Circuit Court for Calvert County
Case No. C-04-CR-22-000226

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1195

September Term, 2023

RANDELL JAMAL WRIGHT

v.

STATE OF MARYLAND

Beachley,
Kehoe, S.,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 15, 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).

On July 12, 2023, a jury in the Circuit Court for Calvert County convicted Randell Jamal Wright ("Wright" or "appellant") of second-degree burglary, theft, and malicious destruction of property related to a jewelry store burglary, as well as the conspiracy to commit those three crimes with two other individuals. Appellant noted this timely appeal and presents the following questions for our review:

1. Did the [c]ourt err by admitting irrelevant and prejudicial evidence?
2. Did the [c]ourt illegally sentence [appellant] by failing to merge conspiracy counts for sentencing?

The State concedes that the conspiracy to commit malicious destruction and conspiracy to commit theft convictions must be vacated. We reject appellant's claim of evidentiary error and therefore shall affirm his remaining convictions.

FACTS

Around 2:30 a.m. on July 1, 2022, Deputy John Lee of the Calvert County Sheriff's office responded to a breaking and entering at the Jewelry Exchange and Pawn shop in Dunkirk, Maryland. Deputy Lee testified that the burglary caused "quite a bit of damage" to the shop. The owner of the shop, Jessica Turner, verified that the store's alarm was triggered at 2:17 a.m. and that a significant of amount of jewelry was stolen as a result of the break-in.

Video of the break-in was recorded by the store's surveillance camera and was entered into evidence. The video depicted three individuals in dark clothing and ski masks entering the store. One of the perpetrators used a sledgehammer to break through the store's front window. That individual then proceeded to smash jewelry display cases with the

sledgehammer while the other two accomplices stole jewelry. Photographs of some of the stolen jewelry were entered into evidence.

Ms. Turner recounted that shortly after the burglary, she saw some of the stolen jewelry on Facebook Marketplace. She then contacted the Calvert County Sheriff's Office, which started investigating the seller in the Facebook posts, Robert Brown III. Calvert County Detective Wyatt McDowell ran Brown's name through Maryland's pawn database and found recent pawn shop transactions with Famous Pawn in Suitland, Maryland. Detective McDowell recovered surveillance footage from Famous Pawn from July 23, 2022, and July 25, 2022. In the July 23 video, Brown can be seen exiting a black Nissan Sentra. The July 25 video depicts appellant with Brown and appellant's cousin, Ahmed Amador.

Detective McDowell began investigating relevant information related to the Nissan Sentra. The car's registration tags were run through Maryland's License Plate Reader ("LPR") system, resulting in evidence that the car entered Calvert County at 2:05 a.m. on the night of the burglary, heading toward the Jewelry Exchange Pawn shop. This evidence was admitted over objection. The car was registered to a Hannah Harris, who resided at the same address as Brown. The State also admitted into evidence, over objection, MVA records that contained Brown's photograph.

Detective McDowell obtained a search warrant for Brown's cell phone. Detective McDowell noticed that Brown frequently called another number, including calls made "around the same time as the crime." That number belonged to Amador, and Detective

McDowell obtained a search warrant for that phone as well. Using the location information from those cell phone records, Detective McDowell conducted surveillance of a Comfort Inn in Oxon Hill, Maryland and a residence in Temple Hills, Maryland.

Detective McDowell then obtained and executed a search warrant at both locations. Brown was arrested with stolen jewelry at the Comfort Inn, while appellant and Amador were arrested at the Temple Hills residence where the police also recovered stolen jewelry. Several items of jewelry were located in the upstairs bedroom of the residence where the police also recovered documents tied to appellant. A pair of shoes similar to the those worn by one of the suspects in the jewelry store's surveillance video was also found in the Temple Hills residence. In the driveway of the residence was a pickup truck bearing license plate number 6CC8835, registered to Diane Marie Wright, appellant's mother, which contained a "yellow-handled sledgehammer sticking out of the back of the truck bed." The sledgehammer was similar to the one used by one of the suspects in the surveillance video. Significantly, pieces of glass were embedded in the sledgehammer. Additionally, Officer Robert Defibaugh of the Greenbelt City Police Department testified, over objection, that he stopped Wright while on patrol in February 2022, and that Wright was driving a Ford F-150 pickup truck. Officer Defibaugh confirmed during his testimony that the license plate number of the Ford F-150 he encountered was 6CC8835, which matched the plate number of the truck impounded as a result of the search warrants served at the Temple Hills residence.

After a two-day trial, Wright was found guilty of second-degree burglary, theft, and malicious destruction of property, as well as the conspiracy to commit each of those offenses. The court sentenced Wright to an executed term of eight years' incarceration with thirty-two years suspended. As stated above, both parties agree that the trial court imposed an illegal sentence, and request that we vacate appellant's five-year suspended sentence for conspiracy to commit theft.[1] Appellant noted this timely appeal.

DISCUSSION

Wright asserts that the trial court erred in admitting the LPR evidence implicating Brown's car, the MVA evidence containing Brown's photograph, and Officer Defibaugh's testimony concerning the February 2022 traffic stop, arguing that all of this evidence was irrelevant, or in the alternative, unduly prejudicial. We shall discuss each of these arguments in turn.

Standard of Review

To be admissible at trial, evidence must first be found to be relevant and, if relevant, its probative value must outweigh its potential for unfair prejudice. *State v. Simms*, 420 Md. 705, 725 (2011). The threshold question of evidentiary relevance is reviewed *de novo*. *Montague v. State*, 471 Md. 657, 673 (2020). Trial courts are granted "wide discretion" when determining the admissibility of evidence. *Young v. State,* 370 Md. 686, 720 (2002). Despite the wide discretion afforded trial judges, they do not have the latitude to admit

[1] The court merged the conspiracy to commit malicious destruction of property into the underlying crime. As the parties correctly note, because merger was inappropriate, we shall vacate that conspiracy conviction as well.

irrelevant evidence. *State v. Simms,* 420 Md. at 724. 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." Md. Rule 5-401. "Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Montague*, 471 Md. at 674 (quoting *Williams v. State,* 457 Md. 551, 564 (2018)).

Evidence which is deemed relevant may still be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. A trial court's determination of probative value versus unfair prejudice is reviewed for an abuse of discretion. *Montague*, 471 Md. at 674. "An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court." *Williams v. State*, 457 Md. at 563 (2018) (citing *Fuentes v. State*, 454 Md. 296, 325 (2017)). "Appellate courts are generally loath to reverse a trial court 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." *Montague*, 471 Md. at 674 (quoting *Portillo Funes*, 469 Md. at 479 (2020)) (internal quotations omitted).

Analysis

I. The LPR report[2]

We begin by noting that "acts and declarations of any conspirator during such

[2] Wright argues that MVA records connecting the Nissan Sentra to Brown were not relevant and that they were unduly prejudicial. The State counters that the records objection was waived because the records were admitted in later testimony for another purpose. "[I]f the same or similar evidence is admitted without objection at another point in the trial, the objection is waived." *Francois v. State,* 259 Md. App. 513, 523 (2023)

conspiracy, and in furtherance thereof, are admissible as substantive evidence against any co-conspirator on trial." *Henderson v. State*, 13 Md. App. 384, 388 (1971) (quoting *Wharton's Criminal Evidence* (12th Ed.), Vol. II, Sec. 416) (internal quotation marks omitted). We initially reject appellant's argument in his reply brief that the LPR records do not qualify as "acts or statements made by co-conspirators." The State theorized that all three perpetrators traveled together in the Nissan Sentra tied to Brown, making the LPR data evidence of an act in furtherance of the conspiracy to burglarize the jewelry store. Notwithstanding that determination, a review of the record indicates that Wright's trial counsel never objected to the admission of such evidence on the ground that appellant now raises on appeal. To the extent that appellant now objects to the admissibility of the LPR evidence on this basis, we decline to consider the issue.

We turn to Wright's principal appellate argument—that the LPR data was not relevant. Wright contends that the LPR records implicating Brown's car were irrelevant because no evidence placed Wright in or near Brown's vehicle. Wright further argues that, even if the LPR records were admissible, they were unduly prejudicial, essentially imparting guilt by association.

The State asserts that the admission of the LPR evidence was proper because it was relevant to the State's theory of the case, *i.e.*, that Brown was driving the car the co-conspirators used in the commission of the burglary. In the State's view, the LPR evidence

(citing *DeLeon v. State*, 407 Md. 16, 32-33 (2008)). At oral argument, appellant's counsel essentially conceded on this point. We conclude that the objection to the MVA records was not preserved for appellate review.

was relevant because it placed Brown's car in the vicinity of the jewelry store just before the burglary occurred, and there existed other evidence not only connecting Wright to Brown, but also connecting Wright to the burglary.

We reiterate that the State's theory of the case was that three individuals traveled together in the Nissan Sentra to the jewelry store for the purpose of committing a burglary. Based on testimony elicited at trial, the State showed that the Nissan Sentra that appeared in the LPR report had both a connection to Brown and was in the vicinity of the crime scene minutes before the burglary took place. The store's surveillance video showed three individuals enter the jewelry store, smash the display cases, and steal the jewelry located therein, before likely departing in the same vehicle in which they arrived. Evidence admitted at trial established that Brown was selling the stolen jewelry via Facebook Marketplace under his own name. A search of the Temple Hills residence—where Wright was present at the time of the search and where there were documents connecting him to that residence—turned up jewelry identified as some of the stolen merchandise.

There was also evidence that Wright and Amador are cousins and roommates in a residence where the police found items stolen from the jewelry store. Amador and Brown were connected via cell phone records and cell phone location data on the night of the burglary. Further, surveillance video showed all three men were seen together on July 25, 2022, conducting a transaction at another pawn shop just weeks after the burglary. Detective McDowell identified Brown and the Nissan Sentra in the July 23, 2022, surveillance video. Based on these circumstances, we have no difficulty concluding that

the LPR data concerning the Nissan Sentra tied to Brown was relevant to the State's theory that Brown, Wright and Amador were accomplices in the burglary.[3]

We turn to Wright's assertion that the LPR evidence was unduly prejudicial. In support of his argument, Wright relies on a trio of cases which concern evidence erroneously admitted against co-defendants in joint trials. In those cases, Maryland courts reversed convictions because evidence admissible as to one defendant was not admissible against a co-defendant, thereby causing a significant risk of unfair prejudice. We are wholly unpersuaded by those cases because they involve evidence that was not mutually admissible against co-defendants in a joint trial. Here, as we have noted, the evidence against appellant was relevant and presumptively admissible.

Evidence excluded for prejudice must be determined to be not just prejudicial, but *unfairly* prejudicial. *Oesby v. State,* 142 Md. App. 144, 165. As noted by this Court in *Newman v. State*, 236 Md. App. 533, 550 (2018):

> If prejudice were the test, no evidence would ever be admitted. The parties have a right to introduce prejudicial evidence. Probative value is outweighed by the danger of "unfair" prejudice when the evidence produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case. The line is not always easy to draw.

(quoting JOSEPH F. MURPHY, JR., MARYLAND EVIDENCE HANDBOOK (3d ed. 1999), Sec. 506(B), "Unfairly Prejudicial Evidence," p. 181).

Here, the evidence of the Nissan Sentra car in the vicinity of the crime scene and

[3] In addition, as we discuss in Section II., the yellow sledgehammer found in the pickup truck connected to Wright further supports the State's theory of a conspiracy involving Brown, Amador, and Wright.

the MVA records proving the link between the car and Brown may have been prejudicial to Wright, but not unfairly so. "[T]he State is not constrained to forego relevant evidence and to risk going to the fact finder with a watered down version of its case." *Oesby v. State,* 142 Md. App. at 166-67 (2002). In applying the abuse of discretion standard required for determinations of unfair prejudice, this Court does not "make close calls with respect to exercise of discretion. . . . We reverse only egregiously bad calls as abuses of discretion." *Newman*, 236 Md. App. at 557. Applying this standard, we discern no abuse of discretion.

II. Testimony of Officer Defibaugh

Wright contends that Officer Defibaugh's testimony concerning a traffic stop he made in February 2022 is not relevant. Wright argues that the traffic stop encounter was unrelated to the July 2022 burglary, and evidence of the traffic stop neither increased nor decreased the probability of the existence of a material fact. Alternatively, Wright argues that even if Officer Defibaugh's testimony is relevant, it is unduly prejudicial because it is too far removed in time from the burglary to be probative.

The State argues that Officer Defibaugh's testimony was properly admitted because Officer Defibaugh's testimony connected Wright to the same pickup truck that the police observed when they executed the search warrant at the Temple Hill residence, and that the sledgehammer was found in the bed of that truck. The State argues that although five months elapsed between Officer Defibaugh's encounter with Wright and the commission of the burglary, the two incidents are not so remote in time as to make the officer's testimony irrelevant.

We agree with the State for many of the same reasons discussed above. Over defense objection, Officer Defibaugh testified that he encountered Wright while on duty in February 2022. During that encounter, Officer Defibaugh observed Wright driving a Ford F-150 truck and in which Wright was the sole occupant. Earlier testimony by Detective McDowell established that during the search of the Temple Hills residence in October 2022, he observed a gray F-150 truck registered to Diane Wright parked in the driveway with a yellow-handled sledgehammer "sticking out of the back" of the truck's bed. Detective McDowell's testimony laid the foundation for the testimony of Officer Defibaugh. The State's theory of the case was that Wright was the individual who wielded the sledgehammer as seen in the surveillance video, smashing the glass display cases to gain access to the jewelry inside. Evidence of Wright's possession of the F-150 truck five months prior to the burglary is relevant to the State's theory that he was likely in actual or constructive possession of the same truck located outside the Temple Hills residence. That a yellow-handled sledgehammer was found in the bed of the truck was relevant to prove that Wright had access to (and likely wielded) the yellow sledgehammer presumably used in the burglary.

We similarly reject the argument that Officer Defibaugh's testimony is unduly prejudicial. As discussed above, evidence is frequently prejudicial; the standard requires the court to determine whether "the risk of 'unfair prejudice' may 'substantially' outweigh the probative value of the relevant evidence." *Newman*, 236 Md. App. at 548. Here, it is uncontroverted that a yellow-handled sledgehammer with embedded glass was found in a

truck registered to Wright's mother and located at a residence associated with Wright. That Wright was stopped by an officer five months prior to the burglary driving the same truck was relevant to prove that Wright had access to that truck. We therefore conclude that Officer Defibaugh's testimony was not unduly prejudicial.

III. Vacating the Superfluous Conspiracy Convictions

Both the State and Wright agree that the trial court imposed an illegal sentence related to the convictions for conspiracy to commit theft and conspiracy to commit malicious destruction of property. The "unit of prosecution" for conspiracy is "the agreement or combination rather than each of its criminal objectives." *Tracy v. State*, 319 Md. 452, 459 (1990). A conspiracy "remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy." *Martin v. State*, 165 Md. App. 189, 210 (2005) (quotation marks and citations omitted). We have held that "only one sentence can be imposed for a single criminal common law conspiracy no matter how many criminal acts the conspirators have agreed to commit." *McClurkin v. State*, 222 Md. App. 461, 490 (2015) (quotation marks and citations omitted).

Here, there was one criminal objective and one conspiracy: the burglary of the jewelry store. Wright was convicted of three counts of conspiracy, all arising from the same agreement between the co-defendants. As such, we affirm the conspiracy to commit second-degree burglary conviction, but vacate the other two conspiracy convictions.[4]

JUDGMENTS OF THE CIRCUIT COURT FOR CALVERT COUNTY FOR

[4] See footnote 1, *supra*.

CONSPIRACY TO COMMIT THEFT AND CONSPIRACY TO COMMIT MALICIOUS DESTRUCTION OF PROPERTY VACATED AND SENTENCE FOR CONSPIRACY TO COMMIT THEFT VACATED. JUDGMENTS OTHERWISE AFFIRMED. COSTS TO BE DIVIDED AS FOLLOWS: 75% TO APPELLANT AND 25% TO APPELLEE.