UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1959

September Term, 2015

LARRY ADESINA OLADIPUPO

v.

STATE OF MARYLAND

Berger,
Friedman,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: November 7, 2016

Tried by a jury in the Circuit Court for Montgomery County, appellant, Larry Adesina Oladipupo, was convicted of first-degree assault and use of a firearm in the commission of a felony or crime of violence related to an incident that occurred on February 3, 2015, second-degree assault and kidnaping related to an incident involving the same victim that occurred on February 5, 2015, and illegal possession of a firearm and illegal possession of ammunition.[1] The trial court sentenced appellant to a total of 25 years in prison,[2] after which he timely noted this appeal, presenting the following questions for our consideration:

1) Did the trial court err in admitting into evidence testimony that Appellant had been in jail prior to these events?

2) Was the evidence sufficient to support Appellant's convictions?

For the reasons that follow, we shall affirm the judgments of the trial court.

FACTS AND LEGAL PROCEEDINGS

On February 5, 2015, Thalia Alexis called 911 on a cell phone borrowed from a stranger at a shopping center on Quince Orchard Boulevard, Montgomery County, to report that her boyfriend had tried to kill her and threatened to kill her family. Crying and out of breath, she explained to the operator that the boyfriend had told her he needed to speak with her in his car; when she entered the car, he punched, slapped, backhanded, and choked

[1] The jury acquitted him of first-degree assault related to the February 5, 2015 incident.

[2] The 25-year sentence was imposed to run consecutively to a 17-year sentence appellant was serving at the time of sentencing in this matter for a probation violation.

her to get her "to start telling the truth," although she did not know what he thought she had done. She refused to give the 911 operator the boyfriend's name for fear he would retaliate against her and her family.[3]

Gaithersburg City Police Corporal Jessica Duke and Officer Jonathan Bennett responded to Alexis's 911 call. When they arrived at the shopping center, Alexis was sitting on a curb, crying and visibly shaking—"utterly hysterical"—and repeating only that her boyfriend had beaten her up and she thought he was going to kill her. Although the officers did not initially see any injuries, Alexis said she had been choked and that her face hurt. Duke later saw "a little bit of swelling on the side of her face." In addition, the officers observed that Alexis's shirt was inside out.

After much prodding from Duke, Alexis identified her boyfriend as Larry Oladipupo and relayed the details of the attack. She told Duke that on February 3, 2015, she had been at appellant's house. Suspicious of something he thought she had done, he pointed a silver handgun at her head and told her he was going to kill her.

The next day, appellant texted Alexis numerous times to try to get her to meet and talk with him. When he knocked on her window late that night, she went outside, and he asked her to enter his vehicle. She refused, but he pushed her to the ground and dragged her to the vehicle.

[3] A recording of the 911 call was played for the jury and entered into evidence.

Appellant drove around for quite some time, "visibly upset" with Alexis. The pair argued, and appellant punched Alexis in the face, choked her, and banged her head against the car window.

At one point, appellant pulled into a gas station and instructed Alexis to disrobe, telling her she was going to walk home naked. She stepped out of the car and took her clothes off, and he revved the engine. Fearing that he would run her over, she grabbed her clothes and ran to the Quince Orchard Plaza shopping center, where she made contact with a man and used his cell phone to call 911.[4] Later that night, Alexis completed a "Domestic Violence Supplemental," a document that is required when there is an allegation of assault by a person with whom the victim is in an intimate relationship. The supplemental detailed, on a diagram, where Alexis's injuries were, her demeanor as observed by the police officer filling out the form, and her comments and description of the abuse.

On February 6, 2015, Alexis was interviewed by Detective Corporal Everett Cammack at the Gaithersburg Police Department.[5] During the interview, Alexis was calm and cooperative as she added details to the narrative that she had given to Duke.

[4] That man, David Smith, testified that he was loading musical equipment into his van at approximately 1:00 a.m. on February 5, 2015 when a distraught woman appeared, saying that her boyfriend was trying to kill her and asking for a ride home. Instead, he handed her his cell phone and advised that she call the police.

[5] The transcript of the interview was admitted into evidence as State's exhibit 3, and a version redacted to eliminate references to appellant's prior interactions with the police was admitted as State's exhibit 3A.

Alexis told Cammack that on February 2, 2015, she had spent the night at appellant's parents' house, where he lived. When appellant did not receive an adequate explanation about an alleged incident, he got angry with her.

Early in the morning of February 3, 2015, Alexis was asleep on the couch in the basement where appellant slept; when she awoke, appellant was staring at her in the dark. He reached under a cushion on the couch and pulled out a silver gun that may have had a black grip, placed it against her forehead, and questioned her about a neighbor he had seen in his yard. He only stopped questioning her approximately 35 minutes later, when he heard his parents moving upstairs. Alexis was then able to leave the house.

Alexis did not respond to appellant's numerous calls or texts the next day. At approximately 1:00 a.m. on February 5, 2015, appellant appeared at Alexis's apartment and knocked on her ground floor window. She told her mother she was going outside to speak with him.

Although she was reluctant, appellant convinced her to get into his car. As soon as she entered the car, his wheedling demeanor changed to anger, and he told her she was going to die. Alexis tried to get out of the car, but appellant grabbed her by her jacket, choking her, and drove away. As he pulled away from her apartment, he hit her and threatened her and her family. He continued to drive and hit her and bang her head against the window.

When they arrived in Rockville, appellant ordered her to undress completely, after which he rolled down all the car windows, telling her she would freeze. He eventually pulled into a gas station in Gaithersburg and told her to get dressed. She did so hurriedly,

putting her shirt on inside out, but she was unable to find her underwear or glasses.[6] She jumped out of the car and ran to the nearby shopping center, where she encountered Smith, the stranger who let her use his cell phone to call the police. Alexis identified appellant as her assailant from a "target sheet" the police had made when they were looking for appellant on outstanding warrants.[7]

Cammack obtained a warrant to search appellant's parents' house. Upon execution of the warrant on February 6, 2015, appellant was the only person in the home. The police found a loaded black 9-millimeter handgun under a couch cushion in the basement.[8] In addition, an iPhone and a pair of tan pants, with appellant's identification in the pocket, were found in the basement.

As appellant's trial date approached, Cammack received several emails stating that Alexis was afraid to testify against appellant. The State subpoenaed Alexis, but she informed the prosecutor that she would not testify. The State filed a motion to compel her testimony, with the proviso that anything she testified to "can't be used against her."

[6] When going over the facts of the assault a second time with Cammack, she told him that she could not find her glasses or her socks but that she put her underwear in her pocket.

[7] Cammack made an in-court identification of appellant as the man Alexis said attacked her.

[8] When Cammack showed Alexis a photo of the gun that was recovered, she agreed that it may have been the gun appellant put to her head on February 3, 2015. The gun was later test fired and determined to be operable. At trial, the parties stipulated that appellant was prohibited from possessing a regulated firearm.

Upon being called as a witness by the State, Alexis immediately acknowledged that she did not want to be in court. She reluctantly agreed she had been involved in two incidents involving appellant in February 2015, which caused her to call the police and go to Shady Grove Hospital, but she claimed not to recall why she had called the police, spoken to the police, or filed out a domestic violence supplemental form.[9] The court granted the prosecutor permission to treat Alexis as a hostile witness and admitted her statements to the police officers into evidence as prior inconsistent statements and excited utterances.

Alexis admitted that she told Detective Cammack that she had awakened at appellant's house on the morning of February 3, 2015, but that actually she had not been there, and she claimed not to remember the events that led to appellant putting a gun to her head. She further claimed not to remember the events of February 5, 2015, which ended with her call to 911.

During cross-examination, Alexis acknowledged she had told defense counsel, prior to trial, that she made the whole story up while drunk and high on marijuana because she was angry at appellant; she now claimed that everything she had told the State and the police was a lie. Instead, she said, the truth was that she had started a "very confrontational argument" with appellant about him cheating on her just prior to the incident that led to the 911 call. She had not rectified her lie to Cammack the day after her hospital visit, she said, because she was afraid she would get into trouble, having been charged previously with

[9] Alexis's medical records from Shady Grove Hospital were admitted into evidence as State's exhibit 1. They indicated that she presented to the hospital with contusions to her face and neck. The domestic violence supplemental form was also admitted into evidence as State's exhibit 2.

giving a false report to police. She claimed that she had tried to tell the prosecutor, during a face-to-face meeting, that her story was a lie but that the prosecutor would not listen to her.

At the close of the State's case-in-chief, appellant moved for judgment of acquittal, disputing the sufficiency of the State's evidence, as follows:

1. **First-degree assault**—there had been no indication that a firearm was used in the commission of an assault, as the only allegation (which Alexis had recanted) was that a silver handgun was pointed at the victim, but only a black handgun was found in appellant's home. In addition, there was no evidence of intent or resulting injury to justify a finding of first-degree assault based on the likelihood of injury or death.

2. **Use of a firearm in the commission of a violent crime**—as above, the victim complained only about a silver firearm, which was not found, and recanted her statement during her trial testimony

3. **Kidnaping**—Alexis was not confined against her will, as she willingly entered appellant's car. There was also no evidence that appellant moved her with the intent to carry or conceal her.

4. **Illegal possession of firearm and ammunition**—no evidence, including DNA or fingerprints, linked the firearm found in appellant's house with him, nor had there been any report that anyone saw him in possession of a black handgun.

The court denied the motion.

In appellant's defense, his mother, Cynthia Oladipupo, testified that appellant lives in an upstairs bedroom in her house, while her other son, Lamar, lives in the basement. She stated that Lamar slept in the basement on the night of February 5, 2015 and that it is he who keeps his clothes there. She further acknowledged that, prior to trial, appellant had

asked Cynthia to tell Alexis she was to blame, that "she know that it wasn't true," and that if she appeared in court, he was going to "press charges on her."

Appellant also called Alexis as a witness. After viewing a videotape taken of her from a police car dashboard camera on February 5, 2015, she claimed that the apparent trouble she had walking in the video was due to the fact she had been drinking and smoking marijuana all that day.[10] She further stated that, although she was heard on the video telling the EMT that she had been hit and choked, her face had actually been fine and appellant had not beaten her. She reluctantly admitted that she had sworn out a peace order against appellant the night of the incident but claimed that the police had told her she was required to do so.

At the close of all the evidence, appellant renewed his motion for judgment of acquittal on the same grounds as previously asserted. The court again denied the motion.

DISCUSSION

I.

Appellant contends that the trial court erred in admitting into evidence, through Corporal Duke, Alexis's statement to Duke while in the ambulance on the way to Shady Grove Hospital on February 5, 2015, that appellant was suspicious that "she was trying to set him up and send him *back to prison*." Any evidence that he had previously been

[10] When she responded to Alexis's 911 call on February 5, 2015, Corporal Duke did not detect any odor of marijuana or alcohol. And, in presenting to the hospital that night, Alexis told the treating physician she had not used drugs or alcohol, although she testified that she did not remember making that denial.

incarcerated for a crime, he concludes, comprised "extremely prejudicial" prior crimes evidence, and that the prejudice substantially outweighed any probative value that the statement may have supplied.

During the State's direct examination of Duke, the corporal testified that when she responded to Alexis's 911 call on February 5, 2015, Alexis was so upset "it took quite a few minutes to get her to tell me what happened," along with numerous reassurances that the police were "just trying to help her." After the court agreed to admit Alexis's statement to Duke as a prior inconsistent statement and excited utterance, the prosecutor asked Duke what had happened after she made those reassurances to Alexis:

> A. Yes. She proceeded to tell me that her—she was afraid that her boyfriend was going to kill her and her family, and I asked her why. She told me that two days prior, on the 3rd of February, she had been at her boyfriend's house, and he was suspicious that she was trying to get him—
>
> Q. All right. Let me cut you off right there.
>
> A. Okay. Sure thing.
>
> Q. Okay.
>
> A. That's okay.
>
> Q. So, she was afraid that he was suspicious of something, and when, what did he do after that, based on that suspicion?
>
> A. He pointed a silver handgun at her head and told her that he was going to kill her, and that she was trying to set him up and send him *back to prison*. (Emphasis added).

Defense counsel asked to approach the bench, where he requested a mistrial on the ground that the "jury can't know that he was someone who was going back to jail. It's very out of bounds." The prosecutor, asserting that she had tried to preclude Corporal Duke from

commenting on appellant's alleged suspicion that Alexis was trying to send him back to prison, argued that the court should give the jury a curative instruction and strike the statement.

Defense counsel argued that striking the statement would not suffice because "[t]here's no way to correct that in the jury's mind." The prosecutor pointed out that there had been no evidence presented to the jury that appellant actually was or had been in prison. The court agreed, stating: "I'm going to tell the jury to disregard any testimony that the witness was trying to put the defendant in prison. The only thing they can regard it, use it for is a motive she might have to make a false statement and it's not being received for the truth."

Defense counsel objected, and during a recess in which the jury exited the courtroom, again requested a mistrial on the ground that no admonition to the jury from the bench would alleviate the prejudice to appellant. The State disagreed with the "extreme remedy" of mistrial and reminded the court that it was the defense's theory that everything Alexis had told the police was a lie, so her statement to Duke about appellant's suspicion actually benefitted the defense. Defense counsel said that he failed to see how the statement could be favorable to the defense. He continued that he could not lie to the jury and declare appellant had no previous conviction and had never been to jail.[11]

Prior to the jury's return, the court reasoned:

[11] It was established during sentencing that appellant had been convicted of robbery when he was 16 years old and was on probation for that crime (and subject to an outstanding bench warrant for a separate CDS crime) when he committed the crimes at issue in this case.

> THE COURT: All right. Well, I think it's important to take a look at the statement in the context in which it has been made. First off, the statement being made by Ms. Alexis to Corporal Duke, is being received as substantive evidence, as an exception to the hearsay rule that it's an excited utterance; Rule 5-802.1, the *Nance* case, the statement itself is being received as substantive evidence.
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> In other words, the statement is being received as though Ms. Alexis was here on the witness stand, testifying as to why the defendant assaulted her. And, that her testimony as received through the officer, is that he assaulted her because he thought she was trying to put him back in jail, which provides motive for the attack.
>
> And as such, it's relevant, because it is motive, and if the victim was on the witness stand herself making that statement, that he said to her while he was assaulting me, that he was assaulting me because [s]he was going to put me back in jail, that statement would be admissible as motive, even though it is prejudicial to the defendant. It is admissible as to motive. So, I don't see that it is a statement that would warrant a mistrial. I'm prepared to instruct the jury that the statement is being received as substantive evidence, that there's no evidence that the defendant is in jail; there's no evidence that he was in jail and it's merely a statement that's being received through the officer by the report from the witness as to why the defendant assaulted her. And it's up to them as to whether or not to believe what the witness told the officer, or what the witness has said here in Court.

Upon the jury's return to the courtroom, the court instructed the jury that Corporal Duke's testimony regarding Alexis's statement

> is being received as substantive evidence, because it is an exception to the hearsay rule because it is determined to be an excited utterance; it's determined to be a prompt complaint, and it's also been determined to be a prior inconsistent statement made by a witness who has testified differently in court.
>
> And it's up to you to [weigh] the credibility of that witness and to determine whether or not, whether the statement made by the witness to Corporal Duke at the time she made that statement was truthful, or whether the statement that she has given in court here was truthful. There is no evidence that the defendant is in prison. There's no evidence that he was in prison, and any statement with respect to the witness saying to the officer that defendant was assaulting her because she was trying to put him in prison,

> goes to motive. But there's no proof that he was in prison, or that she put him in prison.
>
> So, it's a statement that's being received, just as if she were here on the witness stand testifying as to what he was saying when he assaulted her, if you believe that he was, in fact, assaulting her.
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> So, it's up to you to determine the credibility of that witness; that's the testimony that's being offered through Corporal Duke. So, again, that's why the hearsay, what would normally be viewed as hearsay, is actually being allowed as substantive evidence in this case.

Thereafter, the prosecutor resumed her direct examination of Duke, with no objection by defense counsel to the court's instruction.[12]

Appellant claims that the trial court abused its discretion in admitting Alexis's statement that he feared she was trying to "send him back to prison," on the ground that it amounted to improper evidence of prior crimes that had caused him to be in prison in the first place.[13] In his view, the probative value of such evidence was far outweighed by unfair prejudice. We disagree.

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[12] The prosecutor ensured that Detective Cammack, a later witness, made no mention of appellant having been in jail during his testimony.

[13] In his brief, appellant appears to have abandoned the argument, advanced at trial, that the trial court abused its discretion in declining to grant him a mistrial based on the admission of the statement. In any event, it would have been unavailing. In a trio of cases, this Court has addressed the issue of whether a mistrial is required when a witness makes reference to the defendant's status as a prisoner and concluded it is not. *Wagner v. State*, 213 Md. App. 419, 463 (2013) (motion for mistrial based on the statement, "I knew he was locked up," properly denied because the "statement was isolated, unsolicited and unlikely to cause significant prejudice."); *Mitchell v. State*, 132 Md. App. 312, 328-29 (2000), *rev'd on other grounds*, 363 Md. 130 (2001) (no abuse of discretion in trial court's denial of defendant's motion for mistrial when a witness stated that a friend of Mitchell's told him that Mitchell was "locked up;" we were not "persuaded that any significant damage resulted from [the] remark, as it was a single, isolated statement that was (continued…)

Maryland Rule 5-404(b) provides that a court may not admit evidence of other crimes, wrongs, or acts that is offered "to prove the character of a person … to show action in conformity therewith." The rule is intended to prevent the jury from "'developing a predisposition of guilt'" based on unrelated conduct by the defendant. *Sinclair v. State*, 214 Md. App. 309, 334 (2013) (quoting *State v. Faulkner*, 314 Md. 630, 633 (1989)), *aff'd,* 444 Md. 16 (2015).

Notwithstanding this rule of exclusion, a trial court may admit other crimes or prior bad acts evidence if it has special relevance and satisfies three requirements. *First*, the evidence must be relevant to the offense charged on some basis other than mere propensity to commit crime, such as "motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." *Second*, the evidence must be clear and convincing that the defendant was involved in the alleged acts. *Third*, the probative value of the evidence must substantially outweigh its potential for unfair prejudice to the defendant. *Gutierrez v. State*, 423 Md. 476, 489–90 (2011) (citing *Faulkner*, 314 Md. at 634-35).

In our view, all three requirements were met. *First*, the trial court found that Alexis's statement that appellant was suspicious that she was trying to set him up to send him back

wholly unresponsive to the State's question, and the court's curative instruction was adequate to overcome any taint."); *Turner v. State,* 48 Md. App. 370, 377 (1981), *rev'd on other grounds*, 294 Md. 640 (1982) (motion for mistrial properly denied when witness said he had not spent time with the defendant because he was "locked up," as "the response given … was inadvertent and unexpected," and the "statement that 'he was locked up then' would seem to carry very little prejudicial information."). Thus, if not waived, Oladipupo's argument that the court erred in denying his motion for mistrial would not have prevailed.

to prison provided a motive for his attacks. During her interview with Cammack, Alexis stated that appellant becomes paranoid when he "thinks everyone's against him. Everyone's trying to set him up." She added that when he pointed the gun at her on February 3, 2015, appellant asked if she were telling people his business and trying to set him up. His belief that Alexis was trying to set him up, and, as she told Duke, send him back to prison, provided evidence of his motive in assaulting Alexis on two occasions, when she said he had never done so before during their six-year relationship.

Second, defense counsel's admission, as an officer of the court, that he would be lying to the jury if he claimed that appellant had not been in prison previously provided clear and convincing evidence that appellant had been in prison.

Finally, *third,* the court found that the evidence regarding appellant's possible motive in attacking his girlfriend was probative and outweighed the potential for unfair prejudice. We agree, particularly in light of the fact that the court reminded the jurors that Alexis had testified differently in court and that it was up to them to weigh the credibility of her statements. Thus, the jury was aware that it could determine that Alexis's statement to Duke was entirely fabricated, especially when it was reminded that it had heard no direct evidence that appellant was then, or had previously been, in prison.

Moreover, this Court has made clear that we will not find reversible error "when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury without objection through the testimony of other witnesses." *Berry v. State*, 155 Md. App. 144, 170 (2004). *See also Jones v. State*, 310 Md. 569, 589 (1987), *vacated on other grounds,* 486 U.S. 1050, *on*

remand, 314 Md. 111 (1988)) ("Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received."). Here, the jury also heard from Cammack, without objection, that Alexis identified appellant as her attacker from a "target sheet" the police had made when they were looking for appellant on outstanding warrants. Thus, the fact that appellant had committed other crimes was already properly before the jury, and Duke's testimony to the same effect could hardly be deemed unfairly prejudicial.

II.

Appellant also complains that the evidence adduced by the State is insufficient to sustain his convictions, arguing that Alexis, who testified she was drunk and high on the night of the alleged attacks, had recanted entirely her story that appellant had threatened, beaten, or kidnaped her and had admitted to having lied to police on previous occasions. In light of her unambiguous trial testimony, he concludes, no rational jury could have found him guilty of any of the charged crimes beyond a reasonable doubt. He supports his argument with the following examples: 1) Alexis told the police that the gun appellant pointed at her was silver, but only a black gun was found at appellant's house during the execution of the search warrant; 2) Alexis told the police both that she willingly got into appellant's car on February 5, 2015—which, in his view, would preclude a conviction of kidnaping—and was forced into the car unwillingly; 3) Alexis told the police that she had left her underwear in appellant's car, but the evidence tended to show it was in her pocket when she spoke to the police; and 4) he could not have been found to possess the black handgun found in the basement of his parents' house because his mother had clarified that

the room in which it was found belonged to his brother and not to him, he was not near the gun when it was found, and the fact that his driver's license was found near the gun was insufficient to prove his constructive possession of the gun, especially in the absence of DNA or fingerprint evidence linking him to the gun.

Ordinarily, our appellate courts review the sufficiency of the evidence in a jury trial by

> asking whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."
>
> "In determining whether evidence was sufficient to support a conviction, an appellate court 'defer[s] to any possible reasonable inferences [that] the trier of fact could have drawn from the … evidence[.]'" "We defer … and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." In *Jones v. State,* we stated:
>
> > In performing its fact-finding role, the trier of fact decides which evidence to accept and which to reject. Therefore, in that regard, it is not required to assess the believability of a witness's testimony on an all or nothing basis; it may choose to believe only part, albeit the greatest part, of a particular witness's testimony, and disbelieve the remainder.

Grimm v. State, 447 Md. 482, 494-95 (2016) (internal citations omitted).

The same standard applies to all criminal cases, including those resting upon circumstantial evidence. *Handy v. State*, 175 Md. App. 538, 562 (2007). "'Circumstantial evidence is as persuasive as direct evidence. With each, triers of fact must use their

experience with people and events to weigh probabilities.'" *Mangum v. State,* 342 Md. 392, 400 (1996) (quoting *Mallette v. Scully*, 752 F.2d 26, 32 (2d Cir. 1984)).

But for the argument relating to the possession of the handgun, appellant does not argue that the State failed to prove, if the jury believed its evidence, any specific required elements of each of the charged crimes. Instead, he attacks the credibility of the complaining witness, Alexis, averring that her recantation of, and inconsistencies in, her story preclude a reasonable jury from finding him guilty.

We addressed this type of argument succinctly in *Correll v. State*, and we repeat it here, as dispositive to the sufficiency issue appellant raises based on Alexis's credibility:

> None of the arguments the appellant advanced regarding sufficiency have any merit either. They all amount to nothing more than taking issue with the weight and credibility determinations made by the jury. It is "the jury's task to resolve any conflicts in the evidence and assess the credibility of witnesses." In so doing, the jury "can accept all, some, or none of the testimony of a particular witness." It is not a proper sufficiency argument to maintain that the jurors should have placed less weight on the testimony of certain witnesses or should have disbelieved certain witnesses. Here, the jurors were presented with evidence that, if credited, was legally sufficient to support a finding of each element of each crime charged, beyond a reasonable doubt.

215 Md. App. 483, 501–02 (2013), *cert. denied*, 437 Md. 638 (2014) (internal citations omitted). In other words, if the jury credited Alexis's statements to the police, the officers' and David Smith's testimony of her hysterical demeanor on the night of the attack, the hospital records that suggested she had been injured on February 5, 2015, and the fact that

she filled out a domestic violence supplemental form, and received a protective order, it had more than sufficient evidence before it to convict appellant of the charged crimes.[14]

Appellant's sufficiency-of-the-evidence argument regarding the handgun possession charge is equally unavailing. Although appellant was not in actual possession of the handgun when the police discovered it during the execution of the search warrant at this parents' house, the police found a pair of pants with appellant's license in the pocket in the basement, which provided circumstantial evidence that appellant stayed in that room, notwithstanding his mother's claim that her other son lived in the basement. Likewise, the jury was free to credit Alexis's statement to the police that appellant usually slept in the basement and that she was there with him on the night of February 3, 2015, when he retrieved the gun from under the same sofa cushion as the police later found it. If believed by the jury, the evidence was sufficient to prove appellant's constructive possession of the gun, even in the absence of DNA or fingerprint evidence linking him to it. *See Smith v. State*, 415 Md. 174, 187 (2010) (citing *State v. Suddith*, 379 Md. 425, 432 (2004)) (Possession may be actual or constructive, and the mere fact that contraband is not found on the defendant's person does not necessarily preclude an inference by the trier of fact that the defendant had possession of the contraband. So long as the defendant knew of the illicit

[14] Of course, any other result would have the effect of encouraging defendants to terrify their victims into recanting their testimony.

nature of the contraband, he may have dominion and control over it; knowledge may be proven by circumstantial evidence and by inferences drawn therefrom.).

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.