Circuit Court for Baltimore City
Case No. 820209001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1386

September Term, 2021

ANTHONY M. BRYAN

v.

STATE OF MARYLAND

Beachley,
Shaw,
Ripken,

JJ.

Opinion by Beachley, J.

Filed: August 9, 2022

A jury in the Circuit Court for Baltimore City convicted Anthony Bryan, appellant, of attempted kidnapping, second-degree assault, possession of a dangerous weapon with intent to injure, and false imprisonment. The court sentenced Bryan to a total term of 43 years' imprisonment. In this appeal, Bryan presents a single question for our review:

> Did the trial court err in excluding expert testimony regarding memory and eyewitness identification?

We answer this question in the negative and therefore affirm appellant's convictions.

BACKGROUND

At trial, Alexa Baum testified that, in the evening hours of January 19, 2020, she was walking near the corner of Pratt Street and Payson Street in Baltimore when she was accosted by an unknown assailant. The assailant proceeded to grab Ms. Baum's coat and hair, and Ms. Baum could see that the assailant had a screwdriver in his hand. Upon being grabbed, Ms. Baum dropped her cellphone and a bag she was carrying. The assailant then pressed the screwdriver against Ms. Baum's stomach and dragged her into a nearby alley.

Ms. Baum testified that she came face-to-face with the assailant when he grabbed her. Ms. Baum testified that she was able to see her assailant's face and noticed that he had "brown" skin and that one of his eyes "was gray." Ms. Baum also observed that the assailant was "skinny" and that he "wasn't that tall."

Ms. Baum testified that, after she was dragged into the alley, she and the assailant began walking to the other side of the alley. She said she was "scared" because she "thought he was going to hit [her] with a screwdriver." When Ms. Baum and the assailant

reached the other side of the alley, a nearby bystander yelled, and the assailant ran away. At that point, Ms. Baum returned to where her assailant first grabbed her and found her cellphone and bag. Upon retrieving her items, Ms. Baum noticed a Maryland-issued identification card laying on the ground near her phone and bag. Ms. Baum picked up the ID card, looked at the picture on the card, and observed that the person in the picture "looked like the same person" who had just attacked her. The card identified Anthony Bryan. At trial, Ms. Baum testified that when she first saw the card, she was "100% certain" that the person depicted in the card was the same person who had attacked her.

Ms. Baum kept the ID card but did not immediately report the incident to the police. The following day, Ms. Baum returned to that same area and saw Bryan, whom she recognized as her attacker, walking on the opposite side of the street. According to Ms. Baum, when Bryan saw her, he "started looking shook" and "kept watching his back" to see "where [she] was going." Bryan eventually walked away, and Ms. Baum similarly left the area. A few days later, Ms. Baum reported the attack to the police. Ms. Baum identified Bryan in court as the person who had attacked her.

Bryan was ultimately convicted and this timely appeal followed. Additional facts will be supplied as necessary.

DISCUSSION

Bryan's sole contention in this appeal concerns the trial court's decision to exclude the testimony of an expert witness. Prior to trial, Bryan filed a motion indicating that he intended to call Nancy Steblay, Ph.D., a professor of psychology at Augsburg University,

as an expert in eyewitness identification. Attached to the motion was a 15-page report prepared by Dr. Steblay.

Dr. Steblay's Report

In her report, Dr. Steblay stated that, in preparing the report, she had reviewed six pages of discovery documents, which included case summary details, the application for statement of charges, and the Baltimore City Police Department incident report. Dr. Steblay then discussed the "three stages of eyewitness memory"—acquisition, retention, and retrieval. Dr. Steblay explained that a "problem at any of these three stages is sufficient to make memory fail."

Dr. Steblay then noted that there were five aspects of "memory and identification processes" that affected Ms. Baum's identification of Bryan. Those were: "[t]he conditions of the crime incident"; "[t]he lack of an immediate witness description of the offender"; the "[a]bsence of a proper and meaningful identification procedure"; "[t]he potential for memory interference"; and "[t]he potential for false confidence and problems of an in-court [identification]." For each of those factors, Dr. Steblay provided some scientific authority to explain, generally, why the factor would affect a person's memory.

Regarding the conditions of the crime, Dr. Steblay explained that there were certain factors present at the time of Ms. Baum's identification that would have made it "difficult to encode a strong memory of a stranger's face." Those factors were: that the event was "unexpected, brief, fast-paced, and stressful"; that the event included a "physical threat with a weapon"; that Ms. Baum was afraid for her life; that the lighting was poor; that the

assailant was "reportedly wearing a hoodie" that might have been covering his head; that there was significant "competition" for Ms. Baum's attention; and that escape was "likely at the forefront" of Ms. Baum's concerns.

Regarding Ms. Baum's initial description of the assailant to the police, Dr. Steblay noted that Ms. Baum had not provided that description until three days after the attack. Dr. Steblay further noted that Ms. Baum's description was "for the most part general" and did not include details such as age, hair color, facial hair, body size, or complexion.

Regarding the absence of a formal identification procedure, Dr. Steblay noted that Ms. Baum's identification of Bryan as the assailant was made by way of the ID card found at the scene. Dr. Steblay explained that those circumstances were akin to "a single-photo showup," which is normally conducted by the police and involves the police presenting a single suspect to a witness for identification. Dr. Steblay explained that, "for the same reasons that a showup is considered unfair and dangerous, the ID found on the ground presented a highly suggestive encounter without protections for the suspect to help tamp down an eyewitness assumption that this suspect simply must be the perpetrator."

Regarding memory interference, Dr. Steblay noted that there were "two post-event incidents" that were "relevant as memory interference." Those incidents were the finding of the ID card and the "street sighting reported by the witness." Dr. Steblay explained that those incidents would have "become part of the witness's memory of the culprit."

Finally, regarding false confidence and the problems with in-court identification, Dr. Steblay did not make any specific findings regarding Bryan's case. Rather, Dr. Steblay

provided a general explanation about the need for proper police identification procedures and the unreliability of confidence levels expressed by witnesses during in-court identifications.

The remainder of Dr. Steblay's report was devoted to a "summary of scientific framework principles for eyewitness memory" and the importance of expert testimony on the subject. Much of that discussion involved the use of proper police procedures for conducting "lineups" and other identification practices.

Dr. Steblay concluded by noting that "[e]yewitness memory and identification evidence [were] central to this case" and that there existed "possible limitations" on eyewitness memory. Dr. Steblay added that those problems "increase the likelihood of mistaken identification."

State's Motion to Exclude Dr. Steblay's Testimony

On the first day of trial, prior to jury selection, the State moved to preclude Dr. Steblay from testifying. The State argued that Dr. Steblay's testimony, as evidenced by her report, would include irrelevant topics as well as topics that were within the average juror's understanding. The State also argued that the testimony would not assist the jurors in resolving the issues presented. Defense counsel responded that Dr. Steblay's testimony would be helpful because it would explain how Ms. Baum's memory might have been tainted and how she may have been mistaken in identifying Bryan as the assailant. Following argument, the trial court announced that it would hold the matter under

advisement so that it could read all of the documents, including Dr. Steblay's report and the relevant case law.

The following day, the trial court informed the parties that it had reviewed Dr. Steblay's report and the relevant case law. The court then received additional argument on the issue.

Trial Court's Ruling

Following argument, the trial court ruled that Dr. Steblay's testimony would be excluded. The court noted that "75 to 80 percent" of the report dealt with police procedures for conducting witness identifications, which was not relevant to Ms. Baum's identification testimony. The court further noted that many of Dr. Steblay's conclusions about the identification in this case were based on factual assumptions that Dr. Steblay had made. The court highlighted several instances in which Dr. Steblay made factual conclusions that were not supported by the evidence known at the time. The court also emphasized the fact that Dr. Steblay had not spoken with Ms. Baum prior to reaching her conclusions.

Based on those findings, the trial court determined that Dr. Steblay's testimony would be "more harmful, less helpful, more confusing, and misleading." The court expressed its view that the jury was "more than capable of appropriately evaluating and weighing the testimony of the eyewitness identification." The court explained that counsel was "more than free and more than able to cross-examine the eyewitness in reference to [her] opportunity for observation, the capacity for the observation, where her attention was, where it wasn't, any interest or distractions." The court found that "the witness'[s]

credibility will be weighed by the jurors for any inconsistencies and deficiencies that have been elicited or that will be or could be elicited by the defense." The court concluded that "to allow this expert testimony or report in evidence would be confusing and . . . a waste of time and not of appreciable assistance to the jurors."

Parties' Contentions

Bryan contends that the trial court erred in excluding Dr. Steblay's testimony. He asserts that "no reasonable person could conclude that Dr. Steblay's testimony was unhelpful to evaluate Ms. Baum's identification," as such testimony "would have assisted the jurors by educating them on principles of eyewitness memory and by enabling them to view Ms. Baum's identification through the lens of an expert on memory." According to Bryan, Dr. Steblay would have informed jurors that a person's memory is negatively impacted by stress, that memory loss happens at a precipitous rate, that Ms. Baum's finding of the ID card may have led to a misidentification, and that Ms. Baum's confidence in her in-court identification was misleading. Bryan argues that cross-examination was not an adequate substitute because, although counsel could have elicited certain facts about Ms. Baum's identification, Dr. Steblay's testimony would have provided the additional benefit of explaining the significance of those facts.

The State responds that the trial court "soundly exercised its discretion" in excluding Dr. Steblay's testimony. The State contends that the record and the relevant case law support the court's conclusion that Dr. Steblay's testimony would not have been helpful to the jury.

Standard of Review

We review a court's decision to admit or exclude expert testimony under an abuse of discretion standard. *Williams v. State*, 251 Md. App. 523, 546 (2021) (quoting *Troja v. Black & Decker Mfg.*, 62 Md. App. 101, 110 (1985)), *aff'd* 478 Md. 99 (2022). "A court abuses its discretion when it acts in an arbitrary or capricious manner or acts beyond the letter or reason of the law." *Tengeres v. State*, 474 Md. 126, 141 (2021) (citing *Mobuary v. State*, 435 Md. 417, 436 (2013)). Additionally, "[a]n abuse of discretion occurs 'where no reasonable person would take the view adopted by the trial court.'" *B.O. v. S.O.*, 252 Md. App. 486, 502 (quoting *Floyd v. Balt. City Council*, 241 Md. App. 199, 208 (2019)). To meet that standard, "[t]he decision being challenged 'has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *B.O.*, 252 Md. App. at 502 (quoting *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009)). "An abuse of discretion results when the trial court's decision 'does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.'" *Id.* (quoting *Brown*, 409 Md. at 601).

Analysis

Under Maryland Rule 5-702, expert testimony may be admitted

> if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
>
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,

(2) the appropriateness of the expert testimony on the particular subject, and

(3) whether a sufficient factual basis exists to support the expert testimony.

"To determine the appropriateness of expert testimony on a particular subject, a court should ask 'whether the trier of fact will receive appreciable help from the expert testimony in order to understand the evidence or to determine a fact in issue.'" *Walter v. State*, 239 Md. App. 168, 195 (2018) (quoting *Sippio v. State*, 350 Md. 633, 649 (1998)). Moreover, "[e]xpert testimony is required 'only when the subject of the inference . . . is so particularly related to some science or profession that is beyond the ken of the average layman[; it] is not required on matters of which the jurors would be aware by virtue of common knowledge.'" *Johnson v. State*, 457 Md. 513, 530 (2018) (second and third alterations in original) (emphasis removed) (quoting *Bean v. Dep't of Health & Mental Hygiene*, 406 Md. 419, 432 (2008)).

In *Bomas v. State*, 412 Md. 392 (2010), the Court of Appeals discussed the admissibility of expert testimony on eyewitness identification. *Id.* at 403–23. There, a bystander witnessed a shooting and later identified the defendant as the shooter. *Id.* at 395–96. At trial, the defendant sought to have an expert testify about the circumstances of the identification and how those circumstances may have affected the reliability of the identification. *Id.* at 397. After the State objected, the court excluded the testimony because "it would be unhelpful to a jury" and because "a jury was capable of appropriately evaluating and weighing the eyewitness identifications." *Id.* at 401. The defendant was later convicted, and he appealed that conviction to this Court. *Id.* at 403. We affirmed,

and the Court of Appeals granted *certiorari* to consider two questions: (1) whether the Court should reject prior case law, namely, its holding in *Bloodsworth v. State*, 307 Md. 164 (1986), and adopt a standard favoring the admissibility of expert testimony on eyewitness identification; and (2) whether the trial court abused its discretion in excluding the defendant's expert witness. *Id.*

As to the first question, the Court of Appeals held that, although the *Bloodsworth* opinion may have taken "a negative tone with respect to expert testimony on eyewitness identification," the core holding of that case remained good law. *Bomas*, 412 Md. at 410. The Court reiterated that, pursuant to *Bloodsworth*, "the proper standard for the admissibility of expert testimony on eyewitness reliability is 'whether [the expert's] testimony will be of real appreciable help to the trier of fact in deciding the issue presented.'" *Id.* at 406, 416 (alteration in original) (quoting *Bloodsworth*, 307 Md. at 184). The Court further reiterated that "the application of this test is 'a matter largely within the discretion of the trial court[.]'" *Id.* at 416–17 (quoting *Bloodsworth*, 307 Md. at 185). The Court reasoned that, while scientific advances since *Bloodsworth* may have heightened the probative value of expert testimony on eyewitness reliability, the general principles enunciated in *Bloodsworth* were correct:

> We appreciate that scientific advances have revealed (and may continue to reveal) a novel or greater understanding of the mechanics of memory that may not be intuitive to a layperson. Thus, it is time to make clear that trial courts should recognize these scientific advances in exercising their discretion whether to admit such expert testimony in a particular case.
>
> Nonetheless, some of the factors of eyewitness identification are not beyond the ken of jurors. For example, the effects of stress or time are

> generally known to exacerbate memory loss and, barring a specific set of facts, do not require expert testimony for the layperson to understand them in the context of eyewitness testimony. In recognition of this, we believe, consistent with our past holdings, that a flexible standard that can properly gauge the state of the scientific art in relation to the specific facts of the case is best.
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> Accordingly, notwithstanding the negative tone of the *Bloodsworth* decision, the substantive standard for admissibility set forth was not wrong, and indeed is consonant with the current majority view. . . . This standard comports with the general rule on expert testimony set forth in Rule 5-702.

Id. at 416–17.

As to the second question, the Court of Appeals held that the trial court did not abuse its discretion in excluding the expert testimony. *Id.* at 423. The Court noted that the expert had been offered to inform the jury on how certain factors affect memory, such as how confidence does not correlate with accuracy, how time and stress adversely affect memory, and how the manner in which a photo array is presented can lead to false identification. *Id.* at 420. After reviewing proffered testimony, the Court agreed that the testimony would not have been helpful to the jury. *Id.* at 401, 423. The Court explained that the expert's testimony was "extremely general, vague, and inconclusive" and that "the witness offered nothing to support his general statements." *Id.* at 420. The Court further explained that certain aspects of the witness's testimony, such as the effect of time on memory, were within the ken of jurors. *Id.* at 421–22. As to other aspects of the testimony, such as the effect of stress on memory, the Court concluded that those aspects were "insufficiently related to the facts of the case" and "would not have been helpful to the jury." *Id.* at 422. Finally, the Court concluded that, based on the record, it was clear that the trial court had

"carefully considered the proffered testimony's foundation, relevance to the facts of the case, and helpfulness to the jury" and that the court was "entitled to conclude, as it did, that the topics covered by the proffered testimony were inadmissible[.]" *Id.* at 423.

Four years later, in *Smiley v. State*, 216 Md. App. 1 (2014), *aff'd* 442 Md. 168, we relied on *Bomas* in holding that the trial court did not err in excluding expert testimony on eyewitness memory and identification. *Id.* at 37–38. There, the defendant was implicated in a crime by way of a photographic array conducted by the police. *Id.* at 34–36. At trial, the defendant sought to call an expert witness to testify about the impact of stress on memory, how facial memories are acquired, retained, and retrieved, and proper police procedures during the identification process. *Id.* at 37–38. The expert would have also opined that the witness's identification of the defendant via a photographic array would have been more reliable if the police had used different procedures. *Id.* at 38. The trial court, citing *Bomas*, disallowed the testimony on the grounds that the issues were "intuitive" and that the testimony would "not be of real appreciable help to the trier of fact." *Id*. We ultimately agreed with the trial court's assessment and affirmed. *Id.* After granting *certiorari*, the Court of Appeals affirmed our decision, reaffirming the validity of *Bomas* and its analysis. *Smiley*, 442 Md. at 184–85.

Against this backdrop, we hold that the trial court here did not abuse its discretion in excluding Dr. Steblay's testimony on the basis that the testimony would have been unhelpful to the jury. To begin with, the record makes plain that the trial court was receptive to the notion of Dr. Steblay testifying, that the court carefully considered the

arguments in favor of and against that testimony, and that the court studied Dr. Steblay's report and the relevant caselaw prior to issuing its ruling. The court then thoughtfully applied those considerations to the specific facts of the case and concluded that, in light of the proposed testimony's scientific foundation, factual relevance, and necessity in relation to the ken of the average juror, Dr. Steblay's testimony would not appreciably assist the jury. *See Bomas*, 412 Md. at 423.

We now turn to Bryan's specific arguments. Bryan argues that "expert testimony would have informed the jurors that a person's memory is negatively impacted by stress." He asserts that the "Court of Appeals erroneously concluded in *Bomas* that stress and time were two factors of eyewitness identification that were not beyond the ken of jurors." To the extent Bryan urges us to reconsider *Bomas*, we decline to do so because we are bound by Court of Appeals precedent. We further note that Dr. Steblay considered stress as merely one component of a factor she characterized as "conditions of the crime." Other components of the "conditions of the crime" factor included the witness's attention, encoding time (duration of the crime), complexity, presence of a weapon, facial covering or disguise, witness's distance from the crime, and illumination. Although Ms. Baum was presumably under stress as she was assaulted with a weapon, other factors potentially had a positive effect on her memory, including her being in close proximity to the assailant and her ability to see the assailant's face (contrary to Dr. Steblay's suggestion that the assailant's hoodie "perhaps cover[ed] his head"). Dr. Steblay also seemed to assume that the "[l]ighting was poor" because the crime occurred at 8:40 p.m. in January, yet she made

no mention of the presence of street lighting at Pratt and Payson Streets. In short, while there were factors that could have both a negative and positive impact on Ms. Baum's memory, the court did not abuse its discretion in concluding that "there are a lot of presumptions, assumptions, and [Dr. Steblay's] report seems to be very confusing and potentially misleading and not of real appreciable assistance to the jury." As *Bomas* teaches, the effects of stress and time are not beyond the understanding of jurors. *Id.* at 416.

Bryan next argues that "[e]ven if the Court in *Bomas* was correct to describe the effects of stress and time on memory as 'generally known,'" the facts here fit "within the exception carved out in *Bomas*" that allows expert testimony. Specifically, Bryan compares Ms. Baum's finding of Bryan's ID card immediately after the attack to a "showup," which he characterizes as a "disfavored police procedure" that frequently leads to misidentifications.[1] In Bryan's view, Ms. Baum's finding of the ID card may have caused her "to jump to the conclusion" that Bryan was the assailant. The trial court rejected this argument, correctly noting that Dr. Steblay opined that "[i]t is impossible to know whether the memory of the unique feature (the "messed up eye") was a product of the witness's experience during the crime or due to viewing the ID." Moreover, Dr. Steblay

[1] A significant portion of Dr. Steblay's report was devoted to a discussion of proper police procedures for witness identification. Although expert testimony on proper police identification procedures may have had some superficial relevance in establishing a framework for understanding witness identification generally, such testimony would have likely confused the jury given the lack of any factual connection to this case, *i.e.*, no testimony was presented that Ms. Baum identified Bryan as a result of any police procedure.

noted in her report that she did not have "access to the ID card for evaluation of that evidence." We readily agree with the court that this testimony would not be of "real appreciable assistance to the jury."

We further note that, as to Bryan's claim that the identification in this case was akin to a police "showup," Dr. Steblay stated that "showup" identifications are inherently unreliable because the witness knows whom the police suspect to be the perpetrator. The primary problem with the reliability of a "showup" identification is that the police, in presenting a single suspect to the witness for identification, exert explicit and/or implicit pressure on the witness to identify the suspect as the perpetrator. That concern was not present here because Ms. Baum was not even looking to identify the assailant when she returned to the scene of the crime to retrieve her bag and cell phone and fortuitously discovered the ID card. Thus, the court did not abuse its discretion in precluding expert testimony regarding "showup" identification procedures.[2]

Bryan next asserts that "expert testimony would have helped the jurors to evaluate Ms. Baum's confidence in her identification of Mr. Bryan by illuminating that eyewitness confidence at trial may be wholly unrelated to the accuracy of the identification." This argument mirrors Dr. Steblay's report where she cited the National Academy of Sciences

[2] Bryan claims that the trial court clearly erred in finding that 75% to 80% of Dr. Steblay's report concerned police procedures irrelevant to the case. We disagree. It is clear from the record that the trial court did not intend to be taken literally in referring to those percentages. Rather, the court appears to have merely been emphasizing the fact that a significant portion of Dr. Steblay's report was devoted to police procedures that were not used in this case.

for the following proposition: "Expressions of confidence in the courtroom often deviate substantially from a witness'[s] initial confidence judgment, and confidence levels reported long after the initial identification can be inflated by factors other than the memory of the suspect." In other words, Dr. Steblay expressed the concern that in-court identifications can be imbued with "a witness's false confidence[,] mak[ing] triers-of-fact unable to discern between accurate and inaccurate witness testimony."

We fail to see how this principle of "witness overconfidence" applies here. At trial, although Ms. Baum was initially reluctant to look at Bryan, she ultimately identified Bryan as her assailant by stating "That's him." She did not express her confidence level regarding her in-court identification of Bryan. On the other hand, she testified that when she initially saw Bryan's ID card, she was "100 percent" certain that Bryan was her assailant. Thus, the jury was presented with specific evidence of Ms. Baum's confidence level in her out-of-court identification of Bryan, which she made minutes after the encounter ended. Dr. Steblay's report indicates that "[c]onfidence and accuracy can be meaningfully related" when "confidence is measured at the time of *first* identification." (Emphasis in Steblay report). In our view, expert testimony regarding the "false confidence" or "overconfidence" of in-court identifications would not have been of assistance to the jury in this case where Ms. Baum was 100% confident of her out-of-court identification, but expressed no degree of confidence concerning her in-court identification.

In sum, we hold that the trial court did not abuse its discretion in excluding Dr. Steblay's testimony on the basis that the proposed testimony would not be of real

appreciable help to the jury. In the parlance of *Bomas*, the court here "carefully considered the proffered testimony's foundation, relevance to the facts of the case, and helpfulness to the jury," and thus the court was "entitled to conclude, as it did, that the topics covered by the proffered testimony were inadmissible[.]" *Bomas*, 412 Md. at 423.

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