

Circuit Court for Baltimore City
Case No.: 116200009

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2164

September Term, 2017

DAVI RALPH

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: November 9, 2018

*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.

On October 3, 2017, after a five-day jury trial in the Circuit Court for Baltimore City, appellant Davi Ralph was convicted of first-degree assault; use of a firearm in the commission of a crime of violence; wearing, carrying, or transporting a handgun; and possession of a firearm after a disqualifying conviction. On December 14, 2017, the trial court sentenced appellant to twenty-five years' imprisonment for first-degree assault, a consecutive term of twenty years' imprisonment for use of a firearm in the commission of a crime of violence, and a consecutive fifteen-year term for possession of a firearm after a disqualifying conviction, for a total term of sixty years' imprisonment, the first ten years to be served without parole.

Appellant timely appealed and presents the following question for our review, which we rephrase slightly: Did the trial court erroneously allow the State to introduce DNA evidence without establishing the chain of custody between the samples collected and the DNA tested? Perceiving no error, we affirm.

BACKGROUND

On May 31, 2016, at approximately 11:35 p.m., Baltimore City police received a call that a weapon had been discharged in the 2600 block of Aisquith Street. Officer Vladimiy Vertus and Sergeant Julius Dockett, who arrived at the same time in separate patrol vehicles, observed appellant walking with his right arm “stiff” and positioned near his waistband. When appellant saw Sergeant Dockett, he grabbed the side of his hip and turned away, which caused the officer to suspect that appellant was armed. Officer Vertus ordered appellant to stop, but appellant disregarded the command and took off running. A foot chase ensued. Officer Vertus caught up with appellant on Homestead Street and

grabbed him by the shoulder, but appellant broke free and pulled out a black handgun. Officer Dockett, who was attempting to close in on appellant from the other side of the street, watched appellant turn and fire two shots at Officer Vertus.

Additional officers responded to the scene pursuant to a radio dispatch that police were in pursuit of an armed suspect. Officer Michael Jones heard gunshots and ducked behind his patrol vehicle for cover. He then saw appellant running toward him holding a gun. Officer Ronnie Waters, who was on foot, saw appellant turn and fire two shots at the officers chasing him. Officer Jones and Officer Waters opened fire with their service weapons, striking appellant in the chest, back, left arm, and left leg. Appellant fell, and several officers approached to apprehend him. The officers observed a handgun on the ground next to appellant, which Officer Waters kicked away as he approached. Officers then performed chest compressions until EMTs arrived to transport appellant to the hospital.

A Beretta 9mm Luger handgun, as well as cartridge cases, a bullet, bullet jacket fragments, and a bullet fragment were recovered at the scene. A police firearms examiner determined that the Beretta was operable, and that three of the recovered cartridge cases and the bullet had been fired by that handgun. The gun was also swabbed for DNA evidence, and, after executing a search warrant, the police collected appellant's DNA from a buccal swab for comparison. During discovery, the State disclosed that it intended to introduce evidence linking appellant to one of the DNA profiles obtained from the Beretta.

The Trial

Appellant was charged by indictment with attempted first-degree murder, attempted second-degree murder, first-degree assault, and related offenses. In his opening statement, the prosecutor claimed that DNA evidence would connect appellant to the handgun found at the scene and prove that he had shot at an officer. Defense counsel, however, claimed that appellant was unarmed and that the police planted evidence to cover up their unjustified shooting.

At the time of the investigation into appellant's case, Thomas M. Hebert was a DNA analyst and the acting technical leader for the Baltimore City Police Department Crime Lab. At trial, after being accepted as an expert in DNA analysis and testing, Mr. Hebert testified that he received evidence associated with case reference number CC4-160600004 for analysis, which included swabs from the gun and magazine, bullets, and the sample of appellant's DNA taken from the buccal swab. Mr. Hebert explained that, after a serologist noted the possible presence of skin cells on the gun and magazine, he analyzed the sample and determined that a partial DNA profile of at least two people was present. Mr. Hebert said that he used True Allele, a computer program capable of interpreting difficult mixed DNA samples, because "there was not a lot of total DNA present." He determined that appellant matched one of the inferred genotypes in the sample collected from the gun and magazine. According to Mr. Hebert's analysis, the likelihood that appellant's DNA matched the sample recovered from the gun was 404,000 times greater than a coincidental match in the African-American population, 9.41 million times greater than a coincidental

match in the Caucasian-American population, and 3.19 million times greater than a coincidental match in the Hispanic-American population.

On cross-examination, Mr. Hebert clarified that he had analyzed “cuttings” from the evidence swabs created by a serologist who had handled the evidence before it was submitted to him for analysis. He also described the procedures utilized in the laboratory to avoid contamination and the transfer of DNA. Mr. Hebert acknowledged, however, that incidents of contamination had previously occurred in the laboratory, including one prior instance in which Mr. Hebert’s DNA ended up on a tested object even though he had not personally handled the evidence.

Former crime scene technician Tiffany Gough testified that on the night of the shooting, she arrived at the 1700 block of Homestead Street at 12:55 a.m. She seized a Beretta 9mm handgun, magazine, bullets, and cartridge cases, which were associated with case reference number CC4-160600004. Ms. Gough testified that she used wet and dry cotton swabs to collect DNA samples from the trigger and magazine of the gun, and then placed the samples in white boxes that she sealed with blue tamper tape. She initialed the exterior of the boxes, and labeled them with the case reference number, the time and date that the samples were collected, and then submitted the samples to the Evidence Control Unit (“ECU”).

Detective Joseph Chen testified that he followed the crime laboratory’s procedures to collect appellant’s DNA, which involved rubbing “a long q-tip” inside appellant’s mouth to collect his skin cells. To ensure that appellant’s DNA was collected properly and to avoid contamination, Detective Chen stated that he wore gloves and placed the swabs in

packaging material provided by the laboratory. The sealed package was then placed in a larger envelope and submitted to the ECU. He also testified that the evidence in the case was associated with reference number, CC4-16060004.¹

At the end of the State’s case, defense counsel moved to strike Mr. Hebert’s testimony and the DNA results, claiming that the State had not established that the samples that he had analyzed were derived from the evidence swabs collected by Ms. Gough and Detective Chen. Citing *Jones v. State*, 172 Md. App. 444 (2007), defense counsel argued that without testimony from the serologist who handled the samples before Mr. Hebert and “what happened to them in between,” the State had not established a valid chain of custody and, therefore, the DNA evidence was inadmissible. The State responded that, in accordance with *Phillips v. State*, 451 Md. 180 (2017) and Md. Code (1973, 2013 Repl. Vol., 2017 Supp.), §10-915 of the Courts and Judicial Proceedings Article, the DNA, which was analyzed in accordance with FBI quality assurance standards, was admissible without establishing a “strict” chain of custody. Following a brief recess during which the trial court reviewed *Jones* and *Phillips*, the court found that the State had met its burden for admissibility and denied the motion to strike. Additional facts will be supplied as necessary to resolve appellant’s sole contention on appeal.

¹ Although we note that Mr. Hebert and Ms. Gough referenced case number CC4-160600004 while Detective Chen referenced case number CC4-16060004 (containing one less zero), we conclude that the discrepancy in the number of zeroes is not significant. In her testimony, Ms. Gough explained that to develop a unique “CC” number for each case, the first “4” refers to the district, the “1606” refers to the year and month, and the final “4” refers to the case number for that month.

STANDARD OF REVIEW

Generally, determinations regarding the admissibility of evidence are left to the sound discretion of the trial court. *Easter v. State*, 223 Md. App. 65, 74 (2015) (citing *Hajireen v. State*, 203 Md. App. 537, 552 (2012)). We review the evidentiary rulings of the trial court, including its rulings concerning the adequacy of the chain of custody, for an abuse of discretion. *Id.* at 74-75 (citations omitted). “A trial court abuses its discretion only when ‘no reasonable person would take the view adopted by the [trial] court,’ or when the court acts ‘without reference to any guiding rules or principles.’” *Id.* at 75 (quoting *King v. State*, 407 Md. 682, 697 (2009)).

DISCUSSION

As stated above, appellant’s sole argument on appeal is that the State failed to establish a proper chain of custody for the DNA evidence which connected appellant to the gun. Therefore, in his view, the trial court abused its discretion in admitting the evidence.

“Chain of custody evidence is necessary to demonstrate the ‘ultimate integrity of the physical evidence.’” *Easter*, 223 Md. App. at 75 (quoting *Best v. State*, 79 Md. App. 241, 256 (1989)). “When determining whether a proper chain of custody has been established courts examine whether there is a ‘reasonable probability that no tampering occurred.’” *Cooper v. State*, 434 Md. 209, 227 (2013) (quoting *Breeding v. State*, 220 Md. 193, 199 (1959)). What is necessary to negate the likelihood of tampering will vary based on the facts of each case, however, “[t]he existence of gaps or weaknesses in the chain of custody generally go to the weight of the evidence and do not require exclusion of the evidence as a matter of law.” *Easter*, 223 Md. App. at 75.

The application of these principles to DNA evidence is illustrated by *Jones* and *Cooper*. In the former, Jones was convicted after a sample of his DNA in the State’s database matched that of a sample collected during the investigation of an unsolved sexual assault that had been sent to an independent laboratory for analysis several years after the crime had occurred. *Jones*, 172 Md. App. at 449-50. After the trial court denied his motion for acquittal, Jones argued on appeal that the State’s chain of custody evidence did not establish “by a standard of reasonable probability” that the DNA material collected during the victim’s sexual assault forensic examination “was in substantially the same condition when it was tested as it was when the crime occurred,” and “did not negate a possibility that the evidence had been tampered with.” *Id.* at 462. Specifically, Jones pointed out that:

1) the DNA evidence was not timely collected and the examination was not timely completed; 2) the DNA evidence was not properly logged [when it was picked up from the medical center]; 3) it [was] unknown whether the DNA evidence was properly refrigerated; 4) a signature was missing from [a prior request for analysis]; and 5) no semen was seen on the anal swab on December 4, 1998, but semen was found when the evidence was analyzed on March 1, 1999.

Id. In evaluating Jones’s arguments, we observed that although some details in the chain of custody were unknown to certain witnesses, the chain of custody documents and witness testimony “explain[ed] how the evidence was moved and where it was kept during the years between the crime and the DNA testing.” *Id.* at 463. We affirmed the evidence’s admission, explaining that the gaps in the chain of custody “permitted an argument . . . that the jury should not credit the DNA evidence,” but did not “compel a ruling, as a matter of law, that a proper chain of custody of the DNA evidence had not been shown.” *Id.*

In *Cooper*, the defendant’s DNA matched biological material recovered from a napkin obtained from the victim of a sexual assault. 434 Md. at 215-17. On appeal, Cooper argued that the State had failed to account for how the napkin was transferred from the police laboratory to an independent laboratory for analysis and how the independent laboratory handled the napkin. *Id.* at 224. He also claimed that the DNA results were hearsay and lacked foundation because the laboratory supervisor, rather than the employee who analyzed the DNA, testified at trial. *Id.* Because the supervisor testified only in general terms about the laboratory’s procedures when obtaining and maintaining evidence, Cooper argued that:

There was no testimony or evidence that the specific items of actual evidence in this particular case were obtained and maintained by [the independent laboratory] in accordance with their general procedure up to and through testing and analysis, much less any evidence of how they were obtained and maintained at all.

Id.

In holding that there was sufficient evidence to establish a chain of custody as to the napkin, the Court of Appeals noted that the State had established through its witnesses that the police laboratory used sealed packaging and an identifying complaint number throughout its handling of the evidence. *Id.* at 226-27. The Court also credited evidence in the record that the laboratory had undertaken safeguards to ensure the reliability of the DNA results, and that the final report had the same identifying case number as the victim’s rape kit. *Id.* The Court concluded that “the chances of Cooper’s DNA being placed on the napkin through tampering when the napkin had been transferred from the Victim to a locker

behind locked doors at the hospital to the evidence control unit to the police laboratory and then to [an independent laboratory] is remote.” *Id.* at 228.

Appellant’s argument in the instant case is similar to that in *Cooper*. In particular, appellant contends that the State failed to present “any case-specific testimony about what happened to the [DNA] evidence between collection and testing.” However, like the Court in *Cooper*, we conclude that the State introduced sufficient evidence to establish a valid chain of custody.

According to Ms. Gough, she recovered the Beretta at the scene and later tested the gun and magazine for the presence of DNA in the forensic bay. She wore gloves to minimize the risk of tampering, placed the samples in tamper-proof packaging, and then sealed the boxes and labeled them with the case reference number. Detective Chen verified that he followed the crime laboratory’s procedures to collect appellant’s reference sample. He used the gloves and swabs provided in the laboratory’s DNA collection packet and then sealed the samples in the tamper-proof packaging that the laboratory had provided.

Finally, Mr. Hebert analyzed evidence associated with the same case reference number that Ms. Gough and Detective Chen had placed on the samples they had obtained. Although Mr. Hebert analyzed “cuttings” of the samples created by a serologist who did not testify at trial, we note that Mr. Hebert testified as the acting technical leader of the Baltimore City Police Department Crime Lab that “the first step in DNA testing is what’s called serology.” Mr. Hebert further testified that the laboratory has “controls at each step” to prevent contamination, and testified as to the specific procedures followed in this particular case to maintain the integrity of the DNA evidence.

Despite appellant’s bald assertions of possible contamination or tampering, our careful review of the record reveals no support for his claims. Moreover, his argument that the DNA may have been contaminated or that tampering occurred goes to the weight of the evidence and not the threshold for admissibility. We therefore hold that the trial court did not abuse its discretion in admitting the DNA evidence in this case because the State introduced sufficient evidence to establish a valid chain of custody.²

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

² Appellant contends that “the court here did not disagree with the State’s contention that no chain of custody was required” and maintains that the trial court did not exercise its discretion at all. This argument is contradicted by the record, which reveals that after reviewing *Jones v. State*, 172 Md. App. 444 (2007), the chain of custody case cited by defense counsel, the trial court found that the State had met its burden for admissibility.