

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1136

September Term, 2015

---

SEQUAN TAIURQUE JOHNSON

v.

STATE OF MARYLAND

---

Krauser, C.J.,  
Berger,  
Zarnoch, Robert A.  
(Retired, Specially Assigned),

JJ.

---

Opinion by Berger, J.

---

Filed: April 29, 2016

\*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 Charles County, appellant, Sequan Taiurque Johnson (“Johnson”), was convicted of possession of marijuana with intent to distribute, and possession of marijuana. On June 15, 2015, Johnson was sentenced to a total of fifteen months’ incarceration.

On appeal, Johnson presents two issues for our review,<sup>1</sup> which we rephrase as follows:

1. Whether the circuit court erred in concluding that evidence discovered in the vehicle when Johnson was arrested was relevant and not unduly prejudicial.
2. Whether the trial court properly exercised its discretion in determining that the items discovered in the vehicle had been properly authenticated.

For the reasons set forth below, we shall affirm the judgment of the Circuit Court for Charles County.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Prior to July 16, 2014, a communication from a confidential informant was received by law enforcement indicating that Johnson was in possession of contraband. Thereafter, on July 16, 2014, Detective Reginald Forbes (“Forbes”) of the Narcotics Enforcement Section of the Charles County Sheriff’s Office was conducting surveillance and observing Johnson.

---

<sup>1</sup> The issues, as presented by Johnson, are:

- I. Did the trial court err by admitting irrelevant and unfairly prejudicial evidence when it admitted the Notice to Defendant and Public Defender Disclosure?
- II. Did the trial court err by admitting key documents that were not properly authenticated?

That evening, Johnson was riding as a passenger in a red Mitsubishi Lancer. After tracking Johnson for approximately one hour, Forbes observed the vehicle fail to use a left-hand turn signal. Forbes reported the traffic violation to Corporal Kimberly Selkirk (“Selkirk”) of the Charles County Sheriff’s Office Patrol Division, and instructed her to initiate a traffic stop. Selkirk subsequently initiated a traffic stop in a restaurant parking lot. Selkirk learned that Jalen Rosser (“Rosser”) was operating the vehicle, and that the vehicle was registered to Ernest and Eric Rosser.

Upon initiating the traffic stop, Corporal Renee Cuyler (“Cuyler”) of the Charles County Sheriff’s Office’s K-9 unit was summoned to render assistance to Selkirk. Cuyler scanned the vehicle with her K-9, Atos. Atos alerted to the presence of contraband inside the vehicle. Upon Atos’s indication that there was contraband, the officers initiated a search of the vehicle.

During a search of the vehicle, Selkirk discovered a silver grinder with residue suspected to be marijuana in a small area located behind the glove compartment. Selkirk also found a black bag containing another silver grinder in the back seat behind the driver’s seat, again, with residue suspected to be marijuana. Selkirk then proceeded to search the trunk of the vehicle. In the vehicle’s trunk, Selkirk discovered a green and black grocery bag containing two smaller bags of what Selkirk suspected to be marijuana. The grocery bag also contained an empty cigar package, a digital scale, and three documents.

Among the three documents recovered from the grocery bag were a “Continuity of Care” medical form, and a “Notice to Defendant” both bearing Johnson’s name.

Additionally, a public defender “Disclosure and Instruction” form (“OPD Form”) was recovered from the bag, but the latter form did not bear Johnson’s name.

The Notice to Defendant appeared to be issued from the Circuit Court for Charles County. The Notice to Defendant contained information about when Johnson was due in court for an unrelated matter, as well as notice as to how to obtain representation from a public defender. Additionally, the Continuity of Care form appeared to be issued by a detention facility, identified Johnson as an inmate,<sup>2</sup> and contained several boxes indicating numerous entries for various medical conditions. Finally, the OPD Form was an informational document that appeared to be issued by the Office of the Public Defender. The OPD Form contained several advisements relating to the criminal justice system, and the process by which one may obtain the services of a public defender. All three of these documents were admitted at trial against Johnson.

Following a one day trial, a jury convicted Johnson of one count of possession of marijuana, one count of possession with intent to distribute marijuana, and the jury acquitted Johnson of a charge of possession of production equipment. The trial court sentenced Johnson to serve fifteen months for possession with intent to distribute marijuana and merged his possession of marijuana conviction. This timely appeal followed. Additional facts will be discussed as necessitated by the issues presented.

---

<sup>2</sup> When the documents were later admitted at trial the word inmate was redacted from the Continuity of Care form.

## STANDARD OF REVIEW

In the instant appeal, Johnson challenges the relevance of certain evidence admitted at trial. Moreover, Johnson further contests the authentication of the documents presented at trial. Although most challenges to evidentiary decisions are reviewed under the abuse of discretion standard, “whether the evidence is legally relevant [is] a conclusion of law which we review *de novo*.” *Smith v. State*, 218 Md. App. 689, 704 (2014) (quoting *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 52 (2013)). Accordingly, we will review the relevancy of the contested evidence *de novo* and afford no deference to the determination of the trial court.

We will generally, however, affirm the trial court’s decision to admit relevant evidence so long as the trial court did not abuse its discretion when ruling upon a defendant’s motion to exclude the evidence. “Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court.” *Donati v. State*, 215 Md. App. 686, 708 (2014) (citing *Hajireen v. State*, 203 Md. App. 537, 552 (2012)). Accordingly, we review the circuit court’s decision with respect to Johnson’s motions under Md. Rule 5-403, and 5-901 under the abuse of discretion standard. *Donati, supra*, 215 Md. App. at 708 (citing *State v. Simms*, 420 Md. 705, 724-25 (2011)). A trial court is said to have abused its discretion when:

[N]o reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic

and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

*North v. North*, 102 Md. App. 1, 13-14 (1994) (quotations omitted).

Accordingly, for the reasons stated above, we will review whether the challenged evidence admitted against Johnson *de novo*. So long as the contested evidence is relevant, we will review the trial court's decision to admit the evidence under the abuse of discretion standard.

## DISCUSSION

In the instant appeal, Johnson challenges whether the circuit court erred in admitting the Notice to Defendant and the OPD Form because they were irrelevant and unduly prejudicial. Additionally, Johnson contends that the circuit court erred by admitting all three documents because they were not properly authenticated. We shall address these arguments in turn.

### **I. The Circuit Court Did Not Err in Concluding That Evidence Discovered in The Vehicle Was Relevant and Not Unduly Prejudicial.**

#### **A. The OPD Form Was Relevant.**

Initially, Johnson argues that the circuit court erred by admitting the OPD Form into evidence because that form was not relevant. The State, however, contends that the OPD Form was relevant because “in conjunction with the Notice to Defendant, it bolstered

Johnson’s link to the marijuana due to its proximity to that marijuana.” We agree with the State.

Under Md. Rule 5-402, “[e]vidence that is not relevant is not admissible.” Indeed, “the trial court does not have discretion to admit irrelevant evidence.” *Francis v. Johnson*, 219 Md. App. 531, 551 (2014) (quoting *Simms, supra*, 420 Md. at 724-25). “‘Relevant evidence’ means evidence having 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. Stated differently, “relevant evidence is evidence that tends to prove a proposition that is properly provable.” *Anderson v. Litzenberg*, 115 Md. App. 549, 571 (1997).

Critically, when we review the relevance of a piece of evidence, we seek to determine if that evidence makes a fact of consequence more or less probable regardless of the persuasive value of the evidence. That is to say, we will not weigh the persuasive value of the evidence or determine to what degree the evidence should be relied upon. Rather, our inquiry is limited to determining whether the evidence has any tendency to make a fact of consequence more or less probable, even if only marginally so. Indeed:

An item of evidence, being but a single link in the chain of proof, need not prove conclusively the proposition for which it is offered. It need not even make that proposition appear more probable than not. Whether the entire body of one party’s evidence is sufficient to go to the jury is one question. Whether a particular item of evidence is relevant to the case is quite another. It is enough if the item could reasonably show that a fact is slightly more probable than it would appear without that evidence. Even after the probative force of the evidence is

spent, the proposition for which it is offered still can seem quite improbable. Thus, the common objection that the inference for which the fact is offered “does not necessarily follow” is untenable. It poses a standard of conclusiveness that very few single items of circumstantial evidence ever could meet. **A brick is not a wall.**

1 George E. Dix et al., McCormick on Evidence § 185 (Kenneth S. Broun ed., 7th ed. 2013) (emphasis added) (citations omitted).

In the present action, Johnson asserts that the OPD form was irrelevant because:

It contained no identifying information whatsoever. No witness testified, moreover, that they saw anyone hand the Public Defender Disclosure form to Mr. Johnson or saw Mr. Johnson with it. Because the State did not connect the Public Defender Disclosure form to Mr. Johnson, it was irrelevant and should have been excluded.

Relevant evidence need not, however, identify the defendant, nor does it need to be supported by corroborating testimony. To be sure, Johnson raises plausible reasons as to why the OPD Form is of only marginal persuasive value, but such is not the test for legal relevancy. To the contrary, the State maintains that the relevancy of the OPD Form is conditioned upon the relevance of the Notice to the defendant. Indeed, the material inferences furthered by the OPD Form are as follows: The Notice to Defendant belongs to Johnson because it bears Johnson’s name. The OPD Form relates to a subject matter similar to that of the Notice of Defendant and, accordingly, likely also belongs to Johnson. Therefore, the probability that the contraband found amongst two of Johnson’s chattels is also Johnson’s is greater than the probability that contraband found accompanying only one of the documents belongs to him. Although the OPD Form may only minimally contribute



to the persuasive value of the State's intended inferences, it contributes nevertheless. Accordingly, the circuit court did not err in finding the OPD Form to be relevant.

**B. The Circuit Court Did Not Abuse its Discretion in Finding that the Documents Were Not Unduly Prejudicial.**

Johnson further contends that the circuit court abused its discretion by failing to exclude the Notice to Defendant and the OPD Form because the documents' probative value was substantially outweighed by the danger of unfair prejudice. Specifically, Johnson asserts that the documents should have been excluded because they indicate that he had a pending criminal case, and that they further suggest that he is indigent. The State, for its part, asserts that the documents were critical to establish that the contraband at issue here belonged to Johnson, and that any prejudice may have suffered did not substantially outweigh the evidence's probative value. We agree with the State.

Although a judge has no discretion to admit irrelevant evidence, a judge does have considerable discretion to exclude evidence "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." Md. Rule 5-403. Decisions in this realm are "left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003). The trial court's determinations with regard to prejudice or confusion of the issues enjoy "every reasonable presumption of correctness." *Cure v. State*, 421 Md. 300, 331 (2011) (quoting *Prout v. State*, 311 Md. 348,

363-64 (1988), *abrogated on other grounds as recognized in Beales v. State*, 329 Md. 263, 269 (1993)). In the present action, we hold that the circuit court did not abuse its discretion by denying Johnson’s motion to exclude the OPD Form or the Notice to Defendant.

Johnson does not appear to argue that the documents admitted against him violate the general prohibition on the admission of evidence of other crimes, wrongs, or acts as prescribed in Md. Rule 5-404(b). This is because, as the State notes, the evidence is not being offered to show Johnson’s propensity to commit crimes, but rather to show possession of the contraband. Accordingly, we are persuaded by the State’s position that the documents have a special significance that takes the evidence outside the scope of the prohibition articulated in Md. Rule 5-404(b).

Although evidence of prior bad acts may be admissible under Md. Rule 5-404(b), the trial judge still has discretion to exclude the evidence if it is unduly prejudicial under Md. Rule 5-403. Indeed, Johnson cites us to *Wynn v. State*, 351 Md. 307, 317 (1998) for the proposition that our rules of evidence are designed to minimize the risk that “a jury, confronted with evidence that a defendant committed another crime, may utilize improperly the evidence to conclude that the defendant is a ‘bad person’ and, therefore, should be convicted of the charges for which he is on trial.”<sup>3</sup> Although we seek to minimize the risk that a jury may draw such an inappropriate inference whenever possible, relevant evidence

---

<sup>3</sup> Although we embrace this principle, we note that the Court of Appeal in *Wynn, supra*, was presented with a question relating to the application of Md. Rule 5-404(b), whereas here Johnson claims that the evidence at issue should have been excluded under Md. Rule 5-403.

that is offered to further another permissible inference is generally admissible subject to the trial judge's determination that the probative value of the evidence is not substantially outweighed by unfair prejudice.

Likewise, Johnson asserts that the circuit court erred by admitting the documents because they indicate that Johnson was indigent. In support of Johnson's argument he cites *Vitek v. State*, 295 Md. 35 (1982). *Vitek, supra*, however, stands for the proposition that the State cannot rely on a defendant's indigence as a necessary inference upon which to establish the defendant's guilt. *See id.* at 41 (“[T]here must be something more than a ‘general suspicion’ that because a person is poor, he is going to commit a crime.”). In this case, although one might infer that someone who possesses papers from a public defender's office is indigent, the State did not rely on that inference to support the conclusion that Johnson is guilty of the crimes alleged. Rather, the State offered the documents to show that Johnson--as opposed to the driver of the vehicle or the individuals to which the vehicle was registered--possessed the contraband.

In this appeal, Johnson argues that the trial judge abused his discretion by failing to exclude these documents under Md. Rule 5-403. In support of his contention, Johnson identifies numerous instances where the documents contain language or alludes to the fact that Johnson is a criminal defendant in another case or that he is of limited means. To be sure, we recognize that various documents associated with an unrelated criminal prosecution can be prejudicial to a defendant in the matter currently before the court. Likewise, we are cognizant of the inappropriate inferences that can be drawn from the fact that a defendant

might lack financial resources. The standard the circuit court is to employ, however, when considering a motion made under Md. Rule 5-403, is whether the potential prejudice substantially outweighs the evidence's probative value.

Possession of the contraband in this case was a highly contested issue. The State is entitled to endeavor to establish the proximity of where the contraband was discovered as it related to the four individuals who might reasonably have possessed the contraband. To be sure, the parties contest the persuasive value of these documents. The State maintains that the documents are highly probative of establishing the identity of the possessor of the contraband. Indeed, the contraband was found in the trunk of a vehicle with multiple occupants and the individuals to whom the vehicle was registered was not among the occupants. Johnson, however, contends that the documents are unreliable. Regardless of their persuasive value, the documents found with the vehicle were perhaps the only mechanisms to distinguish the possessor of the contraband from the numerous others who had access to the contraband.

When presented with these concerns in the context of the Notice to Defendant, the trial judge articulated the relevant competing interests in determining whether to admit the evidence. The trial judge stated that:

I understand. There's the . . . . there's always the danger of prejudice, for sure. In this situation, I think part of the State's case is possession or if you would want to call it ownership. So, I think it's very probative as to who the bag belonged to when you consider the fact that the bag . . . the black and green bag, I guess . . . she called a Harris Teeter bag . . . is the in the back seat. So, I'm going to overrule the objection.

When Johnson objected to the Continuity of Care and the OPD Form, the judge similarly employed this rationale for denying the motion. In the context of this case, when the documents at issue here were critical to establishing possession, we cannot say that the “court acted without reference to any guiding rules or principles.” *North, supra*, 102 Md. App. at 13. We decline to address, in the first instance, whether the potential prejudice caused by the documents substantially outweighs the evidence’s probative value. Rather, it is sufficient for us to conclude that the circuit court did not abuse its discretion in finding that the prejudice caused by the documents did not substantially outweighed the evidence’s probative value. We, therefore, hold that the circuit court did not err in admitting the Notice to Defendant or the OPD Form into evidence at trial.

## **II. The Circuit Court Did Not Err by Finding the Documents to Be Authentic.**

Johnson further maintains that the circuit court erred by admitting documents that were not properly authenticated. The State counters that “the appearance and contents of each of the documents contained sufficient information from which the factfinder could have reasonably concluded that the document was what the State purported it to be.” We hold that the documents admitted against Johnson were properly authenticated.

Maryland Rule 5-901 provides that generally:

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Md. Rule 5-901(a).

In order for evidence to be properly authenticated, “the trial judge must determine that there is proof from which a reasonable juror could find that the evidence is what the proponent claims it to be.” *Sublet v. State*, 442 Md. 632, 638 (2015). Indeed, the purpose of Md. Rule 5-901 is to ensure that the proponent of the evidence has satisfied a burden of production sufficient to permit a reasonable fact finder to conclude the evidence is what its proponent claims it to be. The standard for authenticity, however, is not so high that it requires the evidence’s proponent to establish conclusively that the evidence is in fact what its proponent claims it to be. Stated differently:

[S]imply handing a writing to the jury without any contextual information at all would be confusing and perhaps misleading. The requirement of satisfying the authentication standard of Federal Rule 901<sup>4</sup> is not a heavy one. Typically it places the burden of locating a witness with some knowledge of the writing on the proponent; the opponent may cross-examine the witness about it; and the trier of fact then gets the added benefit of additional foundational information about the writing.

Dix, *supra*, at § 227.

Although the standard for authentication is not incredibly high, the proponent of tangible evidence must offer some extrinsic evidence establishing authenticity unless the evidence is self-authenticating under Md. Rule 5-902. *Hadid v. Alexander*, 55 Md. App.

---

<sup>4</sup> The authentication requirement of Fed. R. Evid. 901(a) is largely synonymous with that contained in Md. Rule 5-901(a). *Compare* Fed. R. Evid. 901 (“To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.”), *with* Md. Rule 5-901(a) (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”).

344, 350 (1983) (“Unless it is a self-authenticating document, some witness must appear and testify as to what the document is.”). The State argues that the intrinsic characteristics of the documents at issue constitute circumstantial evidence that demonstrate the document’s authenticity. We reject this contention.

As an example of a possible means by which evidence may be authenticated, the Maryland Rules provide that “[c]ircumstantial evidence, such as appearance, contents, substance, internal patterns, location or other distinctive characteristics, that the offered evidence is what it is claimed to be” is acceptable. Md. Rule 5-901(b)(4); *cf.* Fed. R. Evid. 901(b)(4) (“The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, **taken together with all the circumstances.**” (emphasis added)). Maryland Rule 5-901 illustrates how the internal features of a document can be significant support for establishing the authenticity of that document, so long as there is some extrinsic circumstance that makes those internal features relevant.

Were we to accept the State’s contention that the document’s internal features, alone, could establish the document’s authenticity, the scope of self-authenticating evidence would expand to the point that it would swallow our time-honored principle that “[u]nless it is a self-authenticating document, some witness must appear and testify as to what the document is.” *Hadid, supra*, 55 Md. App. at 350. Moreover, to expand Md. Rule 5-901(b)(4) to the dimensions the State advocates would render the provisions of Md. Rule 5-902 superfluous. In essence, we agree with the State that the intrinsic features of a document can bear significant weight in establishing the document’s authenticity. We, however, part ways with

the State that the intrinsic features of a document alone are sufficient to establish a document's authenticity in the absence of any extrinsic support.

Although we hold that the intrinsic features of a document alone are insufficient to establish the document's authenticity, it is apparent to us that in this case there was sufficient evidence to support the proposition that the evidence was what the State purported it to be. First, the State sought to submit the Notice to Defendant through the testimony of Selkirk.

As the document was admitted, the following colloquy transpired:

[THE PROSECUTOR]: . . . Corporal Selkirk, showing you State's Exhibit 9, do you recognize that?

[CORPORAL SELKIRK]: I do.

[THE PROSECUTOR]: And what is that?

[CORPORAL SELKIRK]: It's one of the Court documents that I found with Mr. Johnson's name on it inside the black bag . . . the black and green bag that was in the trunk.

[THE PROSECUTOR]: And, is that in the same of substantially the same condition as when you found it?

[CORPORAL SELKIRK]: Yes, it is.

[THE PROSECUTOR]: And you said that was in the same bag with the drugs?

[CORPORAL SELKIRK]: Yes.

Likewise, the OPD Form was similarly admitted through Selkirk's testimony in conjunction with the following exchange.



[THE PROSECUTOR]: . . . Now I'm showing you, for the record, State's Exhibit 11 for identification. Do you recognize that?

[CORPORAL SELKIRK]: Yes, I do.

[THE PROSECUTOR]: And what is that?

[CORPORAL SELKIRK]: It's . . . I didn't read it, but I saw Office of the Public Defender on it and it was also in the black and green bag.

[THE PROSECUTOR]: Okay. And is that in the same or substantially the same condition as when you found it?

[CORPORAL SELKIRK]: Yes.

Finally, the Continuity of Care form was admitted through the testimony of Detective Forbes, when he testified as follows:

[THE PROSECUTOR]: . . . Now Detective Forbes, showing you what's been marked as State's Exhibit 10 for identification. Do you recognize that?

[DETECTIVE FORBES]: Yes, ma'am.

[THE PROSECUTOR]: And, what is that?

[DETECTIVE FORBES]: That's one of the documents that was in the bag . . . in the green and black bag.

[THE PROSECUTOR]: And you're talking about it was in a bag . . . State's Exhibit 4?

[DETECTIVE FORBES]: Yes, ma'am.

[THE PROSECUTOR]: Is that the same or substantially the same condition as when you found that in the bag?

[DETECTIVE FORBES]: Yes, ma'am.

The State purported that the documents at issue here were documents found in the presence of contraband. Critically, the State did not assert that the documents were definitively what the text of the respective documents suggested. Instead, the documents were admitted to establish that the documents were found in close proximity to the contraband. To the extent Johnson asserts that the prosecutor's comments in closing suggest that the State purported the documents to be more than papers found in close proximity to contraband, we are unpersuaded. We further note that the prosecutor's comments in closing were not challenged. An allegation of error with respect to the prosecution's closing is, therefore, unpreserved.

Rather, the documents were admitted as tangible evidence found in close proximity to the contraband at issue. The State represented that the documents were papers found near the contraband. Selkirk and Forbes, through their testimony, provided sufficient evidence from which a reasonable fact finder could infer that the documents presented at trial were the same documents recovered near the contraband. Accordingly, the trial judge did not abuse his discretion in finding that the documents were properly authenticated. We, therefore, hold that the circuit court did not err in determining that the documents at issue had been properly authenticated.

**JUDGMENT OF THE CIRCUIT COURT FOR  
CHARLES COUNTY AFFIRMED. APPELLANT  
TO PAY COSTS.**