

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2669

September Term, 2013

MARTINEZ WILLIAMS

v.

STATE OF MARYLAND

Krauser, C.J.,
Zarnoch,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: May 20, 2015

*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.

Convicted, by a jury sitting in the Circuit Court for Baltimore City, of possession of a controlled dangerous substance (CDS), Martinez Williams, appellant, presents a single question for our review:

Did the trial court err in allowing testimony concerning an earlier CDS transaction when appellant had been previously acquitted of the charges stemming from that transaction?

For the reasons which follow, we shall affirm.

FACTS AND PROCEEDINGS

On August 11, 2012, at approximately 6:00 p.m., Detective Todd Strohman, of the Baltimore City Police, was in the passenger seat of an unmarked police car, near the corner of Preston and Patterson streets, watching for “narcotic activity,” when he observed an unidentified white male approach Williams and engage him in a short conversation. At the conclusion of that brief verbal exchange, Williams walked to the curb, which was approximately five feet from where he had been standing and picked up a white tissue. He thereupon took a small object from the white tissue, handed it to the white male, and, in return, received a cash payment. The unidentified white male then promptly left the area.

At trial, Detective Strohman, an expert in illegal drug packaging and sales, testified that he believed that the object Williams had retrieved from the white tissue was heroin and that Williams had then sold the heroin to the white male. The detective opined that it was typical for individuals dealing in narcotics to keep their drugs off their person, that it was not uncommon for drugs to be found near a curb, or in a piece of trash, and that he believed the

tissue he saw Williams handle was a “stash for drugs,” specifically, “heroin.” Moreover, the item he saw Williams give to the unidentified white male was, according to the detective, “consistent with the size of a street-level packaged narcotic.”

Immediately following that transaction, Detective Strohman and the officer with whom he was working, Detective Gregg Boyd, drove down to where Williams was standing. They then got out of their vehicle, and while Detective Strohman detained Williams, Detective Boyd searched the area where Williams had retrieved the suspected heroin. Moments later, Detective Boyd found two white tissues like the one Williams had retrieved. One tissue was found to contain three gel capsules of suspected heroin, the other a single gel capsule of suspected heroin. After placing Williams under arrest, the officers searched him and found \$80 in cash on Williams’s person.

When a subsequent chemical analysis of the recovered gel capsules confirmed that they contained heroin, Williams was charged with possession of CDS and attempted distribution of CDS. On September 9, 2013, Williams was tried on those charges. Although he was acquitted of attempted CDS distribution, the jury was unable to reach a verdict as to the charge of CDS possession, and a mistrial was declared. The State thereafter decided to retry Williams on that charge.

Prior to the commencement of Williams’s retrial on the charge of CDS possession, defense counsel moved to limit any testimony that referred to the purported hand-to-hand

drug transaction, which purportedly constituted the attempted distribution of CDS, for which Williams had been acquitted. That motion precipitated the following colloquy between court and counsel:

[DEFENSE COUNSEL]: Your Honor, I would . . . make a motion to limit . . . testimony regarding the alleged hand to hand transaction, as I would argue that at this point in time it's prejudicial to Mr. Williams.

[STATE'S ATTORNEY]: Your Honor, of course the State will argue that's the probable cause for the officers even making this arrest. They viewed –

[THE COURT]: I don't understand why it's not relevant to possession.

[DEFENSE COUNSEL]: Well, it may be relevant, Your Honor, but I believe there's also a great deal of prejudice that also goes along with it. The issue was previously adjudicated and he was found not guilty of the attempt . . .

[STATE'S ATTORNEY]: Again, Your Honor, without the hand to hand transaction, there is no connection with [Williams] to the [CDS]. That's why he goes and touches the napkins that were not on his body, but on the street.

[THE COURT]: Well, you could introduce – as I recall the evidence from the first trial, you could introduce him solely touching the napkins and then the recovery later, but the State could convict – if the jury inferred that he had an item of heroin and passed it to another person, they could convict him of possession based on that piece of heroin, either the one recovered on an inference that was similar to the one recovered. I don't see – I think it's directly relevant to the State's case and I don't see any unfair prejudice to [Williams]. Motion is denied.

Later, at trial, defense counsel did not object when Detective Strohmman testified about the transaction he had observed take place between Williams and an unidentified male. At the conclusion of that trial, Williams was convicted of possession of CDS.

DISCUSSION

Although Williams acknowledges that he made no objection to the testimony of Detective Strohman relating to his involvement in a suspected sale of CDS, he claims that the issue was nonetheless preserved for appellate review because he had made a motion *in limine* as to that testimony and the court ruled upon it “moments before Detective Strohman took the stand.” He further contends that Detective Strohman’s testimony regarding the suspected hand-to-hand sale of CDS was inadmissible “other bad acts” evidence which was not proven by clear and convincing evidence. For those reasons, he asserts that the court committed reversible error by permitting testimony regarding his involvement in the sale of CDS when the only charge against him was for possession of CDS, as he had been previously acquitted of attempted distribution of CDS.

We believe, however, that Williams’s claim was not preserved for our review. To begin with, Maryland Rule 4-323(a) provides, in pertinent part, that “[a]n objection to the admission of evidence shall 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.”

Moreover, as a general rule, “where a party makes a motion *in limine* to exclude irrelevant or otherwise inadmissible evidence, and that evidence is subsequently admitted, ‘the party who made the motion ordinarily must object at the time the evidence is actually offered to preserve [its] objection for appellate review.’” *Reed v. State*, 353 Md. 628, 637

(1999) (quoting *Prout v. State*, 311 Md. 348, 356 (1988)) (further citation omitted). In *Watson v. State*, 311 Md. 370, 372 n.1 (1988), however, the Court of Appeals did hold that an issue regarding the admissibility of testimony was preserved when it was raised in a pretrial motion *in limine* and, subsequently, the court reiterated its ruling on that motion immediately prior to cross-examination of the witness from whom the testimony in question was to be elicited. The Court explained:

[T]he trial judge ruled prior to trial on the motion *in limine* to admit Watson’s prior convictions. Thus, standing alone, Watson’s objection to the trial court’s pretrial ruling would be insufficient to preserve his objection for our review. However, the trial judge reiterated his ruling immediately prior to the State’s cross-examination of Watson. It was during this cross examination that the State elicited Watson’s prior convictions. As we see it, requiring Watson to make yet another objection only a short time after the court’s ruling to admit the evidence would be to exalt form over substance.

Id.

Addressing the Watson exception, in *Hickman v. State*, 76 Md. App. 111, 118 (1988), this Court pointed out that it was the “temporal closeness between the circuit court’s *reiteration of its ruling on the motion in limine and the State’s use of the [evidence at issue]* . . . that mandated the result in *Watson*.” (Emphasis added.) But, “[t]he *Watson* exception is a narrow one” and we are not persuaded that it applies in the instant case. *Washington v. State*, 191 Md. App. 48, 90 (2010) (citation omitted).

Here, the circuit court ruled on defense counsel’s motion *in limine* prior to the commencement of trial. This ruling did not occur “immediately” before the testimony in

question was to be elicited. Indeed, between the court’s ruling and the offering of the subject testimony, the court addressed the jury regarding trial procedure, the parties gave their opening statements, the jury was sworn, and Detective Strohman was qualified as an expert after testifying to his experience and training in the identification of narcotics. Furthermore, there was no reiteration of the court’s ruling before the direct examination of Detective Strohman. Accordingly, we do not believe the circumstances in this case were analogous to those in *Watson*, and thus we conclude that, in the absence of a relevant contemporaneous objection, Williams’s inadmissibility of evidence claim was waived.

But, even if Williams had properly preserved the claim he now makes on appeal, it would not alter the outcome of his appeal. Williams’s entire claim rests on the faulty premise that eyewitness testimony as to his involvement in a suspected sale of CDS was “other bad acts” evidence. It was not. The rule governing the admissibility of “other bad acts” evidence, Maryland Rule 5-404(b), provides in pertinent part:

Rule 5-404. Character evidence not admissible to prove conduct; exceptions; other crimes.

* * *

(b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

Williams was tried on the charge of CDS possession. Section 5-601(a)(1) of the Criminal Law Article of the Maryland Code (2012 Repl. Vol.), provides that “a person may not: (1) possess or administer to another a controlled dangerous substance, unless obtained directly or by prescription or order from an authorized provider acting in the course of professional practice[.]” For the purposes of the statute, “possess” is defined as “to exercise actual or constructive dominion or control over a thing by one or more persons.” Md. Code Ann. (2012 Repl. Vol.), § 5-101(u) of the Criminal Law Article.

Detective Strohman’s testimony was offered as substantive and relevant evidence of Williams’s possession of heroin, not as evidence of some “other crime[], wrong[], or act[]” subject to Rule 5-404(b). *See* Md. Rule 5-401 (“‘Relevant evidence’ means 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 5-402 (“Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible.”). It established that Williams handled and manipulated a stash of heroin. In so doing, it was relevant to the crime charged: possession of CDS.

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