UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1337

September Term, 2016

MARVIN JAHVON SMITH

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: May 16, 2017

The appellant, Marvin Jahvon Smith, was convicted in the Circuit Court for Harford County by a jury, presided over by Judge Yolanda L. Curtin, of second-degree murder and two related handgun offenses. On appeal, he raises the two contentions:

1. that Judge Curtin erroneously refused to ask a voir dire question of the prospective jurors about their possible reactions to the recent killing in Harford County of two sheriff's deputies; and

2. that Judge Curtin erroneously declined to receive in evidence certain items in the possession of the murder victim at the time of his death.

The appellant does not challenge the legal sufficiency of the evidence to support his convictions. It is not necessary to detail the evidence of the appellant's guilt because the evidence in this case has little, or nothing, to do with the merits of the two contentions raised by the appellant. It is enough to note that the evidence permitted a jury finding that on June 16, 2015 at approximately 10:30 p.m. in Edgewood, Maryland the appellant, a young man, in the presence of several other young persons, shot and killed another young man, Darius Preston, by shooting him several times in the head with a handgun. A brief argument of unknown substance may have preceded the shooting. The appellant fled the scene but was apprehended by the police a few minutes later not far from the scene of the shooting.

The Voir Dire

The trial of this case commenced in Bel Air on April 21, 2016. Approximately ten weeks earlier, on February 10, 2016, two Harford County deputy sheriffs had been shot and killed in Abingdon. The killings generated extensive publicity in the county, as well

as elsewhere in the State. The appellant requested that the following question be asked on voir dire:

> In the last several months, there has been heightened community awareness and support for law enforcement in the wake of the shooting of two Harford County Sheriff's Office deputies. Would any of the media attention, community events or social media coverage affect your ability to be fair and impartial in this case?

After vigorous argument from both the appellant and the State, Judge Curtin declined to ask the question on voir dire. She pointed out that the earlier fatal shooting of the deputy sheriffs had been by a homeless man with a troubled past. She explained that the instant case did not remotely involve any confrontation by the appellant with the police. No police officer was in any way involved in the actus reus of the shooting of one young man by another young man. Judge Curtin stated:

> Well, in this case, at least from what I heard in the suppression hearing and what was presented today, this is not a case involving any allegations of any injuries or a shooting concerning police officers or any misconduct by police officers. So I don't see, the way it's worded there, that it would in any way be applicable to filtering out possible biases here.

(Emphasis supplied).

In making her formal ruling, Judge Curtin elaborated on the fact that she included in her voir dire examination of the jurors a number of questions that sought out the existence of possible juror bias.

> I think that there are so many questions that can get to whether or not a juror has bias, and that includes the nature of the charges, that includes whether or not they're more or less likely to believe a police officer, more or less likely to believe prosecution witnesses over defense witnesses. And I always ask the question if there's any reason whatsoever that I have not inquired about that in any way would affect your service as a juror. That basically puts it out

> there to say if there's something else, let us know. I think that that's sufficient to uncover any possible biases and any concerns, simply because this case doesn't have anything to do whatsoever with the police and you're already getting the question as to whether or not anyone would be more likely to believe a police officer. If someone felt that sense of duty or loyalty to law enforcement as a result of what happened to the officers, certainly asking that question of would you be more or less likely to believe a police officer would bring out that bias . . . .

(Emphasis supplied).

Indeed, a number of the questions that were propounded to the prospective jurors did just that.

> Would any of you be more or less likely to believe a police officer over a civilian witness, merely because he or she is a police officer?
>
> Would any of you tend to view the testimony of witnesses called by the defense with more or less skepticism than witnesses called by the State merely because they were called by the defense?
>
> Would any prospective juror be more likely to believe a witness for the prosecution merely because he or she is a prosecution witness?
>
> Have any of you or any member of your immediate family or close personal friends ever been employed by, or associated with, any police department, prosecutor's office, correctional facility, parole and probation agency, or any other law enforcement agency?
>
> Have any of you or any member of your immediate family or very close personal friends ever been a member of any victims' rights organization or any organization primarily concerned with law enforcement issues? For example, MADD or a neighborhood watch program. Things of that nature.
>
> Is there any reason why, if accepted as a juror in this case, you would be unable to render a fair and impartial verdict based solely upon the evidence presented in the courtroom and in accordance with the Court's legal instructions?
>
> Is there any reason that I have not inquired about already that would make it difficult for you to serve as a juror in this case?

(Emphasis supplied).

Although a number of law enforcement officers testified with respect to the investigative procedures, at no point was the credibility of any of those officers an issue. The appellant is pursuing a phantom that simply does not exist. Because Judge Curtin's ruling was not "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons," *Bazzle v. State*, 426 Md. 541, 549 (2012), there was, we hold, no abuse of discretion in Judge Curtin's ruling.

The Murder Victim's Possessions

The police recovered from the body of the murder victim a bag of marijuana, approximately $300 in cash, and two cell phones. The appellant wanted to introduce these items into evidence. The State objected that the evidence was not relevant. Judge Curtin sustained the State's objection. Maryland Rule 5-401.

No motive was ever established for the murder in this case. As an abstract motive for murderers at large, the appellant now posits that the evidence in the victim's possession made it likely that he was engaged in illegal activity and was, therefore, a more likely candidate for being murdered. As a result, the argument runs, there is a greater likelihood that someone other than the appellant may have killed so eminent a candidate for being murdered.

As a purely speculative motive in the abstract, however, the appellant's argument may be a two-edged sword. It also might be argued that the appellant, sharing that abstract motive with the rest of the world, was more likely to have killed the victim than would

have been the case if the appellant had had no motive to do so. In any event, a possible motive in countless others does not establish the homicidal agency of countless others and it, therefore, fails to meet the test of relevance.

In a nutshell, the appellant's thesis, if turned in upon himself, would be that if he shared with the rest of the world such a possible motive to kill Darius Preston, it is then more likely that he did, in fact, kill him than would have been the case if he had had no such possible motive. We do not believe, however, that that would have been proper evidence for the State to have deployed in strengthening its case against the appellant for murder. We cannot believe that the appellant himself would have wished such a speculative motive to be ascribed to him. Indeed, he would have been outraged. Would not even-handed justice, then, hold that if improper for the State to use such an argument against the appellant, it would be equally improper for the appellant to use such an insinuation to besmirch the rest of the world? Due process for the goose is due process for the gander.

Judge Curtin ruled that the conceivable criminal character of the murder victim was irrelevant in establishing the criminal agency of whoever shot the victim in the head.

> I think it's a bit of a stretch in trying to establish these connections. While motive is not an element of the offense, there really is no evidence about why this happened. Even though the victim, Mr. Preston, may have had on him some items that, collectively seen together, could infer that he was possibly engaged in some type of illegal activity, it still does not provide the inference that someone other than Mr. Smith could have committed this crime and that therefore it's relevant for the jury to determine that. It's no different than some of the cases that have come out from the appellate courts about a victim who is involved in gang activity and it's known that he is a gang member and the defense has attempted to provide that evidence and say he's a gang member or he's part of the mob and therefore someone could have killed him and because he's engaged in that lifestyle we should be able to present that

> evidence to the jury so they can determine maybe it could have been someone else. The appellate courts have turned to 5-403 and the first step is determining whether or not it's relevant and would it tend, this evidence, to establish the likelihood of someone else having committed it.
>
> I find it's a stretch. The fact that he had those items on him, without more, without any other evidence tending to show something else was going on that could lead to that inference, the Court doesn't find it relevant. Now, if you have another piece of evidence that could tie it in, that's something to revisit. But just in and of itself, to put those items out there and argue well, he had these things on him and therefore it's quite possible someone else killed him, the Court doesn't find it relevant. Therefore, because I don't find that it's relevant, I'm not going to allow it.

(Emphasis supplied).

An evidentiary ruling on admissibility, particularly admissibility based on relevance, is one entrusted to the broad discretion of the trial judge. We see no abuse of discretion in Judge Curtin's ruling in this case.

JUDGMENTS AFFIRMED; COSTS TO BE PAID BY APPELLANT.