Circuit Court for Worcester County
Case No.: C-23-CR-21-000243

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 830

September Term, 2022

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ANTONIO JERMAINE EPPS

v.

STATE OF MARYLAND

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Tang,
Albright,
Raker, Irma, S.,
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Raker, J.

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Filed: August 16, 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 Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Worcester County convicted appellant, Antonio Epps, of first-degree assault (Count 2), second-degree assault (Count 3), reckless endangerment (Count 4), wearing, carrying, or transporting a handgun in a vehicle (Count 5), wearing, carrying, or transporting a loaded handgun in a vehicle (Count 6), wearing, carrying, or transporting a handgun about his person (Count 7), wearing, carrying, or transporting a loaded handgun about his person (Count 8), illegal possession of a regulated firearm by a disqualified person (Count 10), illegal possession of a regulated firearm by a person convicted of a crime of violence (Count 11), illegal possession of ammunition (Count 12), and discharge of a firearm (Count 13). Appellant presents the following questions for our review:

1. "Did the Circuit Court err by allowing into evidence an interrogating detective's opinions that (a) Appellant was lying when he asserted his innocence; and (b) the detective's job was to look for evidence of Appellant's innocence and he had found none?

2. Is the evidence insufficient to sustain the convictions?

3. Must this Court vacate three of appellant's four convictions under CL § 4-302, and Appellant's conviction under PS § 5-133(b), because the unit of prosecution for each of those statutes is the gun, and there was only one gun in this case?"

For the reasons set forth below, we hold that the evidence was sufficient to support the conviction but that the court erred in admitting inadmissible opinions from the detective. We remand for a new trial.

I.

Appellant was charged by criminal information with attempted second-degree murder (Count 1), first-degree assault (Count 2), second-degree assault (Count 3), reckless endangerment (Count 4), wearing, carrying, or transporting a handgun in a vehicle (Count 5), wearing, carrying, or transporting a loaded handgun in a vehicle (Count 6), wearing, carrying, or transporting a handgun about his person (Count 7), wearing, carrying, or transporting a loaded handgun about his person (Count 8), use of a handgun in the commission of a felony (Count 9), illegal possession of a regulated firearm by a disqualified person (Count 10), illegal possession of a regulated firearm by a person convicted of a crime of violence (Count 11), illegal possession of ammunition (Count 12), and discharge of a firearm (Count 13). Appellant proceeded to trial before a jury. By mistake, Count 9 was not sent to the jury for decision and the State entered a *nolle prosequi* on that count after the jury returned its verdict. The jury acquitted appellant on Count 1 and found him guilty on all other counts. For sentencing purposes, the Court merged Counts 3 and 4 with Count 2 and Counts 5, 6, 7, 8, 10, 12 and 13 with Count 11. The court imposed a term of incarceration of twenty-five years on Count 2 and, on Count 11, a consecutive fifteen-year term, all but five years suspended.

These charges stem from an altercation that took place in the parking lot of the Madison Beach Hotel in Ocean City, Maryland. On June 12, 2021, Nathaniel Armacost, then age 21, went with friends to Seacrets, a nightclub in Ocean City. Sometime after 2 a.m. on June 13, he shared an Uber with three women he met at the club – Jaylee Rockey and Leanna Prinkey, both age 23, and a third woman named Abby, who soon left the group.

They were dropped off in an area near the Madison Beach Hotel. Armacost, Rockey, and Prinkey walked toward an apartment where Rockey's boyfriend was staying, crossing through the hotel parking lot. Armacost, who was very intoxicated, climbed onto the top of a car in the parking lot and began walking on its roof. As he crossed the roof of the car, the sunroof caved in beneath him.

Unbeknownst to Armacost, four people were inside the car. Jameal McLeod was in the driver's seat. Tiovanni Lindsey, McLeod's boyfriend, was the front-seat passenger. Appellant and his girlfriend, Chela Valliere, were in the back seat, with appellant on the passenger side and Valliere on the driver's side. At least two occupants of the sedan emerged and began yelling at Armacost. One of the male occupants of the sedan had a gun in his waistband. He unzipped his jeans slightly and showed it to the two women. At that point, both Rockey and Prinkey ran away. Seconds later, Armacost was shot twice, once in his arm and once in his leg.

After fleeing the scene, Prinkey flagged down a police officer and gave the officers a description of the car and its occupants. Shortly thereafter, Corporal Anthony Rhode saw a car pull into a parking lot. Its occupants got out of the car and began working on its sunroof. He stopped the car and called for backup. There was a shoe impression on the roof of the car, between the sunroof and the trunk, and the internal cover for the sunroof was detached and lying on the dashboard inside the car. A large, red DoorDash bag was sitting on the front passenger seat of the car. Inside that bag was a Glock 27 handgun; a drum-style magazine; two cell phones, one of which was later linked to Valliere and one to appellant; several articles of clothing; and food items.

The police investigated which of the occupants of the car had fired the gun. Armacost could not remember the incident or describe the person who shot him at trial. Rockey and Prinkey recalled the incident in more detail. Neither saw the shooting itself, but both provided evidence regarding the physical characteristics of the men who had emerged from the vehicle. Rockey, who is 5'6" tall, described the man with the gun as a black man, shorter than herself or near her height, with dreadlocks and light-colored jeans. She described the second man who got out of the car (the one without a gun) as taller and heavier with long dreadlocks. Prinkey indicated that the man with the gun got out of the passenger side of the vehicle. She believed he got out of the front seat, but she was not certain. She described him as black man, approximately 5'6" or 5'7" with short dreadlocks. He was wearing a white tank top and jeans. She described at least one other person getting out of the car who was taller, between 5'10" and 5'11."

Body camera footage and police records demonstrate that, of the occupants of the car, McCleod was a black woman with long hair a white tank top and light green or gray shorts. Lindsey was a black man with shoulder-length hair, a black tee shirt with a graphic on the front, and black athletic shorts. Underneath the tee shirt, he was wearing a white tank top. He was 6'7". Valliere was a black woman, shorter than McCleod, with long hair, black leggings, and a black tee shirt. Appellant was a black man with short hair, light-colored jeans, and a black tee shirt. He was 5' 7".

The police conducted a show-up identification with Rockey and Prinkey. Each woman was asked to sit in the front passenger seat of a police vehicle while each occupant of the sedan walked in front of the car. The two show-up identifications were performed

separately. During Rockey's identification, when Lindsey walked out, Rockey said, "I don't know." Appellant followed, and Rockey identified him as "the back seat passenger," but said he "was not the shooter." She did not recognize Valliere, who went third. She identified McLeod as the driver of the vehicle. As Detective Perry drove Rockey to the police precinct, she asked him, "Is that it?" He replied that those were the only people she was being asked to identify. She responded, "it must have been the first guy," referring to Lindsey. Prinkey, on the other hand, could not identify Lindsey. She identified appellant as the person with the gun.

Both appellant and Lindsey were arrested. Appellant was advised of his *Miranda* rights and agreed to speak to Detective Karsnitz of the Ocean City Police Department. A redacted video recording of his interview was played for the jury at trial. During this interview, appellant initially told Detective Karsnitz that Lindsey and McLeod suggested a trip to Ocean City that night and he and Valliere agreed to join them. Appellant claimed that he was asleep in the backseat the entire drive until they stopped at the parking lot where they were eventually apprehended and that he was only awakened by the traffic stop. He denied any knowledge of a gun in the car and claimed not to recall Armacost walking on the car or falling through the sunroof. At the end of his interview, he stated that the gun belonged to Lindsey, but continued to deny any knowledge of the shooting.

After the arrests, the police recovered from the parking lot of the Madison Beach Hotel two Smith & Wesson 40 caliber cartridge casings, which they sent to the Maryland State Police crime lab for comparison with the gun recovered from the car. A firearms and

toolmarks examiner determined that the casings had been fired from the Glock 27 handgun found in the vehicle.

The gun itself was swabbed for DNA evidence in three locations: the grip, the trigger, and the magazine. Analysis of DNA recovered from the grip area yielded a mixed profile consistent with three or more contributors, which included a major female contributor and a minor male contributor. The major female contributor was consistent with Valliere and the minor male contributor was consistent with appellant. Lindsey and McLeod were excluded as contributors to the mixed profile. DNA recovered from the magazine yielded a single male profile that was consistent with appellant's DNA.

Detective Karsnitz determined that the gun recovered from the car was registered to Michael Bailey. It had been purchased from Safeside Tactical in Lynchburg, Virginia on March 18, 2022, and the receipt listed Bailey's phone number. Appellant placed a jail call to that same number on June 30, 2021. In that call, appellant referred to Bailey as "dad."

Appellant called Valliere from jail on March 18, 2022. In the recording, appellant informed Valliere that he had received discovery from his attorney and learned that his "father told [the State] that [appellant] was his son[.]" He added, "they don't got no video of me shooting him, though." Later in the call, appellant's mother joined. Appellant told her that she needed to "talk to [her] baby father." Appellant's mother replied, "what did he say?" Appellant responded, "[H]e told them people that I'm his son and all that. His name not on my birth certificate, is it?" His mother replied that it was not. Appellant said that, if he went to court, he was going to say that "Donald was [his] father" and told his mother to tell her "baby father" to tell them "that [appellant was] not his son." Appellant's mother

suggested that he also could tell them that "Wolf Man" was his father because appellant had been receiving "Social Security from Wolf Man."

The jury found appellant guilty. This timely appeal followed.

II.

We begin with appellant's argument that portions of his police interrogation were admitted erroneously and constituted reversible error.

A.

At trial, the State admitted large portions of a video recording of appellant's interview with Detective Karsnitz. Throughout the interview, on multiple occasions, Detective Karsnitz pushed appellant about his version of events asserting skepticism about appellant's story. On one particular occasion, the detective said "You're lying to me. You're lying to me. Even your girl says you're lying to me. Everybody says you're lying to me." We will refer to this statement as Statement One.

Later in the interview, Detective Karsnitz suggested that maybe appellant shot Armacost in self-defense but said he could not help him if appellant continued to deny getting out of the car at the hotel. Appellant responded, stating, "I know you ain't going to help me because you going to say what you're saying. Like that's not helping me, you real life saying I shot somebody." Appellant said he did not even know the charges against him. The Detective then stated:

> "And, listen, as much as I am here to – to charge somebody and convict somebody that did something wrong, if you didn't do this, and – what you're saying, I'm just as much

> here, my job is, to show that you're innocent, but I have no evidence of that, or if you had a reason to do it, maybe it was self-defense, maybe."

We will refer to the above quote as Statement Two.

On the first day of trial, the court discussed appellant's statement to the police with counsel. The parties agreed upon several redactions, most of which involved appellant discussing prior criminal convictions, but disagreed as to Statement One and Statement Two. Appellant argued that Statement One was "improper commentary" and Statement Two "misleading" and "extremely prejudicial." The court overruled both objections.

B.

Before this Court, appellant argues that the statements were irrelevant, prejudicial, and misleading, usurped the role of the jury, and violated his due process rights. Appellant points to a series of cases in which this Court has held that statements by the police regarding a suspect's truthfulness are not admissible in evidence at trial. *See e.g., Walter v. State*, 239 Md. App. 168, 184 (2018); *Casey v. State*, 124 Md. App. 331, 339 (1999); *Crawford v. State*, 285 Md. 431, 447, 453 (1979). Appellant maintains that hearing the police's opinions on appellant's veracity can prejudice a jury and lead the jury to base its credibility judgments on the officer's judgments of appellant, rather than on its own. Appellant argues that both Statement One and Statement Two make clear that the detectives did not believe appellant's version of events.

Further, appellant argues that Statement Two was irrelevant and prejudicial because it falsely portrayed the role of the police, which appellant characterizes as finding guilt

rather than finding innocence. Appellant argues that this misstatement might lead the jury to believe that appellant had some responsibility to prove his innocence, which he had failed to satisfy, causing the jury to shift the burden of proof to appellant.

As a threshold matter, the State raises preservation. The State begins by asserting that the only objection appellant preserved to Statement One was "improper commentary" and that any other grounds for appellant's argument are unpreserved. As to the substance of appellant's argument, the State argues that the detective's repeated assertions of disbelief were legitimate police tactics designed to induce a guilty suspect to confess. The State concedes that, in some cases, assertions of disbelief may be inadmissible at trial, but argues that such assertions are admissible when they successfully induce a change of story from the suspect. The State argues that, because appellant eventually changed his story about the gun, all the detective's preceding assertions that appellant was being untruthful were admissible.

The State argues, further, that Statement Two was a fair description of the role of the police. The police must search for evidence either of guilt or of innocence in pursuit of the truth. The State maintains that a simple statement that there was no evidence in support of appellant's claims at the time of the interrogation was not sufficient to overcome the jury's understanding of the relevant burdens at trial.

C.

We consider, first, the State's preservation argument regarding the specific objections appellant raised against the admission of Statement One. Rule 8-131(a) provides that, ordinarily, an appellate court will not decide any issue "unless it plainly appears by

the record to have been raised in or decided by the trial court." To state a basis for an objection, it is sufficient that the basis of the objection is made known to the court. Rule 4-323(c). No specific language must be used, provided that counsel makes clear the basis of his objection to the testimony. *Newman v. State*, 156 Md. App. 20, 51 (2003).

Appellant styled his objection below as an objection to "improper commentary," but made clear in his colloquy with the judge that his concern was that it was inappropriate for the jury to hear the detective's expressions of disbelief. In short, while appellant did not use the magic words "misleading," "prejudicial," and "violation of due process," appellant invoked our longstanding precedent that it is improper for the jury to hear commentary by the police about a defendant's truthfulness. We will consider appellant's arguments that this testimony was irrelevant and prejudicial.

D.

We review *de novo* the trial court's determination of whether evidence is relevant. *State v. Simms*, 420 Md. 705, 724-25 (2011). We review a claim that relevant "evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice" for abuse of discretion. *Id*.

Ordinarily, "in a criminal trial, a court may not permit a witness to express an opinion about another person's credibility." *Walter v. State*, 239 Md. App. 168, 184 (2018) (citing *Fallin v. State*, 460 Md. 130, 160 (2018)). This restriction applies to investigating officers' opinions on the truthfulness of an accused's statement. *Crawford v. State*, 285 Md. 431, 447, 453 (1979) (holding that the court improperly admitted into evidence the defendant's unredacted statement to the police, placing before the jury "the obvious

disbelief of the police in the accused's version of what happened" and depriving him of a fair trial); *Casey v. State*, 124 Md. App. 331, 339 (1999) (reversing conviction where court improperly admitted recording, including investigating officers' opinions on the truthfulness of an accused's statement). It applies both when the statements baldly assert disbelief and when the statements make clear the officer's disbelief, in essence, putting it into evidence. *Snyder v. State*, 104 Md. App. 533, 554 (1995) (holding that an officer commenting on the "inconsistencies" in a suspect's statement was improper).

Notably, this Court has made clear that our holdings on the admissibility of officer statements of disbelief are not based on any police misconduct. *Walter*, 239 Md. App. at 193. Questions and comments that constitute legitimate investigative tactics by the police are nonetheless inadmissible in court. In this case, Detective Karsnitz's explicit expressions of disbelief in Statement One, which included him accusing appellant of lying and telling him that everyone, including Valliere, said he was lying, may have been a legitimate investigative tactic. They were, nevertheless, inadmissible as improper commentary under *Crawford*, *Casey*, and *Walter*.

Statement Two sufficiently strongly implies disbelief as to be inadmissible. As in *Snyder,* where an officer asserted that he wanted to question the defendant about "inconsistencies" in his version of events and we held that this implied disbelief, here the detective's assertions that there was no evidence supporting appellant's version of events implied disbelief. *Snyder*, 104 Md. App. at 554. In *Snyder*, the comments were prejudicial and inadmissible. *Id.* The same holds true here—the comments were prejudicial and inadmissible.

The State points out that, in some cases, statements by the police are probative to give context to a suspect's changing story. *Walter*, 239 Md. App. at 193. But, as in *Walter*, appellant did not inculpate himself in the shooting in response to this commentary and his account remained largely the same throughout the entire interview. He denied getting out of the car at the hotel, he denied owning a gun or bringing one to Ocean City, and he steadfastly denied shooting anyone. The only change in his account came at the end of the interview when he stated that the gun belonged to Lindsey. Even then, he did not admit knowing that there was a gun in the car or knowing that Lindsey used the gun to shoot anyone, and this change was not clearly precipitated by either Statement One or Statement Two, both of which occurred earlier in the interview. Both statements are inadmissible.

E.

Having concluded that both statements were inadmissible, we reverse the conviction unless the error was harmless beyond a reasonable doubt. *Dionas v. State*, 436 Md. 97, 108 (2013). We must be satisfied that there is no reasonable possibility that the evidence complained of may have contributed to the guilty verdict. *Dove v. State*, 415 Md. 727, 743 (2010). In considering whether an error was harmless, we consider whether the evidence presented in error was cumulative. *Id.* at 743-44.

Here, while the evidence was sufficient to sustain a conviction as described below, it was not overwhelming. There were significant discrepancies in the eyewitness testimony. One of the eyewitnesses identified a different occupant of the vehicle as the person carrying the gun. Appellant was not found with the gun. The perception, therefore, that appellant

was lying about what had happened (and the natural inference therefrom that appellant had done something wrong) might well have colored the jury's interpretation of the evidence.[1]

We cannot say that this assertion by the detective did not sway the outcome of the trial. The error was not harmless.

II.

Notwithstanding our holding that the circuit court erred in admitting the detective's statements, we also must consider the sufficiency of the evidence. *Winder v. State*, 362 Md. 275, 324-25 (2001). If the evidence presented at trial was sufficient to support a conviction, appellant is entitled to a new trial. *Id.* If the evidence was not sufficient, double jeopardy prohibits a new trial on these charges and appellant's conviction must simply be vacated. *Id.*

A.

Appellant contends that the evidence was legally insufficient to convict him because there was "inadequate reliable evidence of [appellant]'s identity as the shooter, and insufficient evidence to show that, if he was not the shooter, he possessed the gun that was found in the car." Appellant argues that there was insufficient evidence to establish that he

[1] Admittedly, there were earlier instances in the recording played for the jury in which the detective indicated that he believed appellant was lying or that appellant's story was inconsistent with the stories he was getting from other witnesses. However, in this case, we do not find the inadmissible evidence to simply be cumulative of those prior instances. Statement One, in particular, goes beyond simple skepticism, and directly asserts that the detective has evidence—evidence not available to the jury—leading him to believe that appellant was lying.

was the man with the gun in his pants at all. He argues that the identifications were not sufficient because Ms. Rockey "essentially identified Lindsey as the person with the gun" and Ms. Prinkey gave an initial description of the man with the gun that appellant alleges was more consistent with Lindsey. He argues that a man claiming to be his father owning the gun created mere speculation and that the items belonging to him in the bag could have transferred his DNA over to the gun. He further notes that, when the police found him in the car, he was too far away from the bag for the State to argue constructive possession. Appellant argues that there was insufficient evidence to show that he ever possessed the gun, let alone shot it.

The State argues that Ms. Prinkey's identification of appellant, alone, was sufficient to sustain his conviction. Even were that not the case, however, the State argues that the physical description given by both Ms. Rockey and Ms. Prinkey were more consistent with appellant than with any of the other occupants of the car. The State argues that, once one accepts that appellant was the person with the gun in his waistband, it is easily inferred that appellant possessed the gun in the car and that appellant was the one who fired the shots seconds after the women saw him with the gun.

B.

An appellate court reviewing the sufficiency of the evidence to support a conviction will "view the evidence in the light most favorable to the State and assess whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *State v. Krikstan*, 483 Md. 43, 63 (2023) (quoting *Walker v. State*, 432

Md. 587, 614 (2013)). "[W]e do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Walker*, 432 Md. at 614. "We do not second-guess the jury's determination where there are competing rational inferences available." *Smith v. State*, 415 Md. 174, 183 (2010). The question before us 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." *Scriber v. State,* 236 Md. App. 332, 344 (2018) (emphasis in original).

We hold that a rational jury could find, beyond a reasonable doubt, based upon the evidence presented at trial, that appellant was the man with the gun in the waistband of his jeans. An eyewitness, Ms. Prinkey, identified appellant as the man with the gun. An identification by a single eyewitness alone is sufficient to support a conviction. *Braxton v. State*, 123 Md. App. 599, 671 (1998); *Mobley v. State*, 270 Md. 76, 89 (1973). Ms. Prinkey's testimony alone, if believed, was sufficient to establish the fact that appellant was the man with the gun.

Yet, even beyond the identification by Ms. Prinkey, Ms. Rockey testified at trial that the person who displayed the gun in his waistband was a man wearing jeans who was shorter than the other male occupant of the car and around her height. Ms. Prinkey testified that the male occupant of the car with the gun was about 5' 7" and was wearing jeans. Appellant, undisputedly, was the only occupant of the car who was wearing jeans, he was the shorter of the two male occupants by a foot, and he was 5' 7" tall. The gun belonged to a man appellant referred to as "dad," a fact which appellant demonstrably tried to hide. Appellant's DNA was in multiple places on the gun (and appellant's proposed alternate

suspect was ruled out by the DNA tests). This evidence is more than sufficient to establish, if believed by the jury, that appellant possessed the gun. The gun was found with ammunition in a vehicle. The evidence is sufficient to support appellant's convictions on Counts 5-8 and 10-12.

The State presented evidence that appellant was carrying the gun seconds before it was fired and that he threatened the two women with the gun by showing it to them during an altercation. The evidence established that there was only one gun in the car, and the bullets from that gun were a match to the bullets found at the crime scene. From these facts, a rational juror could have concluded that appellant was the one who fired the gun. The evidence is sufficient to support appellant's convictions on Counts 2-4 and 13.

Because the evidence was sufficient to support appellant's convictions, we remand for a new trial in which the detective's inadmissible statements must be excluded.

**JUDGMENTS OF CONVICTION IN THE CIRCUIT COURT FOR WORCESTER COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY WORCESTER COUNTY.**