Circuit Court for Baltimore County
Case No. 03-K-18-004840

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1387

September Term, 2019

CHRISTEN JOEL WILLIAMS

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 12, 2020

Following a two-day trial, a jury in the Circuit Court for Baltimore County convicted appellant Christen Williams of possession of cocaine and possession of cocaine with the intent to distribute. The court sentenced appellant to a total term of fifteen years' imprisonment, with all but five years suspended. In this appeal, appellant presents two questions for our review, which we rephrase as follows:

1. Did the trial court err in refusing to ask during *voir dire* whether potential jurors understood that the State was required to prove appellant guilty beyond a reasonable doubt?

2. Did the trial court abuse its discretion in allowing the State to elicit evidence that appellant was unemployed?

Because we hold that the trial court erred in allowing the State to elicit evidence that appellant was unemployed at the time of the crime, and that such error was not harmless, we need not decide whether the court erred in declining to ask a question during *voir dire*. Accordingly, we vacate appellant's convictions and remand for a new trial.

BACKGROUND

In the afternoon hours of October 15, 2018, Baltimore County Police Officer Beckford[1] was driving his patrol vehicle when he observed two individuals, one of whom was later identified as appellant, conducting what appeared to be a "hand to hand" drug transaction. Upon seeing Officer Beckford, appellant and the other individual, who was never identified, entered a nearby vehicle and "slouched their seats back" so that Officer Beckford could not "see what they were doing." Officer Beckford then activated his

[1] Officer Beckford's first name was not mentioned in the trial transcript.

vehicle's emergency lights and drove to where the vehicle was parked. As Officer Beckford exited his vehicle, appellant and the unidentified individual exited the vehicle and ran in opposite directions. Officer Beckford chased after appellant on foot and observed appellant move his left hand toward his crotch area, seemingly causing "a bag" to fall to the ground. Officer Beckford continued his pursuit and ultimately caught appellant. After placing appellant in custody, appellant stated that "it was only weed." Officer Beckford then retrieved the bag that appellant had discarded. The contents of the bag were later tested and determined to be 20.2 grams of cocaine.

Officer Beckford arrested appellant and the State charged him with possession of cocaine and possession of cocaine with the intent to distribute. Relevant to this appeal, at appellant's jury trial, the following colloquy ensued during Officer Beckford's direct examination:

STATE:	Okay. As part of [the booking] process, did the Defendant indicate whether he was employed or where he was employed?
[WITNESS]:	He, he indicated that he was not employed.
[DEFENSE]:	Objection, Your Honor.
THE COURT:	Basis?
[DEFENSE]:	Relevance.
THE COURT:	Overruled.
STATE:	So, the Defendant indicated to you that he was . . . not employed as part of the booking process?
[WITNESS]:	Yes.

The jury convicted appellant of possession of cocaine and possession of cocaine with intent to distribute. We shall provide additional facts as necessary.

DISCUSSION

In this case we are tasked with determining whether appellant's unemployment status was admissible as relevant evidence. Our Court has recently reiterated that "Relevant evidence is that which 'tend[s] 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.'" *Molina v. State*, 244 Md. App. 67, 127 (2019) (quoting Md. Rule 5-401). Generally, relevant evidence is admissible, but irrelevant evidence is inadmissible. Md. Rule 5-402. "The 'threshold determination of whether evidence is relevant is a legal conclusion' that we review without deference." *Molina*, 244 Md. App. at 127 (quoting *Fuentes v. State*, 454 Md. 296, 325 n.13 (2017)).

In his brief, appellant argues that evidence of his employment was irrelevant and therefore inadmissible. We agree. As we shall explain, Maryland appellate courts have consistently held that evidence of a defendant's employment or financial status in a criminal trial is only admissible under "special circumstances." Because no "special circumstances" were present here, the trial court erred in admitting evidence of appellant's unemployment.

In *Vitek v. State*, 295 Md. 35, 36 (1982), the Court of Appeals addressed "whether it was reversible error for the trial judge to allow the prosecutor to question Vitek regarding his financial status." There, on the evening of December 13, 1980, a man stole a woman's purse. *Id*. at 37. The woman made pre-trial and in-court identifications of Vitek as the

culprit. *Id*. The case proceeded to trial, where Vitek testified in his own defense. *Id*. During cross-examination, Vitek indicated that he had been released from jail the day prior to the robbery. *Id*. at 37-38. The following colloquy then occurred:

> Q. Mr. Vitek, you indicated that you got out of jail on December 12, 1980, is that correct?
>
> A. Yes, I did.
>
> Q. And when you got out of jail, is it correct that you didn't have a job? Is that also true?
>
> A. That is also correct.
>
> Q. So, therefore, Mr. Vitek, you did not have any money on that date?

Id. Vitek's trial counsel objected, arguing, among other things, that Vitek's financial status was irrelevant. *Id*. at 38. The trial court overruled the objection, and the State continued its cross-examination, reinforcing the notion that Vitek did not have any money upon his release from jail. *Id*.

On appeal to the Court of Appeals, Vitek argued that the trial court erred in allowing the State's line of questioning because there was "[a]bsolutely no direct link . . . between Appellant's alleged indigency and the robbery." *Id*. at 39 (first alteration in original). The Court agreed with Vitek "that evidence of his financial status was irrelevant under the facts of [that] case and that its prejudicial effect far outweighed any probative value." *Id*. at 40. In reaching its conclusion, the Court first noted that,

> The real test of admissibility of evidence in a criminal case is 'the connection of the fact proved with the offense charged, as evidence which has a natural tendency to establish the fact at issue.' [O]ur predecessors stated it to be 'an elementary rule that evidence, to be admissible, must be relevant to the issues and must tend either to establish or disprove them.' Evidence which is thus not probative of the proposition at which it is directed is deemed 'irrelevant.'

Id. at 40 (external quotation marks omitted) (quoting *Dorsey v. State*, 276 Md. 638, 643 (1976)).

Turning to the admissibility of Vitek's unemployment, the Court stated that "the fact that [Vitek] was unemployed and recently had been released from jail was irrelevant to the main issue of guilt or innocence and could not be used to infer motive." *Id*. The Court recognized that evidence of an accused's financial situation could be admissible, but cautioned that "in order for such evidence to be admissible, there must be something more than a 'general suspicion' that because a person is poor, he is going to commit a crime." *Id*. at 41. Rather, the Court held "that while normally it is not allowable to show impecuniousness of an accused, such evidence would be admissible under special circumstances." *Id*. (citing *Gross v. State*, 235 Md. 429 (1964)).

The Court used *Gross* as an example of the "special circumstances" that render a defendant's financial status admissible. *Id*. at 41-42. There, "[t]he trial court allowed testimony that Gross had indicated to her employer that she was looking for 'live wires,' i.e., 'men with money' and that she 'would take them to [her] hotel and let them get a room, and then [she] would later visit them.'" *Id*. at 42 (citing *Gross*, 235 Md. at 444). In affirming the trial court's admission of this evidence, the Court of Appeals stated that, "If believed by the triers of fact, [this evidence] tended to show that [Gross] wanted money or

articles of value, a possible motive for killing the doctor." *Id*. (quoting *Gross*, 235 Md. at 444). The Court further noted that "[t]he conversation took place shortly before the killing," and the evidence comported with the State's theory that Gross was "money conscious" and "might resort to robbery to acquire things of value." *Id*. at 42-43 (quoting *Gross*, 324 Md. at 444-45). Unlike *Gross*, however, in *Vitek* "there were no special circumstances which would justify admitting evidence of [Vitek's] financial status. The fact that Vitek was unemployed and recently had been released from jail [was] not evidence of a 'course of conduct' nor evidence of a 'natural tendency' to establish a motive for robbery." *Id*. at 43.

In rejecting the State's argument that other jurisdictions generally permitted evidence of a defendant's financial status to show motive for robbery, the Court stated that a defendant's financial status would generally be admissible only where "there was evidence of a 'desperate' need for money other than the mere fact of unemployment[.]" *Id*. The *Vitek* Court went on to adopt the reasoning in *United States v. Mullings*, where the Second Circuit stated:

> Although a *lack* of money is admissible to show a possible motive for some crimes, in this case the chain of inferences is too speculative. There was no evidence how often Mullings took narcotics, or what the maintenance of such a habit would cost him, or that he was unable to obtain narcotics because of a shortage of money. In effect the evidence only shows that he *might* have lacked money and therefore might have had a motive to commit the crime—from which the judge inferred that he did so. We think this is too remote; the need for money being speculative the motivation can be no better.

Id. at 45-56 (internal citation and quotation marks omitted) (quoting *United States v. Mullings*, 364 F.2d 173, 175-76 (2d. Cir. 1966)). The *Vitek* Court held that, like in

Mullings, Vitek's unemployment and recent release from jail were "too speculative" and "too remote" to constitute relevant evidence. *Id*. at 46. Accordingly, the Court vacated Vitek's convictions and remanded for a new trial. *Id.*

This Court had occasion to further explore *Vitek*'s "special circumstances" requirement in *Knoedler v. State*, 69 Md. App. 764 (1987). There, Knoedler set fire to his apartment, and the State charged him with four counts of arson and a single count of willfully setting a fire with intent to commit insurance fraud. *Id*. at 766. The State "nol prossed" three of the arson counts, and following a bench trial, the trial court convicted Knoedler on the remaining arson count, but acquitted him of the insurance fraud count. *Id*. Knoedler appealed, arguing, among other things, that the trial court erred in admitting evidence of his financial circumstances. *Id*. Specifically, Knoedler disputed two separate inquiries the State made during the trial into his financial circumstances. *Id*. at 769.

The first evidence of financial circumstances concerned testimony from the "resident manager of the apartment complex where [Knoedler] had lived and where the fire occurred." *Id*. The resident manager was permitted to testify, over objection, that Knoedler had, at times, been late with his rental payments. *Id*. The second piece of evidence concerning Knoedler's financial status came during the State's cross-examination of Knoedler, where, without objection, Knoedler "admitted that he had owned a business known as Dundalk Supply and that it had gone 'out of business' in 1979 or 1980. The objection came when the prosecutor asked why it went out of business, the answer being '[i]t was not making money.'" *Id*.

In discussing whether these two pieces of evidence concerning Knoedler's financial circumstances were relevant, we first noted that the *Vitek* Court recognized "that as a general rule it is inappropriate to use the defendant's poverty to establish a criminal motive[.]" *Id*. at 770 (citing *Vitek*, 295 Md. at 41). Nevertheless, we observed that the Court left open the possibility that "while normally it is not allowable to show impecuniousness of an accused, such evidence would be admissible under special circumstances." *Id*. (quoting *Vitek*, 295 Md. at 41). We then undertook to determine the scope of such "special circumstances." *Id*.

We noted that "using a defendant's lack of money to show motive 'would be to put a poor person under so much unfair suspicion and at such a relative disadvantage that for reasons of fairness this argument has seldom been countenanced *as evidence of the graver crimes, particularly those of violence*.'" *Id*. at 771 (quoting 2 John Henry Wigmore, *Wigmore on Evidence* § 392(2)(a) (Chadbourn Rev. 1979)). Nevertheless, we observed that

> in cases of merely peculative crime (such as larceny or embezzlement) and in civil cases where the issue is whether the defendant *borrowed money* or not, the fact that he was in need of it at the time is decidedly relevant to show a probable desire to obtain it and therefore a probable borrowing or purloining; and there is here not the same objection from the standpoint of possible unfair prejudice.

Id. (quotation marks omitted) (quoting Wigmore, *supra*, § 392(2)(a)).

In contrasting Knoedler's case from *Vitek*, we cited numerous out-of-state cases and noted that,

> Whether or not a distinction can be drawn between "peculative" or "non-peculative" crimes, in general, the law seems clear and uniform that, where

> the charge is arson, and especially where it is arson with intent to defraud an insurance company, evidence of the defendant's impecunious condition or need for money is admissible to show motive.

Id. at 771-72. We explained that this exception made sense because it would be "nearly impossible" for the State to otherwise prove motive "where the defendant's own property is damaged or destroyed[.]" *Id*. at 772. Because Knoedler had been charged with arson and insurance fraud, we held that this case met the criteria for "special circumstances," and concluded that the evidence of Knoedler's financial circumstances was relevant to his motive. *Id*.

This Court again revisited the admissibility of a defendant's financial status in *Morrison v. State*, 98 Md. App. 444 (1993). There, Morrison was convicted of murder, conspiracy to commit murder, kidnapping, and robbery. *Id*. at 446-47. Morrison, a nursing assistant, had worked for the victim and her husband at their home. *Id*. at 448. Believing that the victim had underpaid him, Morrison "stole one of [the victim's] blank checks. He wrote himself a check for $2,000.00, forged [the victim's signature] and deposited it in his account." *Id*. When the forgery was discovered, Morrison learned that he would face criminal charges if he did not repay the $2,000.00. *Id*.

Morrison then attempted to convince the victim to "drop the charges" against him, and concocted a misguided plan to kidnap the victim and, according to Morrision, take her "out to the country somewhere and just put her there, and just leave her there and by the time she get back to the city, [Morrison] would have had gone or would have taken care of the $2,000 or hopefully she would have wandered off and got lost somewhere[.]" *Id*. During the execution of this plan, the victim "ran into [a] knife." *Id*. at 449.

On appeal to this Court, Morrison argued, among other things, that pursuant to *Vitek*, *supra*, the trial court erred in admitting evidence of his financial need. *Id*. at 447. Specifically, Morrison argued that the State should not have been allowed to elicit testimony from his girlfriend's sister that he was having money problems, and that he needed money. *Id*. at 449-50. We readily distinguished *Vitek*, noting that in Morrison's case, special circumstances clearly existed that demonstrated "a nexus between the accused's financial status and the motive for a particular crime." *Id*. at 450. Namely, "the State presented evidence tending to show that the appellant committed the crimes at issue because he was unable to repay the $2,000.00 he had stolen and was unable to convince the victim to drop the charges."[2] *Id*. Because the State's theory of the case was that Morrison murdered the victim when he was unable to repay the $2,000 he had stolen, evidence of Morrison's financial circumstances was relevant to his motive to murder the victim. *Id*.

Finally, in *Molina*, 244 Md. App. 67 (2019), this Court recently revisited whether special circumstances existed to render evidence of a defendant's financial circumstances relevant. There, a grand jury "indicted the Molinas on several charges relating to their financial gains from [the victim], including theft scheme, financial exploitation of a vulnerable adult, and financial exploitation of a person over 68 years old." *Id*. at 83. Apparently, after the victim's wife passed away and he became estranged from his only living son, Ms. Molina gained control of the victim's medical care and finances. *Id*. From

[2] We also noted that this evidence was cumulative to other evidence of Morrison's motive. *Morrison*, 98 Md. App. at 450.

2012 to 2016, the Molinas withdrew hundreds of thousands of dollars from the victim's bank accounts to pay for Mr. Molina's gambling habit, a new vehicle, a new house, and their daughter's tuition. *Id*. At trial, the court admitted evidence of the Molinas' joint tax returns as well as evidence of their gambling activities. *Id*. at 124.

On appeal following their convictions, the Molinas argued, among other things, that the circuit court erred in admitting evidence of their gambling activities and their financial circumstances. *Id*. at 84. In rejecting the Molinas' arguments, we recounted several cases, including *Vitek, Knoedler* and *Morrison*. *Id*. at 128-133. Turning to the facts in the Molinas' case, we noted that, "In 2013, the Molinas declared $34,643 of gross income on a jointly filed Maryland tax return. [Mr. Molina] lost $27,019.56 gambling that year. Put differently, [Mr. Molina's] losses accounted to 78% of his family's declared gross income in 2013." *Id*. at 133 (footnote omitted). We determined that this evidence was relevant for two reasons. First, the evidence was relevant to show motive for the theft because Mr. Molina was gambling beyond his financial means. *Id*. Second, the evidence was relevant to show that Mr. Molina funded his gambling activities with the victim's money, because "the Molinas' combined income could not support" those activities. *Id.*

We agreed with the trial court that special circumstances existed to show the nexus between the Molinas' financial status and their motive to commit the crimes charged. *Id.* at 134. We explained that the case law identified

> a distinction of legal significance between offering evidence of a defendant's impecuniosity to show motive for theft, and offering evidence of a defendant's impecuniosity combined with other "special circumstances"—such as evidence that the defendant acquired money contemporaneously with

> the theft—to show that the money the defendant acquired was connected to the theft.

Id. at 132 (citing *Vitek*, 295 Md. at 40-41). We concluded, "The State's theory was not that poverty motivated [the Molinas]—but that gambling and greed did." *Id*. at 134.

In our view, the instant case falls within the general rule of inadmissibility articulated in *Vitek*. *Vitek*'s holding that Vitek's unemployment and recent release from jail "was irrelevant to the main issue of guilt or innocence and could not be used to infer motive" is equally applicable here—the isolated fact that appellant was unemployed on the date of his arrest is "irrelevant to the main issue of guilt or innocence and could not be used to infer an [intent to distribute cocaine]." 295 Md. at 40. We note the dearth of evidence on this subject. Although the record shows that appellant was unemployed on the date of his arrest, we do not know how long he had been unemployed, whether he was receiving unemployment compensation benefits, or even whether he had a specific or unusual need for money. In that regard, we note that, in its review of applicable out-of-state case law, the *Vitek* Court concluded that "the only evidence from which motive could be inferred was that Vitek was unemployed and had recently been released from jail. There was nothing to indicate a 'desperate' need for money." *Id*. at 44. The case at bar is likewise devoid of any evidence that appellant intended to sell drugs because of a "desperate" need for money.

We readily distinguish appellant's case from *Knoedler, Morrison,* and *Molina*. All three of those cases involved a strong nexus between the defendant's struggling financial status and the defendant's motivation to commit the crime. *See Knoedler*, 69 Md. App. at

769-772, (noting that the State established a connection between Knoedler's struggling financial status—his untimely rental payments and failed business—and his motivation to commit arson and insurance fraud); *Morrison*, 98 Md. App. at 450 (observing that Morrison murdered the victim because he was unable to repay the $2,000 he had stolen—a clear connection between his financial status and his motivation to commit the murder); *Molina*, 244 Md. App. at 133-34 (recognizing the nexus between the Molinas' excessive gambling losses compared to their reported gross income, and the nature of their crimes—stealing hundreds of thousands of dollars over the course of several years). Here there is an insufficient connection between appellant's unemployment and his motivation to possess cocaine with the intent to distribute. Accordingly, the trial court erred in admitting this evidence.

Having established that the trial court erred in admitting evidence of appellant's unemployment, we next turn to whether the error was harmless.[3] The Court of Appeals has stated that:

> The harmless error test is well[-]established, and relatively stringent. We stated it in *Dorsey v. State*:
>
> > [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.

[3] We note that the State does not argue that any error regarding appellant's unemployment status was harmless.

Dionas v. State, 436 Md. 97, 108 (2013) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). Here, we are not satisfied that there is no reasonable possibility that evidence of appellant's unemployment may have contributed to the rendition of the guilty verdict. Not only did the State, over objection, improperly introduce evidence of appellant's unemployment at trial, but the State reiterated the significance of appellant's unemployment both in closing argument and in rebuttal.

First, the State argued in closing that, in addition to Officer Beckford's testimony that the quantity of cocaine found in the bag was not consistent with personal use, that appellant's unemployment status was "sufficient evidence . . . to find [appellant] guilty of possession of cocaine with intent to distribute." The State argued that the value of the cocaine—between $700 and $800, was "a substantial amount of cocaine for someone who doesn't have a job to possess." The State further argued, "[appellant is] not a rock star, he's not someone that has a ton of money to be throwing around." Next, during its rebuttal argument, the State reinforced the notion that appellant's unemployment could establish his guilt, as the prosecutor stated, "That big container of toilet paper that might have twenty-four rolls, that costs $16. That cocaine, $700 to $800. It's a lot easier to buy toilet paper in bulk than it is for somebody that's unemployed to buy $700 or $800 of cocaine."

Because appellant's unemployment status played a significant role in the State's theory of the case, we cannot say that the error in no way influenced the verdict. The error was not harmless beyond a reasonable doubt. Accordingly, we must vacate appellant's

convictions and remand for a new trial.[4]

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED AND CASE REMANDED FOR A NEW TRIAL. COSTS TO BE PAID BY BALTIMORE COUNTY.

[4] Because we are vacating appellant's case, we need not decide whether the trial court erred by failing to ask a *voir dire* question regarding the State's burden of proof, or whether appellant waived this argument under *Kazadi v. State*, 467 Md. 1 (2020). For guidance on remand, we note that, if requested, "a trial court must ask whether any prospective jurors are unwilling or unable to comply with the jury instruction on the fundamental principles of presumption of innocence, the State's burden of proof, and the defendant's right not to testify." *Id*. at 9.