UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1339

September Term, 2015

ROY PINKNEY

v.

STATE OF MARYLAND

Graeff,
Friedman,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 8, 2017

A jury in the Circuit Court for Baltimore City convicted Roy Pinkney, appellant, of fourth-degree burglary. The court imposed a sentence of three years.

On appeal, appellant presents the following questions for our review:

1. Did the trial court err in restricting appellant's ability to cross-examine the State's fingerprint expert on the reliability of his methodology?

2. Did the trial court err in permitting the State to elicit biographical information about individuals who were excluded by the State's fingerprint expert?

3. Was the evidence sufficient to convict appellant?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On July 29, 2013, Leak Vanlandingham departed his home for work, locking the front door but leaving a first-floor bay window "wide open." The window was divided into four sections that open outward at a 90-degree angle, and to access the window from the outside, a person would have to walk through his yard, which contained some plant-life and was surrounded by a fence.

When he returned from work approximately 12 hours later, Mr. Vanlandingham unlocked the front door, entered his home, and discovered that an interior door, which he had closed that morning, was now open. The bay window remained open, but the window screen was "pushed in." Mr. Vanlandingham conducted a search of the home and noticed several items missing, including a television, a VCR, a laptop computer, and assorted tools.

After Mr. Vanlandingham called the police, April Taylor, a crime laboratory technician with the Baltimore City Police Department, reported to Mr. Vanlandingham's home and "began to fingerprint the crime scene." Ms. Taylor collected fingerprints from several areas around the home, including "the disturbed window." Ms. Taylor then transferred each of these fingerprints to a "lift card," which was used to store the collected fingerprint for analysis. Four of the lift cards contained fingerprints collected from "the interior frame on the window pane of the first floor," and another lift card contained a fingerprint from the "interior frame on sill of the first floor front bay window."

A total of seven lift cards were given to Sean Dorr, a Latent Print Examiner. Only three of the collected fingerprints, all of which were collected from the interior frame of the first floor bay window, were suitable for analysis. Of these three, two were suitable to be entered into the Department's Automated Fingerprint Identification System ("AFIS"), a database containing the fingerprints of all persons who have been fingerprinted and entered into the State system.

After Mr. Dorr entered the fingerprints into AFIS, the system returned a list of 20 potential matches, or "candidates." Starting with the first candidate, Mr. Dorr conducted a "side-by-side" analysis of the candidate's fingerprints with those collected from the interior of Mr. Vanlandingham's window to determine if they matched. After determining that the prints did not match, Mr. Dorr repeated the process with the next candidate, later identified as appellant, which resulted in a match. Mr. Dorr did not compare the collected fingerprints with any of the other candidates.

Mr. Dorr then retrieved hard copies of appellant's fingerprints, conducted a visual analysis of these fingerprints and the three suitable prints collected from Mr. Vanlandingham's window, and determined that appellant was a match for all three. These results were sent to a second fingerprint examiner, who acted as a "verifier," and confirmed Mr. Dorr's conclusions. Appellant was then arrested and charged.

Mr. Dorr testified at trial regarding the process he used in determining that appellant's fingerprints matched those collected at the scene. He stated that the method he used, i.e., Analysis, Comparison, Evaluation, and Verification ("ACE-V"), was the standard method, and if done correctly, it was an "infallible system."

On cross-examination, defense counsel attempted to impeach Mr. Dorr using a January 2006 report authored by the United States Department of Justice, Office of the Inspector General, regarding the Federal Bureau of Investigation's ("FBI") misidentification of fingerprints left at the scene of a bombing in Madrid, Spain. The State objected, and the following occurred at a bench conference:

> [DEFENSE]: Your Honor, I'd just like to proffer that I want to question this witness about the identification of a fingerprint by the FBI to a lawyer in Oregon named Brandon Mayfield.
>
> THE COURT: This is blatant hearsay.
>
> [DEFENSE]: Well, I do have a report that I believe is within the hearsay…exception.
>
> THE COURT: I've never heard of it.
>
> [DEFENSE]: I've given it to [the State]. I'd like to question the witness about it. It's an FBI report. It's I think within a clear hearsay exception. I'd like to question.

THE COURT: What is clear hearsay exception?

[DEFENSE]: Your Honor, may I retrieve it?

(Pause.)

[DEFENSE]: Your Honor, this is the document. . . .

* * *

[DEFENSE]: And, Your Honor, the hearsay exception is 5-803(b)(8).[1] It's a report prepared by an agency that identifies the workings of the agency. The title of the report is *A Review of the FBI's Handling of the Brandon Mayfield Case* by the Office of the Inspector General.

The court then took a recess to consider the issue. After the recess, the State noted that the report involved "the handling of fingerprints by the FBI," and "Examiner Dorr doesn't work for the FBI, isn't familiar with what their protocols are," but he "testified to what the Baltimore City Police Department's protocols are and then testified on cross that it is, the system is extremely accurate and no other mistakes here." Defense counsel argued

[1] Maryland Rule 5-803(b)(8) sets forth a hearsay exception for public records and reports, providing as follows:

> (A) Except as otherwise provided in this paragraph, a memorandum, report, record, statement, or data compilation made by a public agency setting forth
> (i) the activities of the agency;
> (ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report;
> (iii) in civil actions and when offered against the State in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law; or
> (iv) in a final protective order hearing conducted pursuant to Code, Family Law Article, § 4-506, factual findings reported to a court pursuant to Code, Family Law Article, § 4-505, provided that the parties have had a fair opportunity to review the report.

that the report was "a very high profile example of an agency whose professional standards are beyond reproach, frankly, as the Justice Department and the FBI, where a mistake was made," which counsel argued that the jury was "entitled to know about it."

The court then ruled as follows:

> I understand what you are arguing about. I understand, but I don't agree with it. And I will tell you why. I have read enough of the report to indicate there's a failure in the system of the FBI in 2004. Number one, it indicates what they didn't do that they should have done. It also indicates that the print that they looked at was not a very good print.
>
> This would require a more in-depth, which I believe we can't, comparison of the various steps that they took in the FBI case in 2004. I do not believe that it is relevant to the facts presented in this case. And therefore, I will not admit that report.
>
> * * *
>
> You can't introduce every misidentification case into evidence to show that this identification is not a good one.
>
> I'm not admitting it.

After the trial court ruled that it would not admit the Report into evidence, defense counsel asked if he could still question Mr. Dorr about the Report. The trial court denied the request, stating: "I'm not going to get into Brandon Mayfield. I've already ruled on that," beyond that, the court would take the cross-examination "question by question."

Defense counsel subsequently questioned Mr. Dorr about the candidate list generated by AFIS:

> [DEFENSE]: Now, Examiner Dorr, when you testified that you put the fingerprints into the database, the Automated Fingerprint Identification System, you only – you limited it to search for people from Maryland; correct?
>
> MR. DORR: That's correct.

[DEFENSE]: And the – you testified that the computer gave you 20 possible matches, 20 candidates?

MR. DORR: That's correct.

* * *

[DEFENSE]: Were these 20 candidates ranked in order that the computer thought that they accurately matched?

MR. DORR: Yes. The computer gives each of the side-by-side comparisons a score.

* * *

MR. DORR: The highest score is the first candidate, and the score is lower as you go down to 20.

[DEFENSE]: I see. Now, the first candidate in this case was not [appellant], was it?

MR. DORR: No, it was not.

[DEFENSE]: And you were able to eliminate that candidate, the first match that the computer gave you?

MR. DORR: I was able to eliminate the first candidate, not the first match.

[DEFENSE]: The first candidate. I'm sorry. And how were you able to eliminate that person?

MR. DORR: By analyzing the entire print.

* * *

MR. DORR: Which the computer does not do.

[DEFENSE]: And the second candidate was [appellant]?

MR. DORR: That's correct.

[DEFENSE]: And when you decided that [appellant] was the actual person who left the latent, you stopped?

MR. DORR: I stopped my computer evaluation, and then pulled an actual hard copy to do one by -- side-by-side, one-to-one comparisons.

* * *

MR. DORR: I never looked any further than once I was -- determined an identification on the screen.

Mr. Dorr was then questioned regarding the pool of fingerprints in the system, and then the following occurred:

[DEFENSE]: [Y]ou put that [information about the fingerprint] into the computer system and it returned 20 possible candidates?

MR. DORR: That is correct.

[DEFENSE]: And you looked at the first one and said it's not him, and the second one, it's him, and threw the rest of them away?

MR. DORR: I don't throw them away. I print out the candidate list and –

[DEFENSE]: Well, in this case, you didn't even do that?

MR. DORR.: I only print the top five because of the – our standard operating procedure tells me if I make an identification within the top five, I can only print out the top five candidates. . . .

* * *

[DEFENSE]: Now, you testified earlier that the source of the prints is anybody who – anybody who is fingerprinted within the State if they are applying for a job, if they are trying to get some sort of a clearance that would require fingerprints, all those fingerprints form the database that you use?

MR. DORR: That's correct, any teacher, child care services, anybody who is applying for gun permits, some lawyers are

actually in the database, and anybody who's been arrested for any reason, in that database.

[DEFENSE]: Very well. Now, when the candidate – the 20 candidates are returned to you by the computer, how much do you know about those people?

MR. DORR: Absolutely nothing other than the transaction number which goes to the actual fingerprint card. It doesn't tell me the S-I-D number at first.

[DEFENSE]: So you are not able to tell whether a particular candidate is an arrestee or somebody who is trying to get clearance or a job applicant? You don't know that?

MR. DORR: No, I'm not.

During redirect examination, the State followed up on the information Mr. Dorr obtained from the candidate list, and the following occurred:

[STATE]: Examiner Dorr, you also indicated, going down our candidate match list, there was a first candidate that was ruled out that actually initially had a computer generated higher score?

MR. DORR: That's correct.

[STATE]: And there came a time when you had to run a candidate list; correct?

MR. DORR: Yes.

[STATE]: Did you find out any more about this first candidate?

MR. DORR: Yes, I did.

* * *

MR. DORR: I was able to determine who that person was that was Candidate Number 1.

[STATE]: Okay. And can you give us some information on that person?

MR. DORR: I know that the person --

[DEFENSE]: Object to relevance.

THE COURT: I don't know if it's relevant or not.

You may finish[.]

MR. DORR: Okay. The Candidate Number 1 in this was a very older gentlemen. I believe he was born around 1934 and was printed in the 1950's. And then Candidate Number 2 was [appellant]. And then the other candidates with – on my printed out candidate list were all women that were printed for jobs.

[STATE]: Okay.

[DEFENSE]: Object and move to strike.

THE COURT: Overruled.

DISCUSSION

I.

Appellant first argues that the trial court erred in restricting his ability to cross-examine Mr. Dorr on the reliability of his methodology in his fingerprint identification. Specifically, he takes issue with the court's ruling preventing counsel from cross-examining Mr. Dorr about a problem that the FBI encountered in 2004 that resulted in the FBI's misidentification of a man named Brandon Mayfield in bombings in Madrid. The State contends that the circuit court acted within its discretion in "precluding questions about a report relating to problems with an unrelated FBI investigation a decade earlier."

"It is frequently stated that the issue of whether a particular item of evidence should be admitted or excluded 'is committed to the considerable and sound discretion of the trial court,' and that the 'abuse of discretion' standard of review is applicable to 'the trial court's determination of relevancy.'" *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619 (2011) (citations omitted). "Maryland Rule 5-402, however, makes clear that the trial court does not have discretion to admit irrelevant evidence." *Id.* at 620. Consequently, a trial court's evidentiary ruling encompasses both a legal and a discretionary determination, which in turn implicates two separate standards of review: (1) a *de novo* standard, which we apply to the trial court's legal conclusion whether the evidence was relevant; and (2) an abuse of discretion standard, which we apply to the trial court's determination that the probative value of the evidence is outweighed by any substantial prejudice. *State v. Simms*, 420 Md. 705, 725 (2011). Here, the circuit court ruled that the evidence was relevant, an issue we review *de novo*.

Evidence is relevant if it makes "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. In other words, evidence is relevant if it is both material and probative. "Evidence is material if it bears on a fact of consequence to an issue in the case." *Smith v. State*, 218 Md. App. 689, 704 (2014). "Probative value relates to the strength of the connection between the evidence and the issue . . . to establish the proposition that it is offered to prove." *Id.* (citations and quotation marks omitted). Generally speaking, evidence that is relevant is admissible; evidence that is not relevant is not admissible. *See* Md. Rule 5-402.

Here, Mr. Dorr's identification of appellant's fingerprint was critical to the State's case; it essentially was the sole piece of evidence linking appellant to the crime. And there is no dispute that defense counsel had a right to challenge Mr. Dorr's identification and methodology during cross-examination. *See Markham v. State*, 189 Md. App. 140, 164-65 (2009) (discussing cross-examination as the proper vehicle for attacking a positive fingerprint identification). The question, however, is whether the report, which the State characterizes as "a case study of how the FBI had bungled a single, isolated case," was relevant to the jury's evaluation of the methodology employed by Mr. Dorr.

After reviewing the report submitted by the defense, we agree with the State that the circuit court did not err in precluding cross-examination regarding the Mayfield Report. The report did not find fault with ACE-V, the method that Mr. Dorr used to compare the fingerprints. Instead, it found "errors in the examination procedure," and "the misidentification could have been prevented through a more rigorous application of several principles of latent fingerprint examination."

Under these circumstances, we hold that the trial did not err in refusing to allow appellant to cross-examine Mr. Dorr regarding the Report. Mistakes made by fingerprint examiners employed by the FBI in an isolated case in 2004 had little bearing on whether Mr. Dorr, a Baltimore City employee, implemented appropriate procedures in a different

case over ten years later.[2] The circuit court's refusal to allow appellant to cross-examine Mr. Dorr regarding errors made in an unrelated case was not erroneous.

II.

Appellant next contends that "the trial court erred in permitting the State to elicit biographical information about individuals who were excluded by" Mr. Dorr. Specifically, as indicated, Mr. Dorr testified that

> Candidate Number 1 in this was a very older gentlemen. I believe he was born around 1934 and was printed in the 1950's. And then Candidate Number 2 was [appellant]. And then the other candidates with – on my printed out candidate list were all women that were printed for jobs.

Appellant argues that this information was irrelevant for two reasons: (1) Mr. Dorr did not rely on it when performing his fingerprint analysis; and (2) "[t]hat Candidate 1 was a man in his late 70's or early 80's and that Candidates 3-5 were women fingerprinted for employment related reasons" did not make it more likely that he committed the burglary.[3]

[2] We note that, contrary to appellant's contention, Mr. Dorr did not testify that the methodology he used was "infallible," but rather, that "if the methodology is used correctly, it is an infallible system." As indicated, the report did not involve an assessment of the methodology itself, but rather, an assessment of the FBI's implementation of the system in that particular case. Therefore, even if Mr. Dorr had claimed that the methodology was infallible, which he did not, the report would still not have been probative of the veracity of this claim.

[3] Appellant also argues that the testimony was inadmissible hearsay evidence. Because appellant did not raise this contention below, however, it is not preserved for this Court's review. *See* Md. Rule 8-131(a) (this Court ordinarily "will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court"); *Washington v. State*, 191 Md. App. 48, 91 ("[W]hen particular grounds for an objection are volunteered or requested by the court, that party will be limited on appeal to a review of those grounds and will be deemed to have waived any ground not stated.") (quoting *State v. Jones*, 138 Md. App. 178, 218 (2001)).

The State contends that "the trial court acted within its discretion in permitting the fingerprint expert to testify about some basic biographical information concerning people whose fingerprints may or may not have been similar to" appellant's. It notes that defense counsel asked "a string of questions about the people whose fingerprints were found, by software, to be similar to the fingerprints left at the scene of the burglary," and it argues that defense counsel's inquiry "raised for the jury the possibility that [Mr.] Dorr's treatment of the list had been less than thorough because of his indifference to the people, other than [appellant], whose fingerprints had been identified by the computer." Under these circumstances, it asserts that the trial court did not abuse its discretion in permitting the State's questioning on redirect examination. We agree.

As previously noted, a trial court's authority regarding the admission of evidence is discretionary, and "no error will be recognized unless there is clear abuse of such discretion." *Tetso v. State*, 205 Md. App. 334, 401, *cert. denied*, 428 Md. 545 (2012) (quoting *Oken v. State*, 327 Md. 628, 669 (1992)). Moreover, "[t]he trial judge's discretion in permitting inquiry on redirect examination is wide, particularly where the inquiry is directed toward developing facts made relevant during cross-examination or explaining away discrediting facts." *Bailey v. State*, 16 Md. App. 83, 110-11 (1972). *Accord Daniel v. State*, 132 Md. App. 576, 583 (2000).

Here, defense counsel questioned Mr. Dorr about the candidate list, i.e., fingerprints that were found by the software to be similar to the fingerprints left at the scene of the burglary, suggesting that, after Mr. Dorr saw appellant's fingerprint, he "threw the rest of them away." Given this questioning, and the suggestion that Mr. Dorr's treatment of the

candidates was not thorough, it was not an abuse of discretion for the trial court to allow testimony on redirect examination that Mr. Dorr did find out additional information regarding the top five candidates.

Even if the trial court's admission of the evidence was erroneous, any error was harmless. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (an erroneous evidentiary ruling is harmless when the 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"). Mr. Dorr testified that the candidates' biographical data played no role in his analysis of the fingerprint data. Indeed, Mr. Dorr testified that he did not ascertain the candidate's biographical data until after he had determined that appellant's fingerprints were a match. As such, there is no reasonable possibility that this evidence contributed to the jury's guilty verdict. *See Dionas v. State*, 436 Md. 97, 109 (2013) ("To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.") (internal citations and quotations omitted).

III.

Appellant's final contention is that the evidence was insufficient to convict him of fourth-degree burglary. He asserts that the sole evidence against him was his fingerprints on the "interior frame on [the] window pane" of the bay window that the victim left open, and in the absence of additional circumstances linking him to the crime, "no rational trier of fact could find beyond a reasonable doubt that he was the individual who broke into Mr. Vanlandingham's home." We disagree.

"In reviewing the sufficiency of the evidence presented . . . we consider the evidence in the light most favorable to the prosecution." *Painter v. State*, 157 Md. App. 1, 10 (2004) (citations and quotation marks omitted). "We then determine whether, based on that evidence, '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* at 10-11 (internal citations omitted). *Accord Jones v. State*, 440 Md. 450, 454-55 (2014). "The test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter*, 157 Md. App. at 11 (citations omitted). "When we apply that test, we consider circumstantial as well as direct evidence." *Id.* And as to circumstantial evidence, it alone may be "sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Id.* (citations omitted).

Here, the evidence adduced at trial supported a finding that one or more individuals gained unauthorized access to Mr. Vanlandingham's home through an open window and that several items were removed.[4] The fingerprint evidence led to a reasonable inference

[4] The trial court instructed the jury on the elements of fourth-degree burglary as follows:

> In order to convict [appellant] of burglary in the fourth degree, the State must prove; one, there was a breaking; two, there was an entry; three, the breaking and entering was done into someone else's dwelling; four, the [appellant] was the person who broke and entered; and, five, [appellant] did not honestly and reasonably believe that he had the right or invitation to enter the premises.

that appellant was involved with the burglary. To be sure, this Court has stated that, to support a conviction, "'fingerprint evidence must be coupled with evidence of other circumstances tending to reasonably exclude the hypothesis that the print was impressed at a time other than that of the crime.'" *Hubbard v. State*, 76 Md. App. 228, 235 n.1 (1988) (quoting *McNeil v. State*, 227 Md. 298, 300 (1961)). Such circumstances, however, "need not be circumstances completely independent of the fingerprint, and may properly include circumstances such as the location of the print, the character of the place or premises where it was found and the accessibility of the general public to the object on which the print was impressed." *Lawless v. State*, 3 Md. App. 652, 658-59 (1968). *Accord Colvin v. State*, 299 Md. 88, 110 (1984).

We conclude that the evidence presented here was sufficient to support a reasonable inference that appellant's fingerprints were impressed at the time of the burglary. Initially, appellant's fingerprints were recovered from the same window through which the burglars appeared to gain access to the home. Although no evidence was presented establishing when the fingerprints were left, Mr. Vanlandingham testified that the window was installed just one year prior to the break-in, and he had washed the window at some point between when it was installed and when the break-in occurred. Moreover, appellant's fingerprints were recovered from the interior frame of the window, and the window could only be accessed via Mr. Vanlandingham's private property, which was not open to the general public and was surrounded by a fence. Finally, Mr. Vanlandingham testified that he did not know appellant or have any contact with him. Under these circumstances, a reasonable factfinder could conclude that the fingerprint was left during the burglary. *See, e.g.*,

Fladung v. State, 4 Md. App. 664, 670 (1968) (circumstances sufficient to support conviction where fingerprint was "positioned on the inside of the window as to make it reasonably inferable that the person who entered the building through the window was the same person who left his print thereon," and because the window was "not visible from the road" or "located in an area readily accessible to the general adult public," it could be inferred "that the person who broke the window in that classroom entered the school and stole the food and equipment"). The evidence was sufficient to support appellant's conviction of fourth-degree burglary.

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