Circuit Court for Baltimore City
Case No.: 819081006

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1222

September Term, 2019

KERRON ANDREWS

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Raker, Irma, S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 10, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following trial in the Circuit Court for Baltimore City, a jury found Kerron Andrews, appellant, guilty of: possessing a stolen firearm; transporting a handgun in a vehicle; wearing, carrying, or transporting a handgun within a vehicle within 100 yards of a public building; wearing, carrying, or transporting a handgun on one's person within 100 yards of a public building; wearing, carrying, or transporting a handgun in a vehicle; wearing, carrying, or transporting a handgun on one's person; and various traffic offenses. The court sentenced appellant to an aggregate term of eight years' and two months' imprisonment.[1]

On appeal, appellant contends that the trial court erred in admitting "other crimes" evidence, and by considering unproven conduct when imposing sentence. For the reasons explained below, we shall affirm.

BACKGROUND

On February 21, 2019 at 3:22 p.m., Detective Ricardo Ojedo, of the Baltimore City Police Department, stopped the car that appellant was then driving after witnessing the car not come to a complete stop at a stop sign. When Detective Ojeda approached the vehicle he smelled burnt marijuana, which caused him to call for backup. Detective Ojeda's roadside investigation revealed that the car was registered to Azurdae Harris, appellant's

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[1] Specifically, the court imposed the following sentences: five years for possessing a stolen firearm; three years consecutive for transporting a handgun in a vehicle; one year concurrent for possessing a handgun within 100 yards of a public building; and sixty days consecutive for driving without a license. The court merged the remaining offenses for sentencing.

then-girlfriend; that appellant did not have a valid driver's license; that the passenger did not have any identification; and that the stop occurred within 100 feet of a school.

After appellant and the passenger were removed from the car, Detective Ojeda searched it and recovered a loaded pistol from under the center console, a spent nine-millimeter shell casing, and a blunt.

Two recorded jail phone calls between appellant and his then-girlfriend were played for the jury. During the first phone call, made on the day of appellant's arrest, appellant asked his girlfriend to get him a lawyer, to tell the lawyer that it was not his car, that the gun was in a hidden compartment, and that the gun was not visible. Appellant and his girlfriend also discussed that his girlfriend could get money from "the two whatchamacallit's."

Appellant also said "[h]ey, yo, … and when I come home, I'm going to holler at you real loud, yo, he didn't even run with the joint. If he had did that, he said no. That's why, you feel me? But it's all good, yo, this just ain't right." Detective Ojeda explained that "joint" is one of many street terms for a handgun. Thus, he understood appellant's statement to mean that appellant had asked the passenger to run from the car with the handgun, and the passenger declined.

In the second call, made a few days later, appellant complained that the passenger "didn't even take the whatchamacallit," after appellant asked him to do so. He also claimed that the passenger had told the police where the gun was. Detective Ojeda testified that the passenger had not told him where the gun was, although the passenger may have told the backup officer, who had removed the passenger from the car.

Azurdae Harris testified that she did not own any firearms and, to her knowledge, neither did appellant. She said that appellant had dropped her off at work at around 3:00 p.m. on the day in question which was shortly before appellant was pulled over by the police.

Appellant testified that, shortly after he dropped her off at work, we went to a bar to get a drink where he met his acquaintance who asked him for a ride. That acquaintance was the passenger in the car at the time Detective Ojeda conducted the traffic stop. Appellant testified that, after Detective Ojeda had first approached the car and then returned to his police car, he became aware that his acquaintance had a gun. His acquaintance urged appellant to drive away, but appellant declined. Appellant explained that, in the recorded jail calls, he was upset that his acquaintance got him in trouble by not running away with the gun or telling the police that it was his and not appellant's. Appellant agreed that the passenger was next to him throughout the stop. However, he testified that he was removed from the car first, and the passenger was inside the car for a brief period when he was not.

DISCUSSION

I.

Appellant first contends that the trial court erred when it admitted into evidence the spent nine-millimeter shell casing that the police found in the car he had been driving. According to appellant, that evidence constituted "highly prejudicial 'other crimes' evidence that indicated that at some point, a gun was fired from the car."

Appellant failed to preserve this issue for appeal because, although he made a general objection the first time that Detective Ojeda testified that he recovered a spent nine-millimeter shell casing, he failed to object the second time Detective Ojeda testified about recovering it. The following occurred at trial during the direct examination of Detective Ojeda:

STATE:	Did you recover anything else from the vehicle?
WITNESS:	I did. I recovered a smoked blunt, partially smoked blunt I guess and also a --
DEFENSE:	Objection.
THE COURT:	Overruled.
WITNESS:	A spent nine-millimeter casing.

Later during the direct examination of Detective Ojeda, the same testimony was admitted without objection:

STATE:	And you indicated what else did you recover from the vehicle?
WITNESS:	A blunt which is a hand-rolled cigar containing plant material which is marijuana and also a spent nine-millimeter casing.

We have observed that "'[c]ases are legion in the Court of Appeals to the effect that an objection must be made to each and every question'" posed, or a continuing objection must be requested, to preserve the matter for appellate review. *Fowlkes v. State*, 117 Md. App. 573, 588 (1997) (quoting *Sutton v. State*, 25 Md. App. 309, 316 (1975)). Here, as noted above, the second time Detective Ojeda testified to finding a spent nine-millimeter casing in the car, appellant failed to object. As a result, the issue is not preserved for appeal.

II.

Appellant also contends that, during the sentencing hearing, the court impermissibly sentenced him based, in part, on the court's finding that he had been involved in an earlier unrelated shooting. According to appellant, the information the court relied upon in making that finding was too unreliable to show that appellant was involved in the earlier shooting. The information the court relied upon was supplied to the court in a sentencing memorandum filed by the State, and was contained in this Court's reported decision in *State v. Andrews*, 227 Md. App. 350 (2016).

The State's sentencing memorandum, which was provided to appellant in advance of the sentencing hearing, explained that appellant had been charged with attempted first-degree murder and related offenses in connection with the earlier shooting. The State ultimately entered a *nolle prosequi* on those charges after this Court affirmed the trial court's ruling suppressing evidence because of the use of a "Hailstorm" cell site simulator without a warrant that specifically authorized the utilization of that technology. The sentencing memorandum described the background of that case as follows:

> On April 27, 2014, at approximately 2:15 A.M., Baltimore City Police Officer Connors responded to St. Agnes Hospital located at 900 S. Caton Avenue for a report of several walk-in shooting victims. Upon the officer's arrival, he located three shooting victims.
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> Upon the officer's arrival, he located three shooting victims Rhaiyana Allen, Asiabar Holloway and Toney Browne. Rhaiyana Allen was suffering from one gunshot wound to the head, Asiabar Holloway was suffering from one gunshot wound to the chest, and Torrey Browne was suffering from one gunshot wound to the chest. Investigation revealed that Rhaiyana Allen and Toney Browne were sitting inside a black 2001 Mercedes Benz bearing MD tag 2BL4540, which was parked in the 4900 block of Stafford Street when they were shot. Asiabar Holloway was shot while standing outside of the

> vehicle. As a result of their gunshot wounds: Rhaiyana Allen was rushed into surgery to remove the bullet from her brain, Asiabar Holloway was taken into surgery to repair the damage caused by the bullet striking him in the chest and Toney Browne had surgery to repair a collapsed lung.
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> Investigation revealed that an unknown black male with dreadlocks produced a handgun, shot Asiabar Holloway in the chest, then discharged the handgun into the parked Mercedes Benz. Kerron Andrews, the same defendant in the above-captioned case, was positively identified via photographic array as the unknown black male with dreadlocks that shot and attempted to kill [the victims]. An arrest warrant was issued for Kerron Andrews for the above charges. In an effort to locate the defendant, detectives were able to obtain the cell phone number of the Defendant. The detectives then obtained a pen register/trap & trace order signed by The Honorable Barry Williams. Detectives then used Hailstorm I to locate the Defendant at 5032 Clifton Avenue in Baltimore City. The Defendant was placed under arrest and a search and seizure warrant was obtained for the location. Detectives recovered a handgun from the couch where the Defendant was sitting when Detectives entered 5032 Clifton Avenue. Ammunition and ballistics from the recovered handgun were compared and matched to the evidence recovered from the crime scene and victims.
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> On May 29, 2014, the Defendant was indicted by a grand jury on numerous charges related to the April 27, 2014 shooting.

In pronouncing appellant's sentence, without objection the court said, in pertinent part:

> [s]o every indicia in this case – and your counsel wants me to focus only on this case – would suggest that you're guilty of the offenses which the jury found you guilty of.
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> Then, as part of a sentence or disposition, the Court can consider other matters. And the other matters as set forth in the sentencing memorandum provided by the State involve the recovery of a handgun from you as a result of the use of an electronic device which the police were not authorized to use in order to locate you. But when they located you, through that device and your phone, you were found to be in possession of a gun which then ballistics established had been involved in a shooting not too long before. The police were looking for you, as I understand it, because you had been identified as the shooter.

> The illegal conduct by the police I use that term advisedly – was in an attempt to locate you physically because of that other charge – or those other charges. And when they did find you, they found a gun, they found a gun that was tied to a multiple shooting.
>
> So as you put it, we all have a past. I don't have a past that involves, even remotely, the police ever having accused me of a crime in which I was found to be in possession of any kind of weapon that had been – that can scientifically be demonstrated to have been used to injure other people.
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> So yes, we all have a past, some people's pasts are more significant than others, for consideration of the issues in this case. Because of the danger that guns present, and because I sincerely believe that your past indicates you're a danger, because of your use of a gun and here you're in possession of a gun, which fortuitously, as your counsel has pointed, was not used apparently in any crime or the commission of any crime – which is certainly not part of the case.
>
> But be that as it may, your possession of a gun suggests potential future problems if the gun had remained in your possession and not have been – and had not been discovered by the excellent police work of the officer involved.
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> As a result of my belief that you have engaged in serious criminal conduct previously, that you do not wish to – or you do not appropriately attempt to conform your conduct to that which one would expect of such a person, and in spite of the fact that I believe that you love your children, I believe you love – I will use the term "girlfriend," but your partner of a number of years, I understand all of that. But that doesn't negate the danger that you present to people who are not in that circle.

As noted above, appellant did not object to the State's sentencing memorandum on the basis that it was unreliable. Rather, appellant only pointed out to the sentencing court that we noted by footnote in *Andrews*, *supra*, that there were two other photographic arrays wherein appellant was not identified. 227 Md. App. at 356, n.2. As a result, his claim that the sentencing court relied on unreliable evidence during sentencing is not preserved for review. As we noted in *Reiger v. State*, 170 Md. App. 693 (2006):

> When, as in this case, a judge's statement from the bench about the reasons for the sentence gives rise to the claim of impermissible sentencing considerations, defense counsel has good reason to speak up. A timely objection serves an important purpose in this context. 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. *See* Md. Rules 4–342, 4–345. As recognized in the rule, it is the availability of an opportunity to ask for and obtain immediate relief from the sentencing court that determines whether a contemporaneous objection is necessary. Simply stated, when there is time to object, there is opportunity to correct. *Cf. Graham v. State*, 325 Md. 398, 411, 601 A.2d 131 (1992) (defense counsel had adequate time to object to trial court's failure to disclose entire contents of jury's note and waived right to appeal on that point by failing to do so).

Id. at 701.

Consequently, we shall affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.