District of Columbia
Court of Appeals

No. 15-CF-1378

LEVI RUFFIN,

Appellant,

v.

CF1-13804-14

UNITED STATES,

Appellee.

On Appeal from the Superior Court of the District of Columbia
Criminal Division

BEFORE: Glickman and Fisher, Associate Judges, and Ferren, Senior Judge.

JUDGMENT

This case came to be heard on the transcript of record and the briefs filed, and it was argued by counsel. On consideration whereof, and as set forth in the opinion filed this date, it is now hereby

ORDERED and ADJUDGED that the judgment of the Superior Court is affirmed.

For the Court:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Dated: November 21, 2019.

Opinion by Associate Judge Stephen Glickman.

DISTRICT OF COLUMBIA COURT OF APPEALS

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LEVI RUFFIN, APPELLANT,

V.

UNITED STATES, APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(CF1-13804-14)

(Hon. Rhonda Reid-Winston, Trial Judge)

(Argued January 16, 2018 Decided November 21, 2019)

Debra Soltis, with whom *Paul Y. Kiyonaga* and *Marcus Massey* were on the brief, for appellant.

Kristina Ament, with whom *Channing D. Phillips*, United States Attorney at the time the brief was filed, and *Elizabeth Trosman*, *John P. Mannarino*, *Kenechukwu O. Okocha*, *Akhi Johnson*, and *Eric S. Nguyen*, Assistant United States Attorneys, were on the brief, for appellee.

Before GLICKMAN and FISHER, *Associate Judges*, and FERREN, *Senior Judge*.

GLICKMAN, *Associate Judge*: Appellant, Levi Ruffin, was convicted after a jury trial of the following offenses: first-degree burglary while armed; kidnapping while armed; third-degree sexual abuse while armed; attempted robbery while armed; assault with a dangerous weapon; and assault with significant bodily injury.

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GLICKMAN, Associate Judge: Appellant, Levi Ruffin, was convicted after a jury trial of the following offenses: first-degree burglary while armed; kidnap while armed; third-degree sexual abuse while armed; attempted robbery while armed; assault with a dangerous weapon; and assault with significant bodily inj

2

In this appeal, he contends the evidence was insufficient to sustain his convic for first-degree burglary and kidnapping, and that the trial court erred in den his motions to exclude DNA test results and a knife found in his possession at time of his arrest. Concluding that these contentions lack merit, we affirm appellant's convictions.

I. The Evidence at Trial

The complaining witness at appellant's trial, whom we shall refer to as J testified that a man wielding a silver folding knife attacked her when she arri home on the evening of September 14, 2013. J.C. lived at the time in one of thr

apartments in a row house in Northwest Washington, D.C. Her assailant, who was later identified as appellant, came up behind her as she was unlocking the fron door to the building. Putting his hand over her mouth and holding the knife to face, appellant told her not to move and to drop what she was holding. He then pushed J.C. through the entrance into the common hallway of the row house, followed her in, and closed the door behind them. Alone with her in the hallway and continuing to hold the knife to her face, appellant demanded her money. J.C started to hand him her debit and credit cards, but appellant slapped them away

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He then lifted her dress and rubbed his fingers against her genital area throug underwear.

At that point, J.C. grabbed the hand in which appellant was holding the k and pushed him away. A fight ensued, during which appellant bit J.C. on her lef cheek and her back. She yelled at him to stop. He pushed her to the floor and f out the front door of the row house. After he was gone, J.C. went into her apartment and called the police.

A neighbor in an apartment down the hallway heard and saw part of the attack through the peephole of her door and called the police. The recording of that call was played at trial. It captured over 90 seconds of the assault.

J.C. was taken to the hospital by ambulance. She was treated for the bite wounds on her cheek and back, and for a lacerated finger (which required six stitches) and other knife cuts on her hands. A nurse swabbed J.C.'s bite wounds for biological evidence that could help identify her attacker.

4

After several months, the police acquired information linking appellant t the assault.1 In August 2014, officers went to his apartment to arrest him. In of jeans that appellant asked to put on, the officers found a folding knife wit silver blade and a black handle. Over appellant's objection to its relevance, t knife was admitted in evidence against him at trial, along with the parties' stipulation that it had been in appellant's possession "as early as November 2,

2013" (i.e., about seven weeks after the assault on J.C.). 2

DNA testing identified appellant as J.C.'s assailant. Two forensic scient from the District of Columbia Department of Forensic Sciences (DFS) testified t they received and tested the swabs taken from J.C.'s cheek and back wounds and swab taken from appellant's cheek following his arrest in this case. T scientists performed the extraction, quantification, and amplification of DNA f each of those sources and generated DNA profiles from them for subsequent interpretation and comparison. They did not testify to that interpretation and

1 The nature of this information was not disclosed to the jury in order avoid potential prejudice to appellant.

2 The stipulation was based on the fact that Mr. Ruffin had the knife in possession when he was arrested in November 2013 in connection with a matter unrelated to this case. (The jury was not informed of this arrest.) The knife w recorded at that time as appellant's property. It was returned to appellant bec his possession of it was not unlawful.

comparison, however, because flaws had been detected in DFS's statistical computation procedures. These flaws reportedly "resulted in DFS's overstating t rarity of certain mixture profiles,"3 i.e., profiles obtained from samples cont DNA from more than one person. A panel of experts convened by the United States Attorney's Office identified "systematic concerns with DFS's interpretat of forensic DNA mixtures,"4 and an ANSI-ASQ National Accreditation Board (ANAB) 5 audit of DFS likewise found serious problems with its "mixture interpretation procedures." The ANAB required DFS to suspend DNA testing until it corrected the problems.

The government arranged for an accredited private laboratory, Bode Cellmark Forensics (Bode), to interpret and compare the profiles generated by D in this case. Over appellant's objection, the court allowed Karin Crenshaw, a forensic biologist at Bode, to testify that appellant's DNA profile matched the

3 Barber v. United States,

179 A.3d 883

, 892 (D.C. 2018) (internal quotation marks omitted).

4

Id. at 891-92.

5 "ANSI" and "ASQ" refer to the American National Standards Institute and the American Society for Quality.

6

foreign DNA profiles recovered from the swabs of J.C.'s back and cheek wounds.6 According to Ms. Crenshaw, the probability of randomly selecting an unrelated African American with the same profile as that of the foreign DNA from J.C.'s back was 1 in 450 quadrillion; and the equivalent random match probability for DNA from J.C.'s cheek was 1 in 4.1 sextillion. 7

II. Sufficiency of the Evidence

Appellant claims the evidence was insufficient to convict him of the firs degree burglary and kidnapping charges. Each claim turns on a question o statutory interpretation.

A. First-Degree Burglary While Armed

The crime of burglary in the first degree is defined in D.C. Code § 22-80 (2019 Supp.) in pertinent part as follows (emphasis added): "whoever shall . .

6 In the profiles derived from J.C.'s wounds, Ms. Crenshaw found DNA from only one source (the "foreign" source) besides J.C. herself.

7 J.C.'s description of her assailant had included the fact that he was a man, and appellant met her description. According to Ms. Crenshaw, the probability of finding an unrelated Hispanic or Caucasian with the foreign DNA recovered from J.C. was even more remote.

7

enter . . . any dwelling, or room used as a sleeping apartment in any building, intent . . . to commit any criminal offense, shall, if any person is in any par dwelling or sleeping apartment at the time of such . . . entering, . . . be gui burglary in the first degree."8 Appellant contends there was insufficient proof he entered a "dwelling" to support his conviction of this crime because the evidence at trial established that J.C.'s assailant entered only the common hal of her multi-apartment row house (and not also her or any other tenant's indivi apartment). Appellant asserts that the common hallway of a residential apartmen

building is not part of a "dwelling" as that term is used in the burglary statu

The burglary statute does not define the term "dwelling," and this is the time this court has been called upon to construe it. Its meaning in the statute whether it encompasses a common hallway in a multi-unit residential building, a questions of statutory interpretation that we decide de novo. 9 Where, as here,

8 See also Marshall v. United States,

623 A.2d 551

, 557 (D.C. 1992) ("In order to prove armed first degree burglary, the government must establish beyon reasonable doubt, an armed entry . . . into an occupied dwelling with the inten commit a crime therein."); Edelen v. United States,

560 A.2d 527

, 529 (D.C. 1989) ("The intent of the legislature in regard to § 22-1801(a) [now codified as § 22 801(a)] is clear from the ordinary meaning of its words; the statute seeks to p any entry, with the intent to commit a crime, of a dwelling at a time when anot person is located anywhere within the confines of that dwelling.").

9 Will. v

. Kennedy,

211 A.3d 1108

, 1110 (D.C. 2019).

statutory terms are undefined, we presumptively construe them according to thei ordinary sense and plain meaning, taking into account the context in which they are employed, the policy and purpose of the legislation, and the potential consequences of adopting a given interpretation. 10 "We may also look to the legislative history to ensure that our interpretation is consistent with legisl intent."11 These principles have guided our interpretation of other language in first-degree burglary statute.12 They favor giving the term "dwelling" a broad interpretation that would render § 22-801(a) applicable here.

To begin with, the term "dwelling" is not limited to single-family occupancies. Apartment houses and other multi-unit residential structures also included within standard dictionary definitions of "dwelling," particularly whe that word is used in burglary and similar statutes. Black's Law Dictionary, for example, states that "dwelling" is the short form of "dwelling-house," a term

10 See id.; Chase Plaza Condo. Ass'n v. JPMorgan Chase Bank, N.A.,

98 A.3d 166

, 172 (D.C. 2014); Hood v. United States,

28 A.3d 553

, 559 (D.C. 2011).

11

Williams, 211 A.3d at 1110

(quoting Facebook, Inc. v. Wint,

199 A.3d 625

, 628 (D.C. 2019)).

12 See

Edelen, 560 A.2d at 529

; see also Swinson v. United States,

483 A.2d 1160

, 1163 (D.C. 1984) (construing the word "building" in the second-degree burglary statute, then D.C. Code § 22-1801(b), which is now codified as § 22-801(b)).

9

meaning, in criminal law, virtually any "building . . . , part of a building . []other enclosed space that is used or intended for use as a human habitation." We think it informative and noteworthy that a number of federal courts, tasked under the Sentencing Guidelines with determining the "generic" meaning of "burglary of a dwelling," have accepted this definition.14

In construing the District's first-degree burglary statute, we have no re to reject the broad ordinary meaning of "dwelling" as any enclosed space used f human habitation, nor any reason to narrow the definition of "dwelling" to excl some types of habitation. Section 22-801(a) states that it applies to entries i "any dwelling" without qualification or exception. "[T]here is no indication in legislative history to the contrary." 15 Congress enacted the first-degree burg statute in 1967.16 As explained in the report on the bill by the Senate Committ on the District of Columbia, up until then, "the crime of breaking and entering

13 Dwelling-House, BLACK'S LAW DICTIONARY (11th ed. 2019). This definition adds that the term "typically includes . . . structures connected . enclosed passageway."

14 See United States v. Garcia-Martinez,

845 F.3d 1126

, 1131-32 (11th Cir. 2017) (citing cases).

15

Edelen, 560 A.2d at 529

(footnote omitted).

16 District of Columbia Crime Act of 1967, Pub. L. 90-226, tit. VI, § 60 Stat. 736 (1967).

10

the District of Columbia [was] called housebreaking" and did "not distinguish between dwellings and other premises."17 The authorized penalty for housebreaking, imprisonment for up to 15 years, was the same regardless of the character of the premises. 18 The 1967 enactment amended the housebreaking statute to create two degrees of burglary and specify different minimum sentenc for each. 19 The graver offense, first-degree burglary of an occupied dwelling sleeping apartment, carried an enhanced penalty of no less than 5 nor more than years of imprisonment. Burglaries of other premises were covered by the second-degree statute, which tracked the previous housebreaking statute and continued carry a maximum penalty of 15 years' imprisonment. 20

Accepting the broad, ordinary definition of "dwelling" best serves the evident legislative purpose behind the enactment of the first-degree burglary statute. Burglaries of occupied residences are singled out for heightened punishment because they "pose an increased risk of physical and psychological

17 S. Rep. No. 90-912, at 21 (1967). The previous housebreaking statute was enacted in 1901, see 31 Stat. 1323, ch. 854, § 823 (1901), and was codified 1967 as D.C. Code § 22-1801.

18

Id. 19 S.

Rep. No. 90-912, at 21, 28.
20
Id.; see D.C. Code § 22-801(b).
11

injury." 21 In such burglaries "there is a much greater possibility of confront resident and a substantial risk that force will be used and that someone will b injured, than if one burglarized a building that was not intended for use as habitation, such as an office building after office hours or a warehouse." 22 T elevated risk exists whether the human habitation in question is a single-famil home or apartment, a row house with a few units, or a multi-unit apartment building. "[T]he unique wounds caused by residential burglary are independent o the size or construction of the dwelling. They are the same for the mansion hou and the boarding house, the tract home and the mobile home." 23

So J.C.'s row house was a "dwelling" within the meaning of our first-degr burglary statute. The evidence clearly sufficed to prove that her assailant ent this dwelling with the intent to commit a crime inside it, and that someone els present there when he did so. This latter statutory requirement, which is not i dispute, was satisfied in two ways. First, it suffices that J.C.'s neighbor was row house even though she was in her own apartment; a residential burglary

21
United States v. Rivera-Oros,

590 F.3d 1123 (/opinion/173036/united-states-v-rivera-oros/)

, 1130 (10th Cir. 2009)
(quotation marks omitted).
22
United States v. McClenton,

53 F.3d 584 (/opinion/695162/united-states-v-michael-mcclenton/)

, 588 (3d Cir. 1995).
23

Rivera-Oros, 590 F.3d at 1130 (/opinion/173036/united-states-v-rivera-oros/)

violates § 22-801(a) "if any person is in any part of [the] dwelling" at the ti entry. Second, as in Edelen, this requirement also was met (even if no one else been in the building at the time) because J.C.'s assailant pushed her into the house ahead of him and she therefore was in the dwelling herself when he follow her in.24

It is immaterial that the entry and the subsequent assault went no furth the interior common hallway of the row house. This hallway was behind a locked door; in no way was it a space so open to the public at large as to be consider outside and not part of the private dwelling area. And as far as § 22-801(a) is concerned, an entry is an entry; it does not matter where in a dwelling the inv occurs, for all such intrusions pose the heightened risk of violent confrontati other harms that the first-degree statute is meant to deter and punish. We thus readily agree with the holdings of several other courts that, under burglary st

24 The defendant in Edelen argued that he could not be convicted of firs degree burglary of the complainant's apartment based on evidence that he forced the complainant into it at gunpoint and followed her inside with the intent to her. He argued that his entry into the apartment was not a first-degree burglar because the complainant was not "occupying" the apartment when he encountered her outside it and ordered her to go in. We rejected that argument and held it sufficed to prove first-degree burglary that the complainant preceded Edelen in the apartment and was "in" it at the time he stepped

in. 560 A.3d at 529-30

comparable to ours, "an apartment dweller's 'dwelling house' does include secur common hallways." 25

Appellant argues that this conclusion is foreclosed by our decision in Edelen, in which this court held that the defendant committed first-degree burg when he entered the complainant's apartment, even though he began his attack on her in the common hallway outside her apartment. 26 This argument is not correc In Edelen, this court had no occasion to consider, and therefore did not consid whether the defendant committed a first-degree burglary when he entered the apartment building. The issue before the court was only whether his entry into apartment constituted a first-degree burglary. The two possibilities are

25 Commonwealth v. Goldoff,

510 N.E.2d 277 (/opinion/2000141/commonwealth-v-goldoff/)

, 281 (Mass. App. Ct. 1987);

id. at 280 (/opinion/2000141/commonwealth-v-goldoff/)

("when this historical right to security in one's place of habitation is considered in the context of contemporary multi-unit residential structures, we think of no reason why that right should not apply to tenants who reach their apartment units by a common hallway which they have collectively secured from the general public by a locked door. . . . These [common] areas are not open to public; they comprise a portion of each occupant's dwelling house. The criminal who unlawfully enters there violates the habitation of each of them, and each i endangered by the possibility of confronting him or her[.]"); see also, e.g., S Bowman,

311 S.W.3d 341 (/opinion/2106606/state-v-bowman/)

, 345-47 (Mo. Ct. App. 2010) (citing cases from other jurisdictions and concluding that "the common areas in an apartment building ca constitute part of the apartment . . . as long as the common area in question i secured area not otherwise open to the public.").

26 See footnote

24, supra

14

mutually exclusive. Section 22-801(a) recognizes both possibilities by specifyi that a first-degree burglary can be committed by entering either "any dwelling" any "room used as a sleeping apartment in any building."

We reject appellant's restrictive interpretation of D.C. Code § 22-801(a) hold that the evidence was sufficient to sustain his conviction for first-degre burglary.

B. Kidnapping While Armed

To convict appellant of kidnapping J.C. in violation of D.C. Code § 22-20 (2019 Supp.), the government had to prove that he "intentionally seized, confin or carried [her] away, and that [he] held or detained [her] against her will."2 There was ample evidence that appellant did all of those things by forcing J.C. the hallway of her row house, closing the door behind him, detaining her there knifepoint, and violently resisting her attempt to escape. Appellant contends, however, that there was insufficient evidence to sustain his kidnapping convict

27

Kaliku v. United States,

994 A.2d 765

, 787 (D.C. 2010); see also Hughes v. United States,

150 A.3d 289

, 306 (D.C. 2016) ("The essence of the crime of kidnapping is the involuntary nature of the seizure and detention." (internal punctuation omitted)).

15

because J.C.'s detention lasted only about a minute-and-a-half and was "incidental" to and "wholly coextensive with" the assault and attempted robbery Appellant argues that offenses like robbery and sexual assault almost always include some detention of the victim (though detention is not an element of the and the legislature could not have intended the kidnapping statute to apply to detentions that are "not distinct from another offense" of which the defendant guilty. 28

This argument is not a new one. It has been made to us before, and we ha rejected it. As this court stated in Richardson, the argument is "foreclosed" b "binding precedent."29 We have held that "[t]he plain language" of D.C. Code § 22-2001

28

Richardson v. United States,

116 A.3d 434

, 438 (D.C. 2015).

29

Id. In support

of this statement, Richardson cited Hagins v. United States,

639 A.2d 612

, 617 (D.C. 1994) (rejecting argument that defendant charged with rape could not be convicted of kidnapping if the alleged "confinement" was incidental to the sexual assaults, because "'non-coextensive' (or 'non-incident confinement" is not a statutory element of the crime of kidnapping). See also Spencer v. United States,

132 A.3d 1163

, 1173 (D.C. 2016) ("In Richardson, we conclusively held that 'non-incidental' confinement is not an element of kidnapping in the District of Columbia. . . . Richardson expressly denies that incidental nature of a detention is relevant to the sufficiency of a kidnapping conviction in the District[.]"). We reject appellant's argument that these case not decide the question because the court also held in each of them that even i proof of "non-incidental" detention were required for kidnapping, the evidence (continue

> contains no exception for cases in which the conduct underlying the kidnapping is momentary or incidental to another offense. . . . "[T]here is no requirement that the victim be moved any particular distance or be held for any particular length of time to constitute a kidnapping; all that is required is a 'seizing, confining' or the like and a 'holding or detaining for ransom or reward 'or otherwise'"30

Accordingly, we hold that the evidence in this case was sufficient to sus

appellant's conviction for kidnapping while armed.

III. Evidentiary Rulings

A. Admission of Expert Witness Testimony on DNA Match

Appellant argues that the trial court erred in denying his pretrial motio

preclude testimony by a DNA expert witness from Bode (Ms. Crenshaw) that was

(…continued)
would have been sufficient to sustain the kidnapping convictions at issue. "[W]here a judgment rests on two independent and alternative rationales, both rationales are holdings rather than dicta, even though strictly speaking neithe rationale would be essential to the resolution of the case." Parker v. K & L Ga LLP,

76 A.3d 859

, 878 (D.C. 2013) (McLeese, J., concurring) (citing Woods v. Interstate Realty Co.,

337 U.S. 535 (/opinion/104694/woods-v-interstate-realty-co/)

, 537 (1949), and Richmond Screw Anchor Co. v. United States,

275 U.S. 331 (/opinion/101182/richmond-screw-anchor-co-v-united-states/)

, 340 (1928)).
30

Richardson, 116 A.3d at 439

(quoting West v. United States,

599 A.2d 788

, 793 n.9 (D.C. 1991)).

17

based on unreliable DNA testing data generated by DFS. "We review a trial court's admission or exclusion of expert testimony for abuse of discretion and disturb the lower court's ruling when it is 'manifestly erroneous.'" 31 Federal Rule of Evidence 702, which now governs the admissibility of expert opinion testimony in our courts,32 the court may allow such testimony based on preliminary determination of its evidentiary reliability. 33 The factors the co must consider in assessing reliability include whether the testimony is "based sufficient facts or data"34 and is the product of "reliable principles and meth that "the expert has reliably applied . . . to the facts of the case."35

31
Dickerson v. District of Columbia,

182 A.3d 721

, 726 (D.C. 2018)
(quoting Benn v. United States,

978 A.2d 1257

, 1273 (D.C. 2009)).

32
This court adopted Rule 702 in Motorola, Inc. v. Murray,

147 A.3d 751

(D.C. 2016) (en banc). Although this decision was rendered after appellant's tr we since have held that the holding of Motorola applies retroactively to cases already tried but not yet final on direct appeal. See Williams v. United States

210 A.3d 734

, 743 (2019).

33

Motorola, 147 A.3d at 754

("[T]he trial judge must . . . ensure that any
and all scientific testimony or evidence admitted is not only relevant, but rel
(quoting Daubert v. Merrell Dow Pharmaceuticals, Inc.,

509 U.S. 579 (/opinion/112903/daubert-v-merrell-dow-pharmaceuticals-inc/)

, 589
(1993)).

34
Fed. R. Evid. 702(b).

35

Id. 702(c), (d). (/opinion/112903/daubert-v-merrell-dow-pharmaceuticals-inc/)

18

Federal Rule of Evidence 703, which this court also has adopted, 36 permi an expert to base an opinion on otherwise inadmissible facts or data of which t expert has been informed "[if] experts in the particular field would reasonably on those kinds of facts or data in forming an opinion on the subject." In other words, "the opinions of an expert witness may be based in part on hearsay or ot inadmissible information as long as the hearsay or other inadmissible informati meets minimum standards of reliability and is of a type reasonably (i.e. customarily) relied on in the practice of the expert witness's profession." 37 the court may not abdicate its gatekeeping responsibility to ensure the evident reliability of expert testimony, it typically must "accord an expert wide latit choosing the sources on which to base his or her opinions." 38 In general, "a properly qualified expert is assumed to have the necessary skill to evaluate an

36 See

Motorola, 147 A.3d at 754

n.7; In re Melton,

597 A.2d 892

, 901 & n.10 (D.C. 1991) (en banc).

37 In re Amey,

40 A.3d 902

, 910 (D.C. 2012).

38

Melton, 597 A.2d at 903

. See also Cooper v. Carl A. Nelson & Co.,

211 F.3d 1008

, 1020 (7th Cir. 2000) ("[E]xperts in various fields may properly rely on a variety of sources and may employ a similarly wide choice of methodologies in developing an expert opinion.")

19

second-hand information and to give it only such probative force as the stances warrant."39 Therefore, "[i]n most cases, . . . objections to the reliab out-of-court material relied upon by [an expert] will be treated as affecting o weight, and not the admissibility, of the [expert testimony]." 40

Applying the foregoing principles, we conclude that the trial court did n abuse its discretion by denying appellant's motion to preclude Ms. Crenshaw's testimony. In his motion, appellant cited the criticism of DFS by the ANAB and the government's panel of experts; argued that Bode could not "attest to the accuracy" of DFS's DNA test results; and asserted (without evidence) that "it i not customary for an analyst from one DNA lab to simply review" and draw conclusions from raw test data provided by another lab. But the government

39

Melton, 597 A.2d at 903

. See also Kinser v. Gehl Co.,

184 F.3d 1259 (/opinion/158276/kinser-v-gehl-company/)

, 1275 (10th Cir. 1999), abrogated on other grounds by Weisgram v. Marley Co.,

528 U.S. 440 (/opinion/118337/weisgram-v-marley-co/)

(2000) (describing the rationale under Rule 703 for allowing experts to testify to opinions based on evidence that is itself inadmissible as premise the notion that "experts in the field can be presumed to know what evidence is sufficiently trustworthy and probative to merit reliance.").

40

Melton, 597 A.2d at 903

-04. See also Hose v. Chicago N.W. Transp. Co.,

70 F.3d 968

, 974 (8th Cir. 1995) ("As a general rule, the factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility, and it the opposing party to examine the factual basis for the opinion in cross-examination.").

20

successfully rebutted these contentions. It proffered the ANAB audit report and other documentation showing, as the court found, that the criticisms of DFS pertained only to its statistical interpretation of DNA data, not DFS's procedu for generating that data.41 The court was given no reason to think that the dat furnished by DFS to Bode was unreliable. In addition, the government provided a affidavit in which Natalie Morgan, Bode's Director of Forensic Casework, averre that "independent analysis and review of another Lab's data is routinely comple in the forensic DNA field," and that Bode itself performs such "independent analysis/interpretation" in 20-30 cases per year. 42 No evidence contradicted t averment. It supported the court's finding that, contrary to appellant's assert the data furnished by DFS was "the type of evidence that experts customarily re on."

41

The report prepared by the panel of experts convened by the United St Attorney's Office was not submitted to the trial court in this case and is not record before us. In its stead, the government submitted a copy of a discovery letter conveying the substance of the panel report and also reporting that a me of the panel had reviewed DFS's work in this particular case and had "concluded that there were no specific issues which impact the DNA results." See also

Barber, 179 A.3d at 893-94

(explaining that none of the concerns with DFS's work "cast doubt on DFS's actual testing of the DNA samples in this case or any othe case sampled").

42 Ms. Morgan defined "analysis/interpretation" as including "making comparisons" between DNA profiles.

21

At trial, appellant was able to cross-examine the government's three expe witnesses to identify any problems with the data and challenge the reliability DNA testing and analysis. The jury received an accurate picture of each expert' role. All three witnesses agreed that the issues raised by ANAB did not concern the procedures followed by the two DFS witnesses to generate the "raw data" sen to Bode in this case. Appellant elicited no evidence to the contrary. The two D witnesses described in detail the steps they followed to generate that raw data including the measures followed to ensure the reliability of the results. Crenshaw testified that these steps were shown in the data she received and reviewed, and that it would have been evident to her from the "raw data" if tho steps had been performed improperly. She found no problems or irregularities. This testimony was not impeached or contradicted.

We conclude that the trial court did not abuse its discretion in allowing Crenshaw to testify, and in trusting the jury to evaluate the reliability of he opinion and the information on which it was based.

B. Admission of the Knife

Appellant contends the trial court erred by admitting the knife recovered from his jeans pocket into evidence. He argues that the knife was irrelevant

22

because it did not match J.C.'s description of the one her assailant used and t was no other proof linking the knife to the assault. In overruling appellant's objection to the knife's relevance, the trial court found that the discrepancy between J.C.'s description and the appearance of the knife went to the weight o the evidence but did not render it inadmissible. We agree.

"Evidence is relevant if it has 'any tendency to make the existence of an fact that is of consequence to the determination of the action more probable or probable than it would be without the evidence.'" 43 "The trial court e particularly broad discretion in determining the relevance of a piece of eviden because the inquiry is fact-specific and proceeds under a flexible standard."44 a "highly discretionary" determination "will be upset on appeal only upon a showing of grave abuse."45 We can find no such abuse here.

"An accused person's prior possession of the physical means of committin the crime is some evidence of the probability of his guilt, and is therefore

43 Plummer v. United States,

813 A.2d 182

, 188 (D.C. 2002) (quoting Street v. United States,

602 A.2d 141

, 143 (D.C. 1992)).

44 Richardson v. United States,

98 A.3d 178

, 186 (D.C. 2014).

45 Riddick v. United States,

995 A.2d 212

, 216 (D.C. 2010) (internal
quotation marks and citations omitted).

admissible."46 It is relevant and admissible as "direct and substantial proof o
crime charged"47 if the weapon is "linked to both the defendant and the crime"
the connection is not "too remote or conjectural." 48 In this case, two factors
on the issue of relevance - whether the knife's appearance matched J.C.'s
description, and whether appellant was in possession of it around the time of t
crime. 49

As to the first factor, J.C. reported that her assailant wielded a silve
knife. The knife recovered from appellant's jeans was a folding knife with a si
blade and a black handle. Although J.C. did not mention a black handle, the cou
reasonably could find that the recovered knife matched J.C.'s general descripti

46
Coleman v. United States,

379 A.2d 710

, 712 (D.C. 1977). Our cases
repeatedly have recognized this point. See, e.g., Jones v. United States,

127 A.3d 1173

, 1185 (D.C. 2015); Daniels v. United States,

2 A.3d 250

, 262 (D.C. 2010);
Busey v. United States,

747 A.2d 1153

, 1165 (D.C. 2000).
47

Jones, 127 A.3d at 1184

.
48
King v. United States,

618 A.2d 727

, 728-29 (D.C. 1993) (quotation
marks omitted).
49

Jones, 127 A.3d at 1185

("Ultimately, the admissibility of evidence of a
defendant's prior possession of the weapon or type of weapon used in a charged offense turns on a consideration of the temporal proximity of the incidents of possession to the charged offense and a comparison of the appearance of the weapon previously possessed by the defendant with that of the weapon actually used in the charged offense.").

24

especially given the obvious likelihood that the handle of the knife was not cl visible to J.C. when her attacker was grasping it and threatening her with it.5 Appellant argues that J.C. was not shown appellant's knife and never identified as being, or looking like, the knife held by her assailant. The absence of such identification does not diminish the probative value of the fact that the knife J.C.'s general description of the weapon. As to the second factor, although the police did not find the knife until they arrested appellant eleven months later appellant stipulated that he had it in his possession at a time only seven week the crime was committed. This was not so long after the crime as to deprive the evidence of any probative value.51 We think the trial court fairly could conclu from these facts that appellant's possession of the knife was "some evidence of probability of his guilt" and therefore relevant.52 "It is true that the eviden established only a reasonable probability, and not a certainty," that appellant

50
See, e.g., Williams v. United States,

106 A.3d 1063

, 1069 (D.C. 2015)
(upholding admission of evidence that the defendant's weapon met "the same general description as the one used in the charged offense");

Daniels, 2 A.3d at 254

, 262 (upholding admission of testimony that defendant had been seen with a black gun and a silver gun where witnesses had described murder weapon as eithe black or silver).

51
In some cases, evidence of a defendant's possession of the weapon use in a charged offense has been held admissible even though many months separated the possession from the crime. See

Jones, 127 A.3d at 1186

(citing cases).

52

Busey, 747 A.2d at 1165

(quotation marks omitted).
25
possessed the knife used in the assault on J.C. 53 "But the connection of the [
with the [assault] was not 'conjectural and remote,' . . . and so the lack of c
goes to the weight of the evidence, not its admissibility." 54

Appellant argues that any probative value the knife had was outweighed by
the danger of prejudice, which he identifies on appeal only as the implication
"he was a violent man who carried a knife." 55 Appellant faults the trial judge
failing to balance the danger of such prejudice against the limited probative v
of the knife.

The point is not well-taken, however. "In general, if evidence is relevan
should be admitted unless it is barred by some other legal rule." 56 In other w
upon a finding of relevance, the knife was presumptively admissible. It is true
relevant evidence may be excluded, in the trial court's discretion, if the cour
that its probative value is substantially outweighed by a danger of unfair

53

Id. 54 Id.

(quoting Burleson v. United States,

306 A.2d 659

, 662 (D.C. 1973)).
55
Brief for Appellant at 43.
56
In re L.C.,

92 A.3d 290

, 297 (D.C. 2014).

26

prejudice.57 Thus, if a defendant identifies a risk of unfair prejudice from pr evidence and explains how that risk outweighs the probative value of the eviden the judge must balance the probative value of the evidence against that risk. B "[j]udges are not clairvoyant." 58 The responsibility to identify the risk and the issue of unfair prejudice with specificity for the judge's consideration is party seeking protection from it – meaning, in this case, on appellant.59 It is judge's role to assume that responsibility, snoop out the facts, and construct argument for the litigant. Yet when the relevance of the knife was argued and decided in this case, appellant did not argue that it posed any risk of unfair

57
Johnson v. United States,

683 A.2d 1087

, 1100 (D.C. 1996) (en banc)
(adopting Federal Rule of Evidence 403). The term "unfair prejudice" means the evidence has "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Comford v. United States,

947 A.2d 1181

, 1187 (D.C. 2008) (citations omitted).

58 Will. v

. Dieball,

724 F.3d 957

, 963 (7th Cir. 2013).
59
See

Comford, 947 A.2d at 1188-89

(holding that defendant did not
preserve Rule 403 claim "effectively" where, though he cited the Rule, he gave trial judge "no reason at all why" the testimony he moved to exclude "would be irrelevant or unfairly prejudicial, or why the risk of unfair prejudice would substantially outweigh its probative value"); see also

Williams, 724 F.3d at 962

(claim that trial court erred by admitting evidence without balancing its proba value against prejudice as required by Rule 403 held forfeited where motion in limine "did nothing more than give a barebones recitation of the relevant stand and "then conclusorily state that it was met" with no explanation of "how or wh the balancing test should result in exclusion").

27

prejudice at all. 60 Nor, in our view, was any such risk apparent. Contrary to appellant's unsupported claim (made for the first time on appeal), appellant's possession of the (concededly lawful) knife did not brand him as a "violent" individual. The knife was not inflammatory evidence calculated to appeal to the jury's emotions and prejudice the jury against appellant. And as the judge stat when rendering her decision that the knife was relevant, appellant could challe its probative value through cross-examination.

We conclude that the trial court did not abuse its discretion by admittin knife into evidence.

IV. Conclusion

For the foregoing reasons, we affirm the judgment of the Superior Court.

60

Appellant's written motion to exclude the knife contained nothing beyo a perfunctory, half-sentence assertion in passing that "introduction of the kni more prejudicial than probative." The issue of prejudice versus probative value was not mentioned at all in the argument on the motion.

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Ruffin v. United States, 15-CF-1378 (D.C. 2019)

District of Columbia Court of Appeals

Filed: November 21st, 2019

Precedential Status: Precedential

Citations: None known

Docket Number: 15-CF-1378

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District of Columbia
Court of Appeals

No. 15-CF-1378

LEVI M. RUFFIN,

Appellant,

v. **CF1-13804-14**

UNITED STATES,

Appellee.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, * Fisher, * Thompson, Beckwith, Easterly, McLeese, and Deahl, Associate Judges; Ferren, * Senior Judge.

ORDER

On consideration of appellant's petition for rehearing or rehearing *en banc*, and appellee's opposition thereto, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

FURTHER ORDERED that the petition for rehearing *en banc* is denied.

PER CURIAM

Associate Judges Beckwith and Easterly would grant rehearing *en banc*.

Copies to:

Honorable Rhonda Reid Winston

Director, Criminal Division

No. 15-CF-1378

Copy e-served to:

Debra L. Soltis, Esquire

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