Circuit Court for Baltimore County
Case No. C-03-CR-22-000107

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 559

September Term, 2023

MONTAE MONTEZ BOYKIN

v.

STATE OF MARYLAND

Wells, C.J.,
Friedman,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: September 24, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

On December 10, 2021, Karon Hobbs enticed Peter Moore to her apartment complex with an offer of sex. So as not to disturb her children who she said were asleep in the apartment, however, Hobbs proposed to have sex in Moore's car. When Moore got out of the car to move to the back seat, a masked man attacked him, pistol whipped him, ordered him to get back in the front seat, and punched him in the face. The masked man then forced Moore and Hobbs to drive to a bank at which he forced Moore to withdraw cash from the ATM. He forced Moore to use his Cash App to transfer more money. The masked man took Moore's iPhone and wallet. He released Hobbs and then drove Moore to a deserted baseball field where he threatened and eventually abandoned him.

Moore suspected that Hobbs had been in cahoots with the masked man. Moore used the "find my friends" app, which told him that his iPhone, stolen by the masked man, was at Hobbs' apartment. Moore called the Baltimore County police. On December 17, 2021, police executed a search warrant for Hobbs' apartment. They recovered Moore's iPhone. And they found appellant, Montae Montez Boykin, sleeping in the living room. Near to him, draped over a dining room chair, was a pair of men's black pants, in which the police found a .380 semi-automatic handgun, a blue iPhone 12, and a Volvo key fob. Hobbs and Boykin were arrested. Hobbs later told the police that Boykin was the masked man and that the black pants, and inferentially, their contents, were his.

Much of the State's evidence at trial was offered to prove that Boykin was the masked man.[1] Because it is not relevant to our disposition of this case, we need not go through all of this evidence, which included text messages and GPS tracking. One item, however, is germane to our analysis: the Volvo key fob, which was found, as described, in the black pants next to where Boykin slept in Hobbs' apartment.

Boykin was convicted of kidnapping, armed robbery, use of a firearm in the commission of a crime of violence, and other related crimes. He was sentenced to several concurrent and suspended sentences, which amounted to 20 years of executed time, the first five of which were to be served without parole, followed by 3 years of probation, and ordered to pay restitution to Moore in the amount of $830. This timely appeal followed.

ANALYSIS

In this appeal, Boykin makes two arguments, neither of which has any merit. *First*, he argues that the trial court erred by admitting, over his objection, hearsay testimony regarding the Volvo key fob. *Second*, he argues that the State's Attorney made three categories of impermissible statements during closing argument, which, although he did not object to at the time, he now asserts were plain error. We address them in order.

[1] Boykin argued that he was not the masked man. This was not completely far-fetched. For example, the physical description that Moore gave police of the masked man was a poor match for Boykin, who is not skinny and who, unlike Moore's description, has tattoos on his hands. The jury, however, was not persuaded.

I. HEARSAY STATEMENT REGARDING THE VOLVO KEY FOB

As noted above, a part of the State's case was to tie the black pants and their contents—the gun, the blue iPhone, and the Volvo key fob—to Boykin.[2] On direct examination, Detective Israel, one of the police officers who assisted in Boykin's arrest, testified that he had found the Volvo key fob in the black pants. On cross-examination, Boykin asked if Detective Israel had located a Volvo in the apartment complex. Detective Israel said no. Boykin then tried to thread a needle:

> **Boykin**: You did have information that Mr. Boykin was not driving a Volvo at that time in December?
>
> **Israel**: We had information that he had been stopped in a Volvo just a couple months prior.
>
> **Boykin**: Not in December though?
>
> **Israel**: Not in December, no.
>
> **Boykin**: It's your understanding from speaking to witnesses that Mr. Boykin was not driving that car in December ---
>
> **State**: Objection.
>
> **Court**: Overruled.
>
> **Israel**: No.

On re-direct, the State sought to shore up the testimony linking Boykin to the Volvo and the key fob:

> **State**: What is the date of [Boykin's] connection to a Volvo?
>
> * * *

[2] Of course, of these contents, the gun and the phone were by far the most probative as they were tied to the crime. Nevertheless, Boykin hoped to suggest that the black pants weren't his because the Volvo key fob wasn't his.

Israel: … He was stopped on October 11, 2021[,] in a silver Volvo S90 bearing Virginia tag 35547G….

State: What were you told about the Volvo?

Israel: So we were told that he ---

At which point Boykin objected, a bench conference ensued, and the trial court overruled Boykin's objection. Eventually, Detective Israel was allowed to complete his answer (which is the subject of Boykin's appellate argument): "I was told that Mr. Boykin had sold off the Volvo, but [that] he kept one of the key fobs for it."

In this appeal, Boykin argues that the answer to this final question was inadmissible hearsay, that the trial court erred by allowing its admission, and that prejudice must be presumed unless we can say that it was harmless beyond a reasonable doubt. The State does not contest that the statement was hearsay[3] but argues that it was nevertheless admissible pursuant to the doctrine of verbal completeness, under the "opening the door" doctrine, or that any error was nevertheless harmless beyond a reasonable doubt.

We will resolve the matter by reliance on the common law doctrine of verbal completeness.[4] In *Otto v. State*, the Supreme Court of Maryland explained the common

[3] Hearsay is defined by the Maryland Rules as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MD. R. 5-801(c). Here, this was an out-of-court statement offered for the truth of the matter—that is, a statement a witness gave to Detective Israel that Boykin had sold the Volvo but retained a key fob.

[4] Maryland Rule 5-106 supplements but does not supplant the common law doctrine of verbal completeness, by modifying its timing requirements. *Otto v. State*, 459 Md. 423, 447-48 (2018) (discussing Maryland Rule 5-106 and its relationship to common law doctrine of completeness).

law doctrine of completeness. 459 Md. 423, 447-52 (2018). The Court reaffirmed its traditional requirements that to be admissible to complete the first part of a statement, (1) the second part must be relevant; (2) the second part must "concern[] the same subject" and be "explanatory of the first part;" and that (3) the second part must "merely aid[] in the construction of the [statement] as a whole" and not be, in itself, testimony. *Id.* at 449-50, 452.

Here, all of the elements are satisfied to permit the admission of the second part of the statement despite that it is hearsay. The jury had already heard Detective Israel testify that a Volvo key fob was found in the black pants, that Boykin had been driving a Volvo when stopped in October, but that there was no Volvo in the apartment complex parking lot. The first part of the statement that we are examining—that a witness had told Detective Israel that Boykin was not driving the Volvo in December—was hearsay but admitted during Boykin's cross examination. The second part—that the same witness had told Detective Israel that Boykin had sold the Volvo but retained a key fob—was sought to be introduced during re-direct. This second part is clearly relevant to the issues in the case. It concerns the "same subject" and explains the first part of the statement. It aids in the construction of the first part. And perhaps most clearly, the second part corrects the misimpression that the admission of the first part created: that the Volvo key fob did not belong to Boykin.[5]

[5] In so doing, we express no view on the credibility of this statement. That was for the jury.

We hold that the circuit court did not abuse its discretion in admitting the challenged hearsay statement under the common law doctrine of verbal completeness.[6]

II. STATE'S ATTORNEY'S STATEMENTS DURING CLOSING ARGUMENTS

Boykin next argues that the State's Attorney made three categories of impermissible statements during closing arguments. We begin by noting that he didn't object to any of these statements at the time and, as a result, we can only grant relief, if any, through our plain error review.

We reserve our discretion to exercise plain error review for only those errors that "are compelling, extraordinary, exceptional[,] or fundamental to assure the defendant of a fair trial." *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). We consider four factors in deciding whether to grant plain error review:

> (1) there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant;
>
> (2) the legal error must be clear or obvious, rather than subject to reasonable dispute;

[6] Boykin's argument would fare no better if we relied on the "opening the door doctrine." Boykin had hoped to have the jury hear that he no longer drove the Volvo, but to prevent the jury from hearing that he had retained the key fob. Given that, the State had the right to respond under the common law "opening the door" doctrine. *See State v. Heath*, 464 Md. 445, 459-60 (2019) (discussing "opening the door" doctrine, which allows a party to admit previously irrelevant or inadmissible evidence because the opposing party "injected an issue into the case"); *State v. Robertson*, 463 Md. 342, 351-52 (2019) (same). Finally, given all of the other evidence that tied Boykin to the black pants, including proximity, the handgun, and the blue iPhone, we cannot see how the purported erroneous admission of hearsay regarding the Volvo key fob would be anything but harmless beyond a reasonable doubt. *See Dionas v. State*, 436 Md. 97, 108 (2013) (discussing harmless error standard).

> (3) the error must have affected the appellant's substantial rights, which in the ordinary case means [they] must demonstrate that it affected the outcome of the [trial] court proceedings; and
>
> (4) the error must seriously affect the fairness, integrity[,] or public reputation of judicial proceedings.

Id. (cleaned up). And even if the four factors are present, granting plain error review remains discretionary. *Jones v. State*, 173 Md. App. 430, 454 (2007). With that framework firmly in mind, we turn to the three categories of error that Boykin alleges occurred.

A. Jury Instructions

In closing, the State's Attorney addressed the circuit court's jury instructions. Although he didn't object at the time, with the benefit of 20/20 hindsight, Boykin points out that the State's Attorney's discussion of the jury instructions regarding assault included a discussion of the "intent to frighten" modality (with which Boykin had not been charged) along with the "battery" modality (with which Boykin was charged). Boykin argues that the State's Attorney erred, first by mentioning the jury instructions at all, and then by, second, describing the "intent to frighten" modality of assault, with which Boykin had not been charged.

We don't think that this was a serious error or one that affected the jury's deliberation. In fact, it took us a fair bit of time to even understand the claimed error. Given that, we decline to exercise our plain error review.

B. "Licks"

In closing argument, the State's Attorney reminded the jury of a piece of evidence: Hobbs' testimony that she and Boykin wanted a "lick." Although Boykin didn't object

when the testimony was first introduced or when the State's Attorney mentioned it in closing, he argues now that this was specialized lingo or slang which the State should have been required to support with expert testimony. At the time of Boykin's trial, and when the briefs were filed, that might have been a valid interpretation of the governing law.[7] Since then, however, the Supreme Court of Maryland has resolved the question. In *Freeman v. State*, the highest Court in this State held that it is common knowledge, not requiring expert testimony, that the term "lick" or "sweet lick" means robbery. 487 Md. 420, 439 (2024). As a result, we must reject Boykin's argument.

C. Reasonable Doubt

In discussing reasonable doubt during closing arguments, the State's Attorney told the jury that, "it is not your job to go looking for doubt." Boykin argues that this minimizes the State's burden and misstates the jury's role. We don't think this statement is necessarily an incorrect statement of the law and, even if it is, given that the trial court properly and separately instructed on reasonable doubt, the State's Attorney's statement certainly does not reach the level of error that compels us to exercise plain error review. *Morris v. State*, 153 Md. App. 480, 507 (2003) (describing plain error review as a "rare, rare phenomenon").

[7] This Court clearly thought that expert testimony was required to translate the term "lick" or "sweet lick" to mean a robbery. *Freeman v. State*, 259 Md. App. 212, 233-35, *cert. granted*, 486 Md. 228 (2023), and *aff'd*, 487 Md. 420 (2024); *see also Ingersoll v. State*, 262 Md. App. 60, 100 n.8 (Friedman, J., concurring) (discussing *Freeman*).

We, therefore, reject each of the three categories of error that Boykin claimed infected the State's Attorney's closing argument. Moreover, when reviewed cumulatively, we see no error either.

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