Circuit Court for Baltimore County
Case No. C-03-CR-22-002727

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 970

September Term, 2023

JUSTIN DEVIN ALLEN

v.

STATE OF MARYLAND

Graeff,
Arthur,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: October 9, 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 persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following a bench trial in the Circuit Court for Baltimore County, Justin Devin Allen was convicted of second-degree murder, two counts of using a firearm in the commission of a crime of violence, two counts of first-degree assault, and several related firearm offenses. He noted this timely appeal.

Allen presents the following questions for our review, which we quote:

1. Did the trial court err in considering at sentencing charges which did not result in adjudication of guilt?

2. Did the trial court err in permitting [a police detective] to testify to his opinion concerning the credibility of [the State's key witness]?

3. Did the trial court err in denying [Allen's] motion to suppress a statement recorded while he was alone in a police interrogation room?

For the reasons set forth below, we shall affirm.

BACKGROUND

At trial, Maurice Carpenter testified that shortly after midnight on May 14, 2022, he was driving on Philadelphia Road in Baltimore County. His roommate, Whitney Hoover, was seated in the passenger's seat.

Carpenter testified that, as he approached the intersection of Allender Road, he observed a dark gray Toyota Scion brake suddenly in an effort to "brake-check" him. Carpenter attempted to pass the car on the left. The other car sped up as Carpenter attempted to pass it. The two cars were side by side for a few seconds. While Carpenter's car was next to the other car, he heard a "pop." He looked over at his passenger and saw that she was unresponsive.

Carpenter did not call for medical assistance or call the police for more than an

hour. Instead, he turned onto another road, stopped, and called three people—his girlfriend, the mother of his child, and his boss. The mother of his child drove to the place where he had parked the car, began to drive him away, but brought him back at his request. His girlfriend brought him a pair of pajama bottoms, so that he could change out of his pants, which were soaked with the victim's blood. He put the bloody pants in the trunk of his girlfriend's car and tried to concoct a cover story, asking his girlfriend to say that she had been driving his car. Seventy-five minutes after the shooting, he finally called 911.

The passenger died from a gunshot wound to the right side of her head. A bullet fragment was recovered during the autopsy.

When questioned by the police, Carpenter gave several different accounts about how the incident occurred.[1] Eventually, he gave the account to which he testified at trial. He explained his conduct by saying that he was afraid that the perpetrator would return to shoot him, that his license was suspended and he was not allowed to drive, and that he was afraid that he would be blamed for the shooting. At trial, in response to a question from the State, Carpenter denied that he had shot the victim.

Baltimore County Police Detective Mark Fisher questioned Carpenter, detained him, and obtained warrants to search Carpenter's car and residence. The search yielded nothing.

[1] Carpenter initially said that his girlfriend had been driving and that he had been in the backseat. He said that the incident occurred at a different location on Philadelphia Road. He said that the other car had pulled out in front of his. He did not say that the other driver had brake-checked him.

Detective Fisher also obtained video surveillance footage from Big Falls Inn on Philadelphia Road for May 14, 2022 at 12:12 a.m. The footage showed Carpenter's car traveling behind a gray Toyota Corolla. Through further investigation, Detective Fisher learned that a license plate reader at Bradshaw Road and Philadelphia Road had logged the license plate number of a dark gray Toyota Corolla with dark tinted windows traveling northbound at 12:20 a.m. That car was registered to Allen.

Special Agent Michael Fowler of the FBI, an expert in historical call data analysis, mapping, and cellular technology, conducted a historical cellular record analysis of Allen's two cell phone numbers. Based on the cellular mapping locations of Allen's cell phones, Special Agent Fowler determined that Allen's cell phones were in the southbound area of Philadelphia Road between approximately 12:07 a.m. and 12:15 a.m. on May 14, 2022.

A search of Allen's residence uncovered a Taurus G3 semi-automatic, nine-millimeter Luger handgun and ammunition. Jason Birchfield, a firearms examiner for the Baltimore County Police Department, determined that the bullet fragment recovered in the autopsy originated from a .357, .38, .380, or nine-millimeter caliber class bullet. Birchfield concluded that the bullet fragment recovered during Hoover's autopsy was not fired from the nine-millimeter handgun recovered from Allen's apartment. According to Birchfield, however, the ammunition recovered from Allen's apartment was of the same caliber class as the bullet fragment recovered from Hoover's autopsy. In addition, Birchfield reviewed images of four firearms depicted in videos and photos saved in Allen's phone and testified that those firearms used the same caliber class of bullet as the

bullet fragment recovered in the autopsy.

Jackson Dimalanta, an expert forensic scientist in the field of gunshot residue, performed gunshot residue testing on Allen's car. Mr. Dimalanta's testing revealed the presence of gunshot residue on the "headliner interior of [the] driver door top area" of the car.

Kamauri Wilson had told the police that he had purchased marijuana from Allen on the evening of the shooting and that Allen was the sole occupant of his car. At trial, Wilson claimed to have no recollection of those events, but admitted that he had told the police, in a recorded statement, that there was only one person in Allen's car.

On the basis of this and other evidence, the court found Allen guilty of second-degree murder, two counts of first-degree assault, two counts of using a firearm in the commission of a crime of violence, two counts of illegal possession of a regulated firearm, one count of wearing or carrying a handgun on his person, and one count of carrying and transporting a handgun in a vehicle.

The court sentenced Allen to 40 years of incarceration for second-degree murder, but suspended all but 25 years. The court imposed a consecutive five-year term for one count of use of a firearm, a concurrent five-year term for the second count of use of a firearm, a concurrent five-year term for one count of first-degree assault, and lesser concurrent or merged sentences for the remaining counts.

This appeal ensued.

DISCUSSION

I.

In the sentencing proceeding, the court said that it had "taken into account" Allen's "significant juvenile criminal record," which reflected "nine separate juvenile offenses," including one involving a handgun and "others involving drugs." Allen's record "suggest[ed]" to the court that Allen's "criminal activity" was not a "newly found problem."

Citing those statements, Allen, who was 18 years of age at the time of the murder, contends that the court erred in considering charges that did not result in an adjudication of guilt. Allen did not preserve that issue for appeal. And even if he had preserved it, we would find no abuse of discretion in the circumstances of this case.

"[T]he 'sentencing judge is vested with virtually boundless discretion' in devising an appropriate sentence." *Cruz-Quintanilla v. State*, 455 Md. 35, 40 (2017) (quoting *Smith v. State*, 308 Md. 162, 166 (1986)). Thus, "a sentencing judge may properly consider uncharged or untried offenses[,]" *Smith v. State*, 308 Md. at 172, provided that they are established by "'reliable evidence.'" *Id.* (quoting *Henry v. State*, 273 Md. 131, 147-48 (1974)). Furthermore, because "an acquittal does not necessarily establish the untruth of all evidence introduced at the trial of the defendant," a sentencing judge "'may properly consider reliable evidence concerning the details and circumstances surrounding a criminal charge of which a person has been acquitted.'" *Logan v. State*, 289 Md. 460, 481 (1981) (quoting *Henry v. State*, 273 Md. at 148).

Allen complains that the court considered only a "[b]are [l]ist of [c]harges."[2] He asserts that the court considered a guilty plea that ultimately resulted in a disposition of probation before verdict, charges that were "stetted" or indefinitely postponed, and a number of serious traffic offenses that were dismissed. He recognizes that a court may consider reliable evidence of other wrongdoing, but implies that the information on which the court relied did not meet that standard.

"[A] defendant must object to preserve for appellate review an issue as to a trial court's impermissible considerations during a sentencing proceeding." *Sharp v. State*, 446 Md. 669, 683 (2016) (citing *Abdul-Maleek v. State*, 426 Md. 59, 69 (2012)); *Ellis v. State*, 185 Md. App. 522, 550 (2009). In this case, Allen failed to object to the sentencing court's statements concerning his prior offenses. Therefore, he failed to preserve that issue.

When a judge is alleged to have considered impermissible factors at sentencing, "[a] timely objection serves an important purpose[.]" *Reiger v. State*, 170 Md. App. 693, 701 (2006). "Specifically, it gives the court opportunity to reconsider the sentence in light of the defendant's complaint that it is premised upon improper factors, or otherwise to clarify the reasons for the sentence in order to alleviate such concerns." *Id.*

Because Allen did not object, we have little information about the reliability of the information concerning most of the offenses that the court considered. Similarly, because

[2] In fact, Allen stipulated at trial that he was prohibited from possessing a regulated firearm under Maryland Code (2003, 2022 Repl. Vol.), § 5-133(b)(1) of the Public Safety Article, because of an adjudication of delinquency.

Allen did not object, the court did not have the opportunity to reconsider the sentence in light of his complaints or to clarify what role, if any, the prior offenses played in the court's formulation of a sentence. We cannot fault the circuit court for failing to consider an objection that Allen did not make.

Even if Allen had preserved this issue—which he did not—we would find no abuse of discretion. The record reveals that the challenged comments came just before the court's discussion of Allen's prospects for rehabilitation. The court expressly referred to the "likelihood of rehabilitation." It credited a statement by Allen's mother, that Allen had not been able to take full advantage of earlier opportunities for rehabilitation because he was obligated to care for a younger sister. Finally, at the defense's request, the court recommended Allen for the Youthful Offenders Program at the Patuxent Institution because the court, "for no other reason than . . . his youth, believe[d] that he has got some chance of rehabilitation."

In short, the court referred to Allen's record as part of its consideration of the issue of whether he was amenable to rehabilitation—an issue that the court resolved in his favor. The court did not abuse its discretion in sentencing Allen.

II.

Detective Fisher interrogated Carpenter after the incident, dismissed Carpenter's initial accounts of how it occurred, and extracted yet another account, which the police were able to corroborate with objective evidence. On cross-examination, defense counsel repeatedly asked Detective Fisher about the false statements that Carpenter had made and about the detective's disbelief of Carpenter's statements. The detective responded, in

substance, that "some aspects" of Carpenter's statement were untruthful, but that he was able to corroborate Carpenter's final version.

On redirect, the State asked Detective Fisher whether he found the final third of Carpenter's statement to be "credible." Over an objection, the detective responded, "Yes." On appeal, Allen argues that the court erred in allowing Detective Fisher to offer an opinion about Carpenter's credibility.

Ordinarily, "the admission of evidence is committed to the sound discretion of the trial court." *Portillo Funes v. State*, 469 Md. 438, 479 (2020). In general, an appellate court will "'not disturb a trial court's evidentiary ruling unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.'" *Bey v. State*, 228 Md. App. 521, 535 (2016) (quoting *Moreland v. State*, 207 Md. App. 563, 568-69 (2012)).

"In a criminal case tried before a jury," however, "a fundamental principle is that the credibility of a witness and the weight to be accorded the witness' testimony are solely within the province of the jury." *Bohnert v. State*, 312 Md. 266, 277 (1988); *accord Fallin v. State*, 460 Md. 130, 136 (2018).

More than 30 years ago, Maryland's highest court laid down these governing principles:

> We have never indicated that a person can qualify as an "expert in credibility," no matter what his experience or expertise. We have insisted that, in a jury trial, the credibility to be given a witness and the weight to be given his testimony be confined to the resolution of all of the jurors. It is the settled law of this State that a witness, expert or otherwise, may not give an opinion on whether he believes a witness is telling the truth. Testimony

> from a witness relating to the credibility of another witness is to be rejected as a matter of law.

Bohnert v. State, 312 Md. at 278; *accord Fallin v. State*, 460 Md. at 136; *see also Hutton v. State*, 339 Md. 480, 505 (1995).

Nonetheless, the Court has recognized the possibility that a litigant might "open[] the door" to testimony about another person's credibility. *Fallin v. State*, 460 Md. at 158 n.12. When a litigant "opens the door," "otherwise inadmissible testimony may become relevant and admissible to respond to an issue introduced into a case by an opposing party." *Id.* In the circumstances of this case, Allen opened the door to Detective Fisher's affirmation that he found the final third of Carpenter's statement to be "credible."

On cross-examination of Detective Fisher, defense counsel aggressively questioned the detective regarding the veracity of Carpenter's statements:

> Q. You actually told [Carpenter] you didn't want him to bullshit you, correct?
>
> A. I very well may have said that, yes.
>
> Q. Because he was offering you information that didn't make sense to you?
>
> A. Correct.
>
> Q. In fact, you described it as there was weird stuff, correct?
>
> A. Correct.
>
> Q. And so you said, Let's start fresh at some point?
>
> A. I do recall that.
>
> Q. And the State is correct. Mr. Carpenter has testified as to the nature of his interview. But Mr. Carpenter was not truthful with you as far

as you were concerned in the course of that interview; isn't that correct?

A. In regards to some aspects of his statement.

Q. And that is because you chose what was truthful and what was not truthful, correct?

A. No, sir. I used the information I had gathered in other interviews that evening to confront him with some facts that I thought was [sic] different. So they were facts that I gathered during the investigation that evening and talking to other people before I spoke to him.

Defense counsel proceeded to impugn Carpenter's credibility and asked the detective to confirm that Carpenter lied on at least two occasions:

Q. And so you are just accepting that Mr. Carpenter, who may not be the most truthful individual, was telling the truth when he said that; is that correct?

A. No, I am not accepting it. When Mr. Carpenter would tell me something, I would attempt to verify that by interviewing the people he called or finding surveillance video that would corroborate the things he's saying. And that's what I went off of.

Q. The first two times that he had a chance to explain something to you, it was not that he was being brake checked; isn't that correct?

A. Sir, it's not the first time a witness has not told the truth on the first time. I don't have an explanation for that.

Defense counsel went on to ask Detective Fisher to agree that Carpenter had changed his story and had tried to get others to lie for him:

Q. You would agree Mr. Carpenter told you multiple versions of different descriptions of what transpired on the early morning hours of—

A. In regard to some aspects, yes. He did change his story.

Q. He changed his story. And he never said to you that he was afraid that there was an arrest warrant out for him; isn't that correct?

A. Again, I don't—if you would like to—I don't recall exactly what he said to me on that. He would have to tell you.

Q. But you would agree that he made a determination to tell you different versions that led you to actually tell him, Don't bullshit me, right?

A. Yes.

Q. And you would agree that Mr. Carpenter, after his roommate is sitting in a car not knowing her condition other than it's dire, made any decision but to try to create a story to protect himself that he then asked other people to tell the police.

A. You would have to ask him what his intentions were.

Q. You investigated it. Come on. You know that.

A. Yes, he called other people. Correct.

At the end of the very brief redirect examination that began moments later, the State asked: "[A]fter concluding your entire investigation, did you find what Mr. Carpenter ended up advising you on that, let's say, last third of your interview credible?" Detective Fisher said, "Yes."

Immediately thereafter, on re-cross, defense counsel asked the detective, again, to evaluate Carpenter's credibility:

Q. Did you find Mr. Carpenter credible when you told him no more of this and he said, you know, I swear the only thing I am not telling you the truth about is that [my girlfriend] was the driver?

Do you remember that? Because you remember everything she asked you.

A. Sir, I remember, obviously, there was some—that's why I went and tried to corroborate the things he was trying to say to me. And I wanted to—that's why I conducted the search warrant on his apartment. That's why I didn't let him leave until I did those things.

> I wanted to corroborate what he was saying. I don't take everything somebody says to me at face value. It's not the first time I have had a witness be untruthful to begin with.

In the circumstances of this case, Allen can fairly be said to have opened the door to Detective Fisher's affirmation that Carpenter was "credible" in the last third of the interview. On cross-examination, Allen repeatedly attacked Carpenter's credibility, asked the detective to confirm that Carpenter had made false statements, and prompted the detective to explain that he sought to verify what Carpenter had said. On re-cross, Allen renewed the attack, and the detective responded, again, that he wanted to corroborate Carpenter's account. Thus, the detective's statement on redirect, that part of Carpenter's account was "credible," is little more than an explanation that the detective was able to find objective evidence that corroborated Carpenter's account. In fact, the detective's statement on redirect is not very different from what he had said several times on cross: "[S]ome aspects" of Carpenter's statement were untruthful, but the detective attempted to "verify" what he had said and proceeded on the basis of what he could verify.

In any event, even if the court erred in not sustaining Allen's objection, the error, if any, was harmless beyond a reasonable doubt, because there is no reasonable possibility that Detective Fisher's one-word answer contributed to the rendition of the guilty verdict. *Dorsey v. State*, 276 Md. 638, 659 (1976). The prohibition against witnesses opining about credibility was designed for jury trials. *Bohnert v. State*, 312 Md. at 277, 278; *accord Fallin v. State*, 460 Md. at 136. In this case, however, the finder

of fact was "a veteran judge, sitting without a jury." *Geiger v. State*, 235 Md. App. 102, 113 (2017).

As the State argues, Detective Fisher affirmed the credibility of the final third of Carpenter's statement during a bench trial in which Allen had "long and ably attacked Carpenter's credibility." Both before and after Detective Fisher answered the question that Allen challenges on appeal, the detective repeatedly said that "some aspects" of Carpenter's account were unworthy of credence—that they were, in the detective's own words, "bullshit." Nonetheless, the detective had also said that he could verify other aspects of the account, which implies that he regarded those aspects as credible. Moreover, it would have been obvious to the court that the State had based the criminal charges on the aspects of Carpenter's account that the detective regarded as credible, because the State had charged Allen rather than Carpenter. In these circumstances, we see "no reasonable possibility that the [court's] decision . . . would have been different had the [allegedly] tainted evidence been excluded." *Dove v. State*, 415 Md. 727, 744 (2010) (citing *Ross v. State*, 276 Md. 664, 674 (1976)).

III.

After Allen was arrested, he invoked his *Miranda* rights,[3] and Detective Fisher allowed him to use a telephone in an empty office. The police recorded his calls.[4] During one of the calls, Allen said, "I put myself in this position."

At trial, Allen claimed that he was unaware that the calls would be recorded. He moved to suppress the recording on the ground that he had a reasonable expectation of privacy when he was making the call and thus that the recording was an illegal wiretap. He said nothing about *Miranda*.

In responding to Allen's motion, the State volunteered that the recording did not violate Allen's *Miranda* rights, because, the State said, he was not subject to interrogation when he was making the calls. In addition, the State disputed the contention that Allen had a reasonable expectation of privacy when he was making the calls. It argued that Allen was told to keep the door "cracked" and that he said, "I know they are listening."

Before deciding the motion to suppress, the court heard testimony from Allen and viewed excerpts of the audio-visual recording. On the basis of that evidence, the court was unpersuaded that "Allen had a subjective belief that that telephone conversation was not going to be recorded." In support of its conclusion, the court observed that, during the call, Allen said, "I know they are listening." The court also observed that Allen

[3] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

[4] Although the record is not entirely clear, it appears that the police had an audio-visual recording of everything that occurred in the office and that they also intercepted the call and recorded Allen's half of the conversation.

himself said that he "would think" that the police had a camera recording him. The court noted that the room was small, that Allen was less than 10 feet from the door, and that the door was ajar. Because it found that "Allen understood . . . that the police would be listening to these conversations" and that "he had no reasonable expectation of privacy in those conversations," the court denied the motion to suppress. The court did not address *Miranda*.

Later that day, when the State successfully moved to admit the excerpts of the recording, Allen objected, "[a]dopt[ing] the previous arguments that [had] been made[.]" As before, Allen did not mention *Miranda*.

On appeal, however, Allen contends that, "[u]nder a straightforward application of *Miranda* and its progeny," the court erred in admitting the excerpts. The State responds that Allen failed to preserve that argument for appellate review.

We agree that Allen did not preserve his *Miranda* argument. "[W]hen specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999); *accord Handy v. State*, 201 Md. App. 521, 537 (2011). Here, Allen moved to suppress the recording only on the ground that it was an illegal wiretap. He objected to the admission of the excerpts only on that ground as well. Although the State referred to *Miranda* in opposing the motion to suppress, the court did not consider or decide the question of whether the State violated Allen's *Miranda* rights when it recorded his conversations. The *Miranda* issue is not properly before this Court. *See* Md. Rule 8-131(a).

Even if the issue were before us—which it is not—we would find no error. *Miranda* applies only to custodial interrogation. *See Miranda v. Arizona*, 384 U.S. at 444. "Without the presence of both custody *and* interrogation, the police are not bound to deliver *Miranda* warnings and obtain a proper waiver of the rights to silence and counsel before questioning a suspect." *Cooper v. State*, 163 Md. App. 70, 93 (2005) (emphasis in original); *accord Williams v. State*, 219 Md. App. 295, 317 (2014).

When Allen said that he had put himself in this position, he was in custody, but he was not being questioned or interrogated. He was sitting alone in a room. He may have believed that he was being recorded and may have known that "they [were] listening," but his statements were not in response to "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response[.]" *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). To the contrary, he said what he said even though the police did not say or do anything to prompt him to speak, other than to put him in a room with a phone. "Not all police conduct that may cause a defendant to speak constitutes interrogation." *State v. Conover*, 312 Md. 33, 39 (1988).

In *Anderson v. Commonwealth*, 352 S.W.3d 577, 584 (Ky. 2011), the Supreme Court of Kentucky considered whether *Miranda* barred the use of videotaped statements that the defendant had made on a cell phone call before the police had administered his *Miranda* warnings. "When [the defendant] made the inculpatory statements he was sitting in an interrogation room, voluntarily talking with someone on his cell phone." *Id.* "A police officer was stationed in the corner of the room but he was not speaking to or

interacting with [the defendant]." *Id.* Because the defendant "was clearly not subject to any express questioning or coercive tactics[,]" the court concluded that "he was not interrogated, there was no violation of his *Miranda* rights and his statements were admissible." *Id.*

Allen, too, was clearly not subject to any express questioning or coercive tactics, when he volunteered that he had put himself in this position. "Volunteered statements of any kind are not barred by the Fifth Amendment[.]" *Rhode Island v. Innis*, 446 U.S. at 300 (1980) (quoting *Miranda v. Arizona*, 384 U.S. at 478). "There is no privilege against inadvertent self-incrimination or even stupid self-incrimination, but only against compelled self-incrimination." *Ciriago v. State*, 57 Md. App. 563, 574 (1984). Thus, even if Allen had preserved the *Miranda* issue, we would hold that the police did not violate his right against compelled self-incrimination.

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