

Circuit Court for Washington County
Case No. 21-K-16-052309

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1279

September Term, 2017

LAMAR CASON WILMORE

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 28, 2019

*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.

Lamar Cason Wilmore was tried by a jury in the Circuit Court for Washington County, and convicted of robbery with a deadly weapon, robbery, second-degree assault, and theft. He was acquitted of several included counts.¹

On appeal, Wilmore argues: (1) that the trial court erred in admitting hearsay evidence and (2) that the evidence was not sufficient to convict.

Finding no merit in either claim, we shall affirm.

BACKGROUND

The charges against Wilmore arose out of his alleged participation in a robbery that occurred during an illicit drug transaction in Hagerstown, Washington County. To facilitate the transaction, the seller, Michael Moroz, got into a vehicle driven by the intended purchaser, Amanda McDaniels. Unknown to Moroz, a third person was in the rear passenger seat. According to Moroz, that person, later identified as Wilmore, attacked him from the back seat by choking him, placed a gun at his head, and robbed him. As necessary to our subsequent discussion of sufficiency of the evidence, we shall provide greater detail of the events.

DISCUSSION

Hearsay

Wilmore's hearsay challenge arises from the testimony of Detective Nicholas Varner:

¹ The court imposed a sentence of 20 years' incarceration, suspended five years, and ordered three years' probation for the robbery with a deadly weapon conviction. The robbery, assault, and theft convictions merged into the robbery with a dangerous weapon conviction for the purposes of sentencing.

[PROSECUTOR]: ... what did you do once you actually located [Amanda McDaniel]?

[WITNESS]: ... we interviewed ... her in reference to the incident that happened.

* * *

[PROSECUTOR]: ... ultimately, as a result of your interview with ... Miss McDaniel, were you able to develop a suspect for the second individual that [sic] was in the vehicle?

[WITNESS]: That's correct.

[PROSECUTOR]: And what ... suspect were you ... what person were you able to identify as a suspect?

[DEFENSE COUNSEL]: Your Honor, I'm going to object.

THE COURT: Overruled. The question is based on your interview with Miss McDaniel, what person was also developed as a suspect. Overruled. You may answer.

[WITNESS]: ... Lamar Wilmore was developed as a suspect.

Relying on *Parker v. State*, 408 Md. 428 (2009), Wilmore argues that the exchange constituted inadmissible hearsay and entitles him to a reversal. The State responds that Varner's testimony was not admitted to establish that Wilmore was the person in the back seat of the vehicle; rather, the State argues that it was admitted for the non-hearsay purpose of showing how Varner identified Wilmore as a suspect. *Parker*, the State argues, is inapposite.

Parker prevailed before the Court of Appeals because the information provided to police by a confidential informant contained significant detail that led the police only to Parker. 408 Md. at 443-44. In *Parker*, the Court noted that an extrajudicial statement

offered to show that investigators acted on the statement is generally admissible. *Id.* at 438-39. But, the Court warned, such a statement may be excluded if the information “becomes more specific by repeating definite complaints of a particular crime by the accused[.]” *Id.* at 440 (emphasis in original) (internal quotations and citation omitted). Here, in contrast, no such detail was obtained from Varner’s questioning of McDaniel. In that regard, the State directs us to *Graves v. State*, 334 Md. 30 (1994), where the Court noted that:

It is well established that a relevant extrajudicial statement is admissible as nonhearsay when it is offered for the purpose of showing that a person relied on and acted upon the statement and is not introduced for the purpose of showing that the facts asserted in the statement are true.

334 Md. at 38 (citing *Jones v. State*, 310 Md. 569, 588 (1987)).

We cannot conclude that the very limited information passed from McDaniel to Varner rises to the level of the considerably more detailed information provided by the confidential informant in *Parker*. Varner’s response to the question did not become more specific by relating definite information about a particular crime. We find neither error nor abuse of discretion in the court’s ruling on admissibility.

The State further contends that, even if the court erred, the error was harmless beyond a reasonable doubt. Assuming error, *arguendo*, we agree.

An error is harmless if we are satisfied that there is no possibility that the evidence complained of may have contributed to the rendition of the guilty verdict. *See Dorsey v. State*, 276 Md. 638, 659 (1976). The State relies on *Peisner v. State*, 236 Md. 137 (1964), wherein the Court noted that any error in the admission of evidence was rendered harmless

by the admission of competent evidence to the same effect. 236 Md. at 144-45 (citing *Connor v. State*, 225 Md. 543, 555 (1961)). McDaniel, prior to Varner’s testimony, testified without objection that Wilmore was her accomplice in the robbery and, further, that she told the police as much during her interview. “We shall not find reversible error when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury without objection” *Berry v. State*, 155 Md. App. 144, 170 (2004) (citing *Grandison v. State*, 341 Md. 175, 218-19 (1995)).

Sufficiency of the Evidence

Wilmore next challenges the sufficiency of the evidence to sustain the guilty verdicts, based only on his assessment of the credibility of the State’s witnesses – McDaniel and Moroz. He does not dispute the conduct of the parties involved in the events that resulted in the charges against him. Rather, he argues that “[k]ey state witnesses were so lacking in credibility that no rational trier of fact could have found Appellant guilty.” Collectively, he considers the State’s witnesses to be liars, drug addicts, and thieves. They may well be.

In our review of a challenge to the sufficiency of the evidence, we are to determine “whether, after viewing [both direct and circumstantial evidence, and all reasonable inferences drawn therefrom][,] in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Handy v. State*, 201 Md. App. 521, 558 (2011) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We emphasize that the assessment of the

credibility of the witnesses is left to the discretion of the triers of fact. *Id.* at 559 (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). The credibility of a witness and the weight to be accorded that witness's testimony are solely within the province of the jury. *Id.*

The jury heard the testimony of McDaniel and Moroz and had the opportunity to observe their demeanor as they testified, and to compare their testimony in the context of all the evidence. In their verdicts, the jurors made the obvious determination that their testimony, when supplemented by that of the investigating officers, was sufficient to meet the standard set out in the court's instruction that, to convict, they were to be satisfied beyond a reasonable doubt of Wilmore's guilt.

As always, weighing the credibility of witnesses and resolving conflicts in the evidence are tasks left to the fact-finders. *See Johnson v. State*, 156 Md. App. 694, 714 (2004).

**JUDGMENTS OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY
AFFIRMED; COSTS ASSESSED TO
APPELLANT.**