Circuit Court for Montgomery County
Case No. C-15-CR-22-001105

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 684

September Term, 2023

OLUWAFEMI OMOTOYE

v.

STATE OF MARYLAND

Berger,
Leahy,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: September 12, 2024

A jury, sitting in the Circuit Court for Montgomery County, found Oluwafemi Omotoye ("Appellant") guilty of second-degree assault. The court sentenced Appellant to five years, all suspended, and three years of supervised probation. Appellant noted this timely appeal and presents one question for our review: "did the [trial] court err in determining that whether appellant had 'experience in the [boxing] ring' was relevant and admissible evidence?" For the following reasons, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At trial, two witnesses testified: Appellant and Galefele Sennanyana ("Sennanyana").[1] Sennanyana testified that, on the evening of July 9, 2022, he went to a friend's apartment for a "get together," where Appellant was also present. Appellant, whom Sennanyana had met on a couple of previous occasions, was also present.

Approximately half an hour after arriving, Sennanyana took a container of ice out of the freezer to make himself a drink. As Sennanyana was returning the ice container to the freezer, Appellant approached and hit him in the face several times with his fists. Sennanyana testified, "he struck me and struck me and struck me again. And I just kind of blurred out, and then I was just trying to get out of there and then I think he might have hit me again as I was fleeing."

Sennanyana "backed out" of the kitchen and "fled" to another part of the apartment. He saw that someone had "pinned [Appellant] against the wall." Another person handed

[1] The briefs and record reflect inconsistency in the spelling of Sennanyana's name. After a review of the exhibits in the record, we use what appears to be the correct spelling of Sennanyana's name.

Sennanyana a towel, which he held to his bloodied face. Sennanyana, needing a doctor, asked someone to call 911. Appellant then "[took] off and [ran] out of the apartment."

Sennanyana was taken to the hospital by ambulance, where he received treatment for a broken nose and a "through and through" laceration to his upper lip. Records from the hospital and photographs of his face were admitted into evidence.

Sennanyana testified that he never spoke to or otherwise interacted with Appellant that evening, and that he had no reason to anticipate a fight. In response to questioning, Sennanyana denied that he touched Appellant or attempted to hit him with the ice bucket.

Appellant was the sole witness to testify in his defense. According to Appellant, Sennanyana hit him first, and he struck back in self-defense.

Appellant testified that he met Sennanyana for the first time at a cookout two months prior to the incident in question. Appellant said that Sennanyana was intoxicated, "verbally abusive, vulgar, [and] boisterous," "did not respect [his physical] boundaries," and ignored his repeated requests for Sennanyana to "keep his hands to himself." Appellant explained:

> [Sennanyana] was so boisterous[,] like he would make a joke and slap my back and shake me. . . . [W]hen I introduced myself and . . . told him a little about my financial background being in banking[,] he said I was too clean and he wiped his [wet] hands down my . . . shirt[.]

Appellant described the interaction as "terrifying" and "uncomfortable."

On the date in question, according to Appellant, Sennanyana was intoxicated and was "stumbling[,]" "boisterous," and "loud." He described the incident as follows:

> Mr. [Sennanyana] uncoordinatedly walked to the kitchen. With his left hand, he grabbed the freezer door. He didn't say excuse me. He reached in with his right hand to grab the ice bucket. He swung it. I saw it in my peripheral. I move[d] my head out of the way. I gave him a look like what

> are you doing[?] Mr. [Sennanyana] then with his left hand reached out for a fist bump and when I didn't fist bump him back - - when I didn't reciprocate that fist bump, he struck me and he is strong. He is slow but he is strong.

Appellant testified that Sennanyana attempted to hit him in the throat, however he was "able to dodge the punch and roll with [his] shoulder." He indicated that Sennanyana's fist made contact with Appellant's back and he "crashed into the kitchen island."

Appellant claimed that he "feared for his safety" because Sennanyana is "significantly bigger," and the plastic ice bucket Sennanyana was holding had "sharp edges" and was "filled with ice." He said, "I just really wanted to create a safe distance because I knew that ice bucket was coming. I could tell. [Sennanyana was] intoxicated. He had it clutched in his right hand. I felt fear so I did everything I could just to create a safe distance." Appellant testified that he turned around and "threw a lucky punch with [his] eyes closed," and hit Sennanyana in the face. On cross-examination, Appellant said that he threw two punches but "one definitely missed and one connected." A "mutual friend" who was at the gathering "politely" asked Appellant to leave. Appellant left because he "didn't want any further problems[.]"

Appellant claimed that he sustained injuries to his right wrist and left leg as a result of crashing into the kitchen island, that his cell phone screen was cracked, and that his watch was broken. Photographs of his right inner forearm, left leg, and damaged phone and watch were introduced into evidence.

On cross-examination, the prosecutor asked Appellant whether he had "experience with organized fighting[;]" however, Appellant gave a non-responsive answer.

> [PROSECUTOR]: And when you talk about rolling and positioning, you have some experience with organized fighting. Right?
>
> [APPELLANT]: I have experience with getting out of the way of an ice bucket swinging at my head.

The prosecutor rephrased the question, eliciting an objection:

> [PROSECUTOR]: No, but my question is, do you have any training as a fighter?
>
> [DEFENSE COUNSEL]: Objection. Can we approach?

At the bench, defense counsel stated two grounds for the objection: (1) relevance and (2) the defense had not been provided with evidence that Appellant was engaged in organized fighting. The prosecutor argued that Appellant's experience and/or training as a fighter was relevant to the jury's consideration of his claim of self-defense, specifically whether he was frightened of Sennanyana, his "ability to respond to that fear," and his "ability to evade." The court overruled the objection and directed the prosecutor to repeat the question. The cross-examination continued without further objection to the line of questioning:

> [PROSECUTOR]: Mr. Omotoye, do you have any training or experience with fighting in a ring?
>
> [APPELLANT]: Yes, sir.
>
> [PROSECUTOR]: And in that you learn how to move your body?
>
> [APPELLANT]: To defend myself. Yes, sir.
>
> [PROSECUTOR]: But there is an offensive component to it as well?
>
> [APPELLANT]: Can you clarify please?
>
> [PROSECUTOR]: Well, you throw punches. You don't just dodge them?

> [APPELLANT]: On July 9 - -
>
> [PROSECUTOR]: That's not my question, sir. You have some experience with knowing how to fight?
>
> [APPELLANT]: I know how to defend myself. Yes, sir.

Pursuant to Appellant's request, the court instructed the jury on the law of self-defense. In the State's closing argument, the prosecutor cast doubt on Appellant's claim:

> This is not a self-defense case, because [Appellant] was not defending himself. He was the first aggressor. He was the only aggressor. He doesn't like Mr. [Sennanyana]. He thinks he's annoying, he thinks he's brutish, he thinks he's a drunk, but there is no evidence that he had a [] justification for breaking Mr. [Sennanyana's] nose, splitting his lip, and assaulting him with several punches in the face. That's why this is not a self-defense case.

The jury found Appellant guilty of second-degree assault. This timely appeal followed.

DISCUSSION

A. Standard of Review

To be admissible at trial, evidence must be relevant. Md. Rule 5-402. "Evidence is relevant if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *Williams v. State*, 457 Md. 551, 564 (2018) (quoting *Fuentes v. State*, 454 Md. 296, 325 (2017)); Md. Rule 5-401. "Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Williams*, 457 Md. at 564 (citing *State v. Simms*, 420 Md. 705, 727 (2011)). "Whether evidence is relevant is a legal issue reviewed by appellate

courts *de novo*." *Montague v. State*, 244 Md. App. 24, 39 (2019) (citing *Schisler v. State*, 394 Md. 519, 535 (2006)).

"Relevancy is not the be-all and end-all of admissibility, however." *Id.* "Trial courts should exclude even relevant evidence 'if its probative value is substantially outweighed by the danger of unfair prejudice.'" *Id.* (citing Md. Rule 5-403). "Evidence is unfairly prejudicial 'when it tends to have some adverse effect beyond tending to prove the fact or issue that justified its admission.'" *Id.* (quoting *Hannah v. State*, 420 Md. 339, 347 (2011)). The "balancing between probative value and unfair prejudice is something that is entrusted to the wide discretion of the trial judge." *Newman v. State*, 236 Md. App. 533, 556 (2018) (quoting *Oesby v. State*, 142 Md. App. 144, 167 (2002)). The trial court's decision to admit relevant evidence is reviewed for an abuse of discretion. *Williams*, 457 Md. at 563. "An abuse of discretion occurs where no reasonable person would take the view adopted by the [trial] court." *Id.* (citing *Fuentes*, 454 Md. at 325).

B. Parties' Contentions

Appellant contends that the trial court erred in determining that evidence of his experience as a fighter in a "ring" was relevant. Appellant argues that "without establishing a link between the type and age of his experience and the events underlying the charges," the evidence could not make it more or less probable that he assaulted Mr. Sennanyana. Alternatively, Appellant claims that even if the evidence was relevant, its probative value was outweighed by the risk of unfair prejudice because it suggested to the jury that he was "violent, had the ability to cause injury, and could misconstrue the threat he faced when acting in self-defense."

The State maintains that the issue of relevance was not preserved for appellate review because Appellant did not object to every question regarding his training and/or experience as a fighter, nor did he request a continuing objection. As to the merits, the State asserts that the evidence was relevant to the jury's consideration of Appellant's claim that he acted in self-defense, that is, whether he did believe that he was in immediate or imminent danger of bodily harm, and whether the amount of force used was reasonably necessary. The State further contends that Appellant waived his claim that the evidence was unfairly prejudicial because he failed to make an objection on that ground. We agree with the State's contentions.

C. Analysis

1. Relevancy

"It is well established that a party opposing the admission of evidence 'shall' object at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." *Ware v. State*, 170 Md. App. 1, 19 (2006) (quoting *State v. Jones*, 138 Md. App. 178, 218 (2004) (in turn quoting Md. Rule 4-323(a))) (some internal quotation marks omitted).[2] "Furthermore, objections must be reasserted

[2] Maryland Rule 4–323 provides, in pertinent part:

> **(a) Objections to Evidence**. An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived . . . .
>
> **(b) Continuing Objections to Evidence.** At the request of a party or on its own initiative, the court may grant a continuing objection to a line of questions by an opposing party. For purposes of review by the trial court

unless an objection is made to a continuing line of questions." *Id.* (citing *Brown v. State*, 90 Md. App. 220, 225 (1992)). *See also Wimbish v. State*, 201 Md. App. 239, 261 (2011) ("[t]o preserve an objection, a party must either 'object each time a question concerning the [matter is] posed or . . . request a continuing objection to the entire line of questioning.'") (quoting *Brown*, 90 Md. App. at 225).

Here, the trial court ruled that asking about Appellant's training as a fighter was a "permissible question." Appellant did not request a continuing objection. After the prosecutor restated the question, and Appellant acknowledged that he had experience fighting "in a ring," the prosecutor proceeded to ask a series of questions related to that experience. At no point was there any additional objection to this line of inquiry. Consequently, the objection as to relevancy was waived. *See DeLeon v. State*, 407 Md. 16, 31 (2008) ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection.") (citing *Peisner v. State*, 236 Md. 137, 145-46 (1965)).

Even if the objection had not been waived, Appellant's challenge to the relevancy of the evidence appears to lack merit. The issue in the case was whether Appellant acted in self-defense. To find in his favor, the jury would have had to conclude, among other things, that Appellant had "reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant,"

> or on appeal, the continuing objection is effective only as to questions clearly within its scope.

and that he "in fact believed himself in this danger[.]" *State v. Faulkner*, 301 Md. 482, 485 (1984) (citations omitted). Evidence that Appellant had "training as a fighter" was relevant to the jury's consideration of his argument that he was acting in self-defense. *See State v. Speaks*, 236 N.E.3d 268, 281 (Ohio Ct. App. 2024) (holding that, where defendant charged with assault claimed self-defense, defendant's training and experience in mixed martial arts was relevant to the issue of whether he had reasonable grounds to believe that the victim's alleged actions placed him in imminent danger of bodily harm.)

2. *Unfair Prejudice*

"[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.'" *State v. Jones,* 138 Md. App. 178, 218 (2001) (quoting *Leuschner v. State*, 41 Md. App. 423, 436 (1979)), *aff'd*, 379 Md. 704 (2004). *Accord Perry v. State*, 229 Md. App. 687, 709 (2016) ("[W]here an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal.") (citing *Klauenberg v. State*, 355 Md. 528, 541 (1999)). "Requiring an objecting party, who volunteers, or is requested to give the basis, to state all reasons for the objection permits the court to focus its attention upon only those reasons deemed meritorious by that party, excusing it from considering the universe of reasons that might impact the decision." *Banks v. State,* 84 Md. App. 582, 588 (1990). "[T]he objecting party may not advance other, more meritorious reasons after the ruling has been implemented. To allow him or her to do so would be unfair to the court, since it would permit a party to sandbag the judge." *Id.* at 588-89.

Appellant specifically objected to the question regarding his fighting experience on the ground that it was irrelevant, however at no time did he argue in the trial court that it was prejudicial. As this Court has explained, "an objection to the admission of evidence on the ground of irrelevance is by no means the same thing as an objection to evidence on the ground of unfair prejudice." *Jeffries v. State*, 113 Md. App. 322, 342 (1997). "Indeed, the thrust of an unfair prejudice argument is that the prejudicial effect outweighs the acknowledged relevance. If the evidence were truly totally irrelevant, it would have little, if any, capacity to prejudice." *Id.* Consequently, when a defendant objects on grounds of relevance at trial but does not also assert a claim of unfair prejudice, the latter claim is not preserved for appellate review. *Id. Accord Mines v. State*, 208 Md. App. 280, 291 (2012) (holding that a claim that evidence was unfairly prejudicial was not preserved for review where the only objection was to relevance).

Accordingly, we conclude that Appellant's argument that the disputed evidence should have been excluded as unfairly prejudicial was not preserved.[3]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] Even if Appellant's argument that the disputed evidence should have been excluded as unfairly prejudicial was properly preserved, our holding would not change. *See Speaks*, 236 N.E.3d at 281 (rejecting a properly preserved claim of unfair prejudice, because that there was "[n]othing inherently prejudicial concerning having a background in MMA. Therefore, there was no danger of unfair prejudice due to its admission into evidence.").