Circuit Court for Prince George's County
Case No.: CT191096X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1931

September Term, 2022

DONNELL LEE CATO

v.

STATE OF MARYLAND

Wells, C.J.,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: February 21, 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 Prince George's County, convicted Donnell Lee Cato, appellant, of voluntary manslaughter and use of a firearm in a crime of violence. The court sentenced him to a total term of ten years' imprisonment followed by five years of probation.

Cato presents three questions[1] for our review, which we have slightly rephrased:

1. Did the trial court err in denying Cato's motion to strike a prospective juror for cause?

2. Did the trial court err in admitting testimony that Cato and his girlfriend had an argument the night of the shooting?

3. Did the trial court err in allowing the State to cross-examine Cato about the legality of his gun possession under the "opening the door" doctrine?

Finding neither error nor abuse of discretion, we affirm.

BACKGROUND

On the night of November 30, 2018, Cato and his then-girlfriend, Kevonia Robinson,[2] were spending time together at his home in Prince George's County. Kevonia

[1] The questions as posed by Cato are:

1. Did the trial court err by denying Appellant's motion to strike prospective juror no.2 for cause?

2. Did the trial court err by admitting irrelevant, prejudicial evidence that Appellant and Ms. Robinson had a fight on the night of the shooting?

3. Did the trial court err in ruling that Appellant's testimony as to why he first got a gun "opened the door" to the fact that he was prohibited from possessing a gun under the conditions of his pre-trial release?

[2] Kevonia's brother, Gregory Robinson, appears later in our discussion. Because they share a last name, we shall refer to them by their first names, not out of disrespect, but for the sake of clarity.

had not originally planned on staying the night at Cato's, but, after the couple fell asleep, she changed her mind. She changed her mind again, however, after she and Cato awoke during the night and began arguing.

At some point during the argument, Kevonia texted her mother to send someone to pick her up. Kevonia's mother first sent an Uber to pick her up, but because Cato took Kevonia's bags, she never got into that car. When Kevonia's mother learned that the pickup by Uber had been unsuccessful, she sent Kevonia's brother, Gregory, to pick her up.

At the time, Gregory was with his girlfriend, Donece Clark, his stepbrother, Wayne Hamilton, his friend, Brian Crayton, Jr., and Crayton's friend, Ariana Smith. The five of them drove to Cato's house to get Kevonia. When they arrived, the three men went to the door while Clark and Smith waited in the car.

When Cato answered the door and stepped out onto the porch, Gregory told him to "grab Kevonia" so they could "take her with [them] and go downtown." When Cato and Crayton made hostile motions towards each other, Gregory stepped between them in an effort to de-escalate the situation. Despite Gregory's efforts, Cato drew a gun from behind his back, shot Crayton in the chest and killed him.

Additional facts needed for our discussion of the issues will be included below.

DISCUSSION

I.

Cato's first claim of error concerns a prospective juror who responded to several of the trial court's general *voir dire* questions. This person, who was seated, will be referred to herein as Juror No. 2. In the court's individual *voir dire* of those responding to the

general *voir dire* questions, the court first asked about Juror No. 2's response to whether he "shared or support[s] any views in an organization that sought to change criminal laws, sentencing of offenders, rights of victims, [or] rights of person[s] accused":

> THE COURT: What was your response to that?
>
> [JUROR NO. 2]: [My] response is that I consider myself a responsible gun owner. And I have done this in another state also, the State of Georgia and here.
>
> THE COURT: Done what in other states?
>
> [JUROR NO. 2]: Become a responsible gun owner. And I think the penalties for irresponsible use of a gun should be harsher.
>
> THE COURT: You believe that.
>
> [JUROR NO. 2]: The punish[ment] for irresponsible gun use should be harsher.
>
> THE COURT: Got you.
>
> [JUROR NO. 2]: More so than they are now.
>
> THE COURT: I understand, harsher. I get it.

The court then inquired about the juror's response to whether he had previously been a victim of a crime:

> THE COURT: What was that about?
>
> [JUROR NO. 2]: I was working at a restaurant that was robbed and I was the first one that weapon was pointed at.
>
> THE COURT: When was this?
>
> [JUROR NO. 2]: It was a while ago, when I was younger.

Finally, the court questioned the juror directly whether he could be impartial:

> THE COURT: Anything about that, you believe, would render you unable to be fair and impartial in this proceeding?
>
> [JUROR NO. 2]: Given the different perspective of what side of a gun you are on.
>
> THE COURT: Can you be fair and impartial?
>
> [JUROR NO. 2]: I could try.
>
> THE COURT: I didn't ask you but—just so you know, you wouldn't be a part of the sentencing phase.
>
> [JUROR NO. 2]: Ma'am.
>
> THE COURT: You would not be a part of the sentencing phase.
>
> [JUROR NO. 2]: Yes, ma'am, I understand.
>
> THE COURT: Just in reaching a verdict, you believe you could be fair and impartial going back to your position on the need for harsher sentences?
>
> [JUROR NO. 2]: Yes, ma'am, I think I could.
>
> THE COURT: So you believe you could be fair and impartial?
>
> [JUROR NO. 2]: Yes, ma'am.

When the court solicited motions to strike prospective jurors for cause, Cato moved to strike Juror No. 2 stating that one of the central issues in the case was whether he used his gun responsibly. He argued that Juror No. 2's responses in *voir dire* indicated potential bias. The court, however, determined that Juror No. 2 "ultimately came down and said [he] believed [he] could be fair and impartial" and denied the motion. Cato used the first of his twenty peremptory challenges to strike Juror No. 2 and, later, used the rest.

Parties' Contentions

Cato contends that the trial court erred in denying his motion to strike Juror No. 2 for cause because his responses to the *voir dire* questions "indicated a bias directly related to the crime and [him]." Because he was facing allegations connected to a shooting that occurred when he was prohibited from possessing a gun, Cato argues that "the attitude expressed by the prospective juror raised legitimate doubts as to his ability to be fair[,]" and that "any concern about [Juror No. 2's] bias could not be allayed meaningfully by the court's follow-up questioning."

The State contends that the trial court acted within its discretion in denying Cato's motion. It argues that, although Juror No. 2's responses to the general *voir dire* questions may have warranted individual, follow-up questioning, he ultimately stated that he believed he could be fair and impartial.

Analysis

"Voir dire, the process by which prospective jurors are examined to determine whether cause for disqualification exists, is the mechanism whereby the right to a fair and impartial jury, guaranteed by Art. 21 of the Maryland Declaration of Rights, is given substance." *Dingle v. State*, 361 Md. 1, 9 (2000) (internal citations and footnote omitted). A trial court's "wide discretion . . . in regulating the flow of [a] trial" extends to that process. *Morris v. State*, 153 Md. App. 480, 501 (2003). We review rulings made by a trial court during *voir dire,* including denials of challenges for cause, for abuse of discretion. *See id.*

As we have previously said, in ruling on a challenge for cause, "what matters most is the final position asserted by the challenged juror and the judge's conclusion as to the significance of that response." *Id.* at 502. That is because bias is, ultimately, "a question of fact[,]" *Dingle*, 361 Md. at 15, and "[t]he judge on the scene, face to face with the juror . . . , is infinitely more able than we to make such a determination." *Morris*, 153 Md. App. at 502.

To be sure, Juror No. 2's answers to the general *voir dire* questions revealed the potential for bias. But as the United States Supreme Court has observed:

> To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

Irvin v. Dowd, 366 U.S. 717, 723 (1961).

Here, the trial court's follow-up questions were appropriately directed at discerning whether Juror No. 2 could, in fact, "lay aside his impression or opinion and render a verdict based on the evidence presented in court." *Id.* We have only the cold record of his answer to the court's question: "So you believe you could be fair and impartial?" He responded: "Yes, ma'am." Unlike the trial court, we do not have the benefit of the myriad of non-verbal indicators that can inform an assessment of the sincerity of that response. *See Morris*, 153 Md. App. at 502–03. But the trial court, sitting face-to-face with the prospective juror, believed his self-assessment that he could be fair and impartial. Even if another judge may have concluded otherwise, we are persuaded that there was a rational

basis for the trial court's exercise of its discretion in seating Juror No. 2. *See id.* at 504. In short, we perceive no abuse of discretion.

II.

Cato's second claim of error relates to the admission of certain testimony by Kevonia. Before testimony began, he moved *in limine* to exclude evidence that he and Kevonia had argued the night of the shooting. More particularly, he had learned, through discovery, that she told the paramedics who arrived on the scene, that Cato had assaulted her during their argument, and that they had taken photographs of the alleged injuries. Cato argued that testimony concerning the argument with Kevonia was not relevant to the charges and should be excluded. The trial court agreed that evidence regarding the alleged assault, including the photographs, was unduly prejudicial and would not be admitted. But evidence that Cato and Kevonia had argued and that Cato had prevented Kevonia from leaving his house would be admitted. When the State, at trial, elicited that testimony from Kevonia, he renewed his objection. Overruling the objection, the court granted a continuing objection.

Parties' Contentions

Cato contends that the trial court erred in permitting Kevonia to testify regarding the argument the night of the shooting. He argues that his argument with Kevonia is a separate incident from the shooting and that one is not related to the other. In his view, the argument is a "collateral fact" that would not support "any reasonable presumption or inference" related to the shooting or his state of mind leading up to it.

The State contends that the argument was relevant to the shooting because it "tended to explain why the men were on Cato's porch in the first place[.]" It argues that without that testimony, "the jury would have been less able to accurately assess the dynamic of the encounter."

Analysis

Relevant evidence is "evidence having 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. Relevant evidence is ordinarily admissible; irrelevant evidence is not. Trial courts have no discretion to rule otherwise. *Smith v. State*, 218 Md. App. 689, 704 (2014); Md. Rule 5-402. On the other hand, "[t]he admission of background evidence is a generally accepted exception to the relevancy requirement." *Fraidin v. Weitzman*, 93 Md. App. 168, 195 (1992). Indeed, "considerable leeway is allowed for proof of facts which are not offered as bearing on the dispute, but as details which fill in the background and give it continuity, interest[,] and color." *Weiner v. State*, 55 Md. App. 548, 555 (1983). *See also 1 McCormick on Evidence* § 185 (8th ed. 2020) ("Leeway is allowed, even on direct examination, for proof of facts that merely fill in the background of the narrative and give it interest, color, and lifelikeness."). The evidence at issue served that role in this case.

Testimony that Kevonia and Cato had argued the night of the shooting provided informative background to the State's narrative. It explained what brought Crayton and the other two men to Cato's doorstep. Without it, the jury's understanding of context in which the shooting on the porch occurred would be incomplete. On the other hand, the court's

limiting the testimony to narrative context as it did, reflects its keen awareness that more details about the argument—including the allegations that Cato assaulted Kevonia and photographs of her alleged injuries— risked unfair prejudice toward Cato. *See Weiner*, 55 Md. App. at 555. The court did not err in admitting Kevonia's testimony and limiting it as it did.

III.

Cato's third claim is also one of evidentiary error. When Cato testified in his own defense, his counsel elicited testimony from him about his gun ownership during direct examination:

> [DEFENSE COUNSEL:] Mr. Cato, you had a gun, right?
>
> [CATO:] Yes.
>
> [DEFENSE COUNSEL:] You said you were 22 years of age, right?
>
> [CATO:] Yes.
>
> [DEFENSE COUNSEL:] Did you get any guidance from a parent or anything about getting a gun, operating a gun?
>
> [CATO:] No.
>
> [STATE]: Objection.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL:] Why did you get a gun?
>
> [CATO:] Well, just growing up in D.C. it was really rough. My mom on New Years, when I was eight years old, she was shot in her legs in front of our house.
>
> [STATE]: Objection.

> THE COURT: Overruled.
>
> [CATO]: D.C. was rough. I had friends who turned out to be guys who wanted to rob me, they robbed me. I have been beaten and jumped and woke up in the hospital before.
>
> [STATE]: Objection.
>
> THE COURT: Sustained.

At a bench conference before cross-examination, the State argued that Cato's testimony "opened the door" to questions about his gun possession at the time of the shooting. The court agreed, and the following exchange took place:

> [STATE:] And when you had that gun in your house, on December 1, 2018, you know that a [c]ourt told you you weren't allowed to have a gun, right?
>
> [CATO:] Yes.
>
> [STATE:] But you still had that gun?
>
> [CATO:] Yes.

Parties' Contentions

Cato contends that the trial court erred in ruling that his testimony about why he first got a gun "'opened the door' to the fact" that, at the time of the shooting, "he was prohibited from possessing a gun under the conditions of his pre-trial release." He argues that his testimony did not "generate an issue that would render the fact that he was on pre-trial release legally relevant." Moreover, even if he had "opened the door," the "fact that he was on pre-trial release and prohibited from possessing a gun" would still be

inadmissible because any probative value that it may have was substantially outweighed by its prejudicial effect.

The State contends that Cato failed to preserve this issue for appellate review because he did not "lodge any objection to this evidence" in the trial court. But, if addressed, it argues that Cato's testimony about his owning a gun opened the door to responsive evidence that his possession at the time of the shooting was unlawful. The State also points out that, despite how Cato framed the question for our review in his brief, the jury was only told that he had been told by a court that he was not to have a gun at the time of the shooting. The jury was not told that it was because of his pre-trial release.

Cato responds to the State's preservation argument by pointing to the trial transcript. He argues that although *he* may not have raised the issue, the State did. And when the trial court "clearly ruled on the matter," the State's questions soon followed.

Preservation

Maryland Rule 8-131(a) provides that "[o]rdinarily, the 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[.]" In regard to the introduction of evidence, unless the trial court grants a continuing objection, Rule 2-517(a) requires an objection "be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." The defense need not be the party to raise an issue, however; if it was nevertheless addressed by both the State and the trial judge, it will be preserved. *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 430 Md. 535, 543–44 (2013). *See also Goff v. State*, 387 Md. 327, 339 (2005) (holding that an issue was preserved where

"the specific question . . . was considered and decided by the trial court, even if not argued by the parties"). Further, an exception to the contemporaneous objection requirement applies when two conditions are met: (1) the judge, just prior to the admission of the contested evidence, has announced a final decision to admit the evidence; and (2) requiring counsel to repeat the objection shortly after the court has overruled it would elevate form over substance. *Clemons v. State*, 392 Md. 339, 363 (2006).

Here, the prosecutor and trial judge addressed the "opening the door" issue at the bench conference following Cato's direct testimony, and Cato voiced his disagreement. At the end of that conference the court announced its final decision on the issue. The State's questions regarding Cato's gun possession appear only three pages later in the transcript. On this record, requiring counsel to object so soon after the court's ruling would elevate form over substance. We are persuaded that the issue is preserved for review.

Analysis

The "opening the door doctrine" involves the expansion of evidentiary relevancy. Whether a party has opened the door to the introduction of responsive evidence is a question of law that we review de novo. *State v. Robertson*, 463 Md. 342, 353 (2019). Whether the responsive evidence was properly admitted is reviewed for an abuse of discretion. *State v. Heath*, 464 Md. 445, 458 (2019).

The doctrine "authorizes admitting evidence which otherwise would have been irrelevant in order to respond to (1) admissible evidence which generates an issue, or (2) inadmissible evidence admitted by the court over objection." *Id.* at 459 (quotation marks and citation omitted). Put differently, "opening the door is simply a way of saying: My

opponent has injected an issue into the case, and I ought to be able to introduce evidence on that issue." *Id.* (quotation marks and citation omitted). The evidence introduced, however, is not without limitation.

After determining that the door is open, the court must assess the responsive evidence's "proportionality" in light of the open door evidence admitted in the first place. The introduction of responding evidence is permitted '"only to the extent necessary to remove any unfair prejudice that might have ensued from the original evidence."' *Robertson*, 463 Md. at 357 (quoting *Little v. Schneider*, 434 Md. 150, 164 (2013)). That limitation is generally consistent with Rule 5-403. *Heath*, 464 Md. at 460. It excludes evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Id.* (quotation marks and citation omitted). In addition, it "does not allow . . . injecting collateral issues into a case[.]" *Id.* at 459 (quotation marks and citation omitted). An issue is collateral if it is immaterial to the issues in the case. *Id.* For example, testimony from a witness based only on an unproven allegation, that is "highly likely to lead the jury on a detour as to whether the [circumstances] actually happened and would distract the jury[,]" is a form of collateral issue. *Id.* at 460.

Here, Cato injected his implied right and reason to possess a gun into the case when, on direct examination, the questions asked and answered confirmed that Cato was legally old enough to own a gun and explained why he obtained one in the first place. Because Cato was charged only with the use of a firearm in the commission of a crime of violence,

his reason for possessing a firearm was not relevant to the charges. Thus, we are persuaded that the "general nature" of this questioning on direct "opened the door" for limited responsive evidence regarding Cato's firearm possession on the night of the shooting. *See Robertson*, 463 Md. at 360. We perceive no error in the trial court's determination that it did. In addition, Cato's argument that the prejudice substantially outweighed the evidence's probative value is unpersuasive. The jury was not told Cato was on pre-trial release, which is a focus point in his argument. Moreover, he was the one who injected his right to possess or own a gun into the proceedings. Admitting, in cross-examination, evidence that he was not to possess a gun at the time of the shooting was, in our view, neither error nor an abuse of discretion.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.