Circuit Court for Baltimore City
Case No. 118150006

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 434

September Term, 2019

RONALD UTLEY

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 8, 2020

Convicted by a jury in the Circuit Court for Baltimore City of unlawful possession of a regulated firearm, wearing, carrying, and transporting a handgun, and unlawful possession of ammunition, Ronald Utley, appellant, presents for our review two questions:

1. Did the court err in admitting testimony about the neighborhood in which Mr. Utley was arrested?

2. Did the court err in accepting Mr. Utley's waiver of his right to testify?

For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State presented evidence that on May 9, 2018, Baltimore City Police Detectives Brandon Sanchez and Ryan McLaughlin drove to the intersection of Dukeland and Edmondson to "look[] for high narcotic sales and . . . just to watch and see what [was] going on in the area." From their vehicle, Detective Sanchez observed a man, whom the detective identified in court as Mr. Utley, walk to a vacant store, "dip[] down, reach[] all the way down with his right arm . . . into a hole," "retrieve[] a handgun[,] and put it under his shirt." Mr. Utley then "ran across the street holding the gun with his arm" and "placed the gun on a vehicle tire." The detectives called their "backup," after which their "arrest team responded." As Detective Tyler Sentz and a second officer arrested Mr. Utley, Officer Carlos Sanchez recovered the handgun, which the officer discovered had "one in the chamber" and other ammunition "in the magazine." The parties stipulated that Mr. Utley "is prohibited from possession of a regulated firearm because of a previous conviction that prohibits his possession of a regulated firearm."

Mr. Utley first contends that the "court erred in admitting testimony about the neighborhood where [he] was arrested." (Capitalization and boldface omitted.) At trial,

the prosecutor asked Detective Sanchez how he would "characterize [the] intersection" where Mr. Utley was arrested "as far as crime goes." Over objection, the detective testified:

> This area actually is notorious for a very high-crime area as far as homicides, shootings, robberies, stolen autos, CDS sales. There's been police-involved shootings here; police have been shot at. There's a lot of gang activity in this area that's been noted. A lot of gangs have been – gang members have been identified that are in the area. It's very high on the Western District and the southwest border patrol area, other (unintelligible []) they have.

Mr. Utley contends that the "testimony should not have been admitted," because it

> had little, if any, probative value vis-à-vis [Mr. Utley's] individual guilt. [Further], it was highly prejudicial evidence that risked causing the jury to find [Mr. Utley] guilty by association, and . . . implied that [Mr. Utley] had a criminal character. In a case where the jury struggled mightily to reach a verdict,[1] the State cannot now show, beyond a reasonable doubt, that the erroneous admission of the testimony had no effect.

We first conclude that Mr. Utley's contention is not preserved for our review. The Court of Appeals has stated that a "party opposing the admission of evidence [must] object each time the evidence is offered by its proponent," and if the party fails to do so, the party "waive[s] the objection for appeal." *Klauenberg v. State*, 355 Md. 528, 545 (1999) (citations omitted). Here, Detective Sanchez testified without objection that at the time of

[1]In support of his claim that the "jury struggled mightily to reach a verdict," Mr. Utley notes that

> although the jury began deliberating shortly after 3:00 p.m. on the second day of trial, they did not reach a verdict until shortly after 2:00 p.m on the third day. While deliberating, the jury sent the court numerous notes asking to see evidence, including the gun, body camera footage, and a police report. Finally, shortly before reaching a unanimous verdict, they sent a note indicating that they could not reach a verdict on one of the counts.

(Transcript references omitted.)

Mr. Utley's arrest, the detective was in a "specialized unit" of "officers more knowledgeable with investigating skills to concentrate in high-crime areas," and that the area where Mr. Utley was arrested was "a high-volume area" for "narcotic sales." Detective Sanchez further testified without objection that "at that time in the Western District, [there was] a number of homicides throughout the district within the [previous] 10 or 15 days." During cross-examination, the detective confirmed defense counsel's statements that the "particular corner" where Mr. Utley was arrested "is extremely violent," that "there's a ton of crime there," and that it is "a popular drug corner" where one "would . . . see transactions occurring all day long." Later, Detective McLaughlin testified without objection that at the time of Mr. Utley's arrest, the detective was "assigned certain areas just in the Western District alone primarily resulting from violence or high drug sales." Finally, Detective Sentz testified without objection that at the time of trial, he was assigned to the "Western District Action Team," which is "responsible for proactive enforcement in high-crime areas, crimes of violence, a lot of CDS, [and] a lot of handgun violations." By failing to object to this evidence that the area where Mr. Utley was arrested is a very high-crime area, and that the crimes committed in that area included homicides and sales of narcotics, Mr. Utley waived his objection to the challenged testimony for appeal.

Mr. Utley next contends that the court erred in "accepting [his] waiver of his right to testify." (Capitalization and boldface omitted.) Following the close of the State's case, defense counsel advised Mr. Utley, in pertinent part:

> If . . . you choose to testify, you'll take the stand like any other witness. . . . . The State could ask you questions . . . about any prior convictions that you've had since you were 18 and you were represented by counsel, . . . and

> those prior convictions would be crimes of moral turpitude. That would be crimes that go to your honesty. I do believe that there are a couple of crimes that would fall into that category and either myself or the State could ask you about those prior convictions.

Mr. Utley subsequently indicated that he wished to remain silent, and that he was 37 years old and had obtained his "GED." The court subsequently stated that it was "satisfied that [Mr. Utley was] freely, voluntarily, and intelligently exercising his right to remain silent."

Mr. Utley contends that although he "had several convictions for impeachable crimes . . . after he turned 18," all but one was "more than 15 years old at the time of . . . trial," and hence, defense counsel's "advisement was incorrect." Mr. Utley further contends that because "he may well have elected not to testify based on [the] incorrect advisement," the "court erred by accepting his waiver of his right to testify without first correcting [the] erroneous advisement."

We disagree. In *Savoy v. State*, 218 Md. App. 130 (2014), we stated that when "trial counsel's advice about impeachment with [a] conviction [is] facially incorrect," an "appellant must nonetheless establish that the incorrect advice influenced his election not to testify." *Id.* at 154-55. Here, like in *Savoy*, "[t]here is no indication . . . that [Mr. Utley] relied detrimentally on his trial counsel's advice." *Id.* at 156. Mr. Utley "does not claim that he would have testified but for the erroneous advice given by his counsel," and his assertion that he may have elected to testify but for the advice "is mere speculation." *Id.* Moreover, Mr. Utley "has never claimed that he had decided to testify at his trial or that he changed his mind after his lawyer told him about the impeachment risk." *Id.* There is no

evidence that defense counsel's incorrect advice influenced Mr. Utley's election not to testify, and hence, the court did not err in accepting his waiver of his right to testify.

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