Circuit Court for Caroline County
Case No. 05-K-16-011300

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 81

September Term, 2017

MICHAEL WILLIAMS

v.

STATE OF MARYLAND

Meredith,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: May 21, 2018

The appellant, Michael Wayne Williams, was convicted in the Circuit Court for Caroline County by a jury, presided over by Judge Sidney S. Campen, of 1) the importation into Maryland of heroin, 2) the possession of heroin with the intent to distribute, and 3) the possession of heroin. On this appeal the appellant raises two contentions:

1. Judge Campen erroneously declined to ask potential jurors, on voir dire, whether they were likely to look upon the testimony of law enforcement officers as more credible than the testimony of other witnesses.

2. The State failed to produce legally sufficient evidence to support the appellant's conviction for importing heroin into Maryland.

Non-Preservation At Least Twice Compounded

Prior to trial, both the State and the appellant submitted proposed voir dire questions to Judge Campen. The two sets of questions were virtually identical with each other. Neither set of questions asked the court to pose the police-witness credibility question. During the voir dire examination, the court's questions were completely consistent with the questions submitted by both parties. At the conclusion of the general voir dire, Judge Campen asked counsel for both sides whether they had "any objections to the court's questions" or "any requests for additional voir dire." Appellant's counsel, as well as the State, answered that there were no objections and no requests for additional voir dire.

The voir dire examination had processed a large number of prospective jurors until it came up with 31 qualified jurors. The appellant's brief informs us that the court had individually voir-dired 145 members of the jury venire. That was enough to provide for a 12-person jury, after making allowance for maximum peremptory strikes on both sides and

for an alternate juror. It was at that point that the prosecutor, not defense counsel, first raised the police-witness-credibility issue:

> **[PROSECUTOR]:** Your Honor, I hesitate to make this any longer, but I think one question that we probably should have, and I kind of realized when we came up here is there is going to be two police officers testifying today. And generally one of the questions that they ask normally is would you give weight, more weight to a police officer [(sic)] testimony just because they are a police officer. And I don't remember anybody asking that. And just to foreclose any kind of problem with that, or saying that, you know somehow [(sic)] unfair to the Defendant and that there's some suggestion that a juror that would have believed anything a police officer said. I think it might be, it might make sense to ask everyone up to see if there's anybody who would.

(Emphasis supplied).

Defense counsel then indicated that he would join the State's request for such an inquiry, but when Judge Campen asked whether that question had been included in the original request, defense counsel thought that it had. Further inquiry, however, showed that defense counsel was completely confused as to what exactly the question was.

> **[DEFENSE COUNSEL]:** That's at number five, has any member of the jury panel been employed by a law enforcement agency, or former agency represents, provides services, persons charged . . . .
>
> **THE COURT:** I asked that question.
>
> **[PROSECUTOR]:** No he asked that question.
>
> **THE COURT:** I did ask that question.
>
> **[DEFENSE COUNSEL]:** Okay, I thought . . . I thought that covered that adequately. I thought it had been asked. What is it that you're . . . .

(Emphasis supplied).

It was the State, and the State alone, that then explained to Judge Campen that the police-credibility question had not been asked. Defense counsel was completely silent.

> **[PROSECUTOR]:** I was saying that generally when we have police officers testify, there's a question that says something to the effect of would you give a police officer's testimony more weight simply because they are a police officer. And that wasn't asked.

Judge Campen then explained carefully and fully why he was not going to reopen the already prolonged voir dire phase of the case.

> **THE COURT:** Well, gentleman I was, I tell you I was surprised because you both filed the very same proposed voir dire, the Defense's voir dire was the same as the State's voir dire. And I asked the very same question that you asked. I'm not going to now prolong this process. We were an hour late getting started this morning. And I've asked the questions that you asked me to ask.
>
> **[PROSECUTOR]:** That's fine. I'm not necessarily . . . .
>
> **THE COURT:** That is a standard question I know that but now is not the time to ask me to do it after we've already voir dired the entire jury panel and we already asked, we have our thirty-one jurors and now to go back and say well wait a minute, let's re voir dire them. I'm going to deny your request.

(Emphasis supplied).

After the judge explained his very solid reasons for not reopening the voir dire, neither the appellant nor the State made any shadow of an objection.

Whether categorized as non-preservation or implied waiver or both, see Brice v. State, 225 Md. App. 666, 679, 126 A.3d 264 (2015), cert. denied, 447 Md. 298, 135 A.3d 416 (2016), we hold that this issue is not properly before us for consideration. If, arguendo, it were, we would not hesitate to hold that, on the merits of reopening voir dire, Judge Campen did not abuse his discretion in declining to reopen the already lengthy voir dire.

Even if, purely arguendo, non-preservation were not fatal to his argument, the appellant has utterly failed to show any prejudice whatsoever. For a variety of reasons, we see no error.[1]

Importing Drugs Into The State

The appellant was convicted of three counts. One charged the importation of heroin into the State of Maryland. A second charged the possession of heroin with intent to distribute. The third charged the simple possession of heroin. The appellant challenges the sufficiency of the evidence to support his conviction for importation.[2] He does not challenge the other two convictions.

[1] Even if, arguendo, some opinionated juror had hypothetically slipped through the voir dire net in the present case, it is fascinating to speculate as to what turns that juror's credibility biases might have taken. Neither the appellant nor any defense witnesses testified. Four police witnesses did, one from Delaware and three from Maryland. Of the Marylanders, two were from the State Police and one was the Chief of the Federalsburg Police Department. Of the State Police, one was a sergeant and the other was a chemist with the Forensic Science Division.

What subcurrents of credibility prioritizing might have ensued in such a case? Maryland versus Delaware? The State Police versus the local police department? A forensic chemist versus an officer in the field? Particularly when they all agreed. The assessment of credibility loses some significance when everyone tells the same story. And what about relative credibility in a one-witness case? This case was a "pat hand," devoid of any factual controversy. The appellant simply cannot conjure up any conceivable prejudice.

[2] As a practical matter, even if the appellant prevails on this contention, his victory will be little more than a moral victory. At sentencing, the sentence for simple possession merged into that for possession with intent to distribute. On that charge, the appellant was sentenced to 25 years of imprisonment. On the importation charge, the appellant was also sentenced to 25 years of imprisonment. The two sentences were to run concurrently.

In this case the modality of importation was highly unusual. On June 10, 2016, Officer Pasky of the Blades, Delaware Police Department was on routine duty at a parking lot, checking on tags at random. When he ran the tags on a gray, older model Jeep Grand Cherokee—the car driven by the appellant—he learned that the owner of the car had a suspended driver's license and an active warrant for his arrest. Accordingly, Officer Pasky activated the lights and siren on his car and attempted to stop the Jeep Grand Cherokee.

The Grand Cherokee sped away and Officer Pasky followed. What ensued was a high-speed chase that "moved all over the roads without regard for traffic rules," at times "going the wrong way down a one-way street" and at times reaching speeds in excess of a hundred miles an hour.

An interesting aspect of the high-speed chase was that as it proceeded, small objects were being thrown from the window of the fleeing car. Officer Pasky described them as small bags that he suspected, even during the chase, were full of a substance. At some point some miles into the chase, both cars crossed the line from Delaware into Maryland. The chase continued into the town of Federalsburg, several miles inside the Maryland line. At a certain point in Federalsburg, the Grand Cherokee "flipped over" and onto train tracks, where it landed upside down. The appellant was its driver and only occupant. At the crash site and just under the driver's door the police recovered a gray bag, which in turn contained three smaller bags containing a substance that proved to be heroin.

The appellant contends that the State never proved that he was aware of the fact, during the high-speed chase, that he was crossing the state line into Maryland. The

appellant attributes to the law a geographic scienter that the criminal statute itself does not contain. Maryland Code, Criminal Law Article, Sect. 5–614(a)(1) provides:

> (a)(1) Unless authorized by law to possess the substance, a person may not bring into the State: [it then lists 12 various controlled substances in varying amounts.]

(Emphasis supplied).

The prohibited behavior is to "bring into the State" the prohibited substance. The appellant unquestionably did just that. The appellant consciously and intentionally drove his Grand Cherokee from the parking lot in Blades, Delaware to the place where it flipped over in Federalsburg, Maryland. Nothing in Love v. Curry, 104 Md. App. 684, 695–96, 657 A.2d 796 (1995), or White v. State, 363 Md. 150, 166–67, 767 A.2d 855 (2001), remotely suggests that there is some special scienter requirement that the defendant must be aware of the fact that he is physically entering the state. We know of no such requirement and we will not attribute to the statute a mental element that it fails to mention.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.