instead of going to the hospital went to his girlfriend’s house.

Upon arriving, his girlfriend's son hid his gun. The appellant gave items to his girlfriend that had been taken from the victims of the robbery and asked her to get rid of them. In a recorded statement to the police following the robbery, the appellant's girlfriend recounted inculpatory statements the appellant made while he was recuperating in her home.

We are satisfied, in light of the overwhelming evidence of the appellant's guilt, that the admission of the jailhouse recorded telephone call in which he directed his friends to "holler" at the victims and make them "do right" did not affect the outcome of the trial, beyond a reasonable doubt.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY THE APPELLANT.**