UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0359

September Term, 2015

WARREN EUGENE RICHARDSON

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 3, 2016

A jury in the Circuit Court for Prince George's County convicted Warren Eugene Richardson, Appellant, of theft under $10,000 and making a false statement to a peace officer. Appellant was sentenced to a term of 10 years' imprisonment, with all but six years suspended, for theft and a term of six months' imprisonment, to be served concurrently, for making a false statement. In this appeal, Appellant presents the following questions for our review:

1. Did the court err in admitting evidence that Appellant gave a false name to police?

2. Did the court unduly restrict Appellant's testimony?

Finding no error, we affirm.

BACKGROUND

On June 18, 2014, Prince George's County Police Detective David Gross was on duty in an unmarked vehicle when he witnessed Appellant driving a motorcycle. Detective Gross conducted a check of the motorcycle's license plate and discovered that the motorcycle had been reported stolen. Detective Gross contacted other police officers and "advised them of what was going on, and to respond to the area." Once Detective Gross and the other officers were in position, they "activated their emergency red and blue police lights." After a brief chase, during which Appellant crashed the motorcycle into one of the police cars, Appellant was apprehended and arrested.

After taking Appellant into custody, Detective Gross transported Appellant to the hospital for a "check-up." Prior to arriving at the hospital, Detective Gross attempted to get Appellant's "name and date of birth" so he could "check him into the hospital."

Appellant responded that his name was "George Reed Richardson" and that his date of birth was February 3, 1990. Appellant also stated that he was a college student from Florida and that he was buying the motorcycle for $4,500. After arriving at the hospital, Appellant admitted that he had given the detective a false name.

Prior to Appellant's trial, the court held a motions hearing at which defense counsel discussed Appellant's "statement" to Detective Gross:

> [DEFENSE]: And, for the record, [the State] and I had discussed motions in this case. The only motion that I possibly would have, I believe, would have been a custodial statement that was non-Mirandized but [the State] has agreed that he would not use it in the State's case in chief.
>
> THE COURT: Okay. So motions withdrawn with agreement not to use statement, oral statement, in case in chief.

At trial, the State gave an opening statement in which it referenced Detective Gross's questioning of Appellant prior to their arrival at the hospital. Defense counsel objected, and the court held a bench conference, at which time the following colloquy occurred:

> [DEFENSE]: What [the State] is about to get into is the subject of an agreement with counsel.
>
> [STATE]: [The State] is about to get into his name.
>
> THE COURT: What did they ask?
>
> [STATE]: They asked his name. That's the only place I was going with that. So I don't know what he's talking about.
>
> [DEFENSE]: I'm talking about an unMirandized and out-of-court statement that [the State] said [it] wasn't going to use.

THE COURT: Say it again?

[DEFENSE]: He was not going to use.

THE COURT: Are you going to use the name?

[THE STATE]: No.

THE COURT: So all right. Well, you know what he's talking about, he's not going to attempt to use.

[DEFENSE]: It's my assertion that all of this is part of the same thing.

THE COURT: You're talking about the part about what's your name? Tell me more. I don't know what you're talking about.

[DEFENSE]: Well, one of the charges is a false name and – but all of this happened at the parking lot in which the police allege that [Appellant] gave him a false name and information as to where he was, how he got to the area, et cetera, et cetera, et cetera. And it was my understanding [the State] indicated [it] wasn't going to use any of that.

THE COURT: You said it was my understanding. What did he say to you?

[DEFENSE]: When we were in front of [the hearing court] last – I don't remember the date. We put in on the record there was a statement made, and [the State] indicated that [it] was not going to use them in [its] case-in-chief, unless the defendant testified. And thus his – [the hearing court] indicated that we withdrew motions subject to the State not using that.

THE COURT: It says motions withdrawn per agreement not to use oral statements in case-in-chief.

[STATE]: Yes, but there's a specific statement listed in the statement of charges. He was talking about that statement. That statement is that he purchased the vehicle on Craigslist.

The trial court then reviewed Detective Gross's statement of probable cause.[1] The document included Detective Gross's recitation of the events that led to Appellant's arrest. In addition, Detective Gross summarized the statements made by Appellant following his arrest:

> [Appellant] was placed under arrest and into handcuffs. [Appellant] had no identification and provided me the name of "George Reed Richardson" with a date of birth of 02/03/1990. [Appellant] was taken to the Fort Washington Medical Center for a check-up from the collision with the unmarked vehicle. While at the hospital, his real identity was discovered as Richardson, Warren Eugene (B/M 08/26/1988).
>
> * * *
>
> Upon the arrest of [Appellant] he told me while en route to the hospital that he "…just purchased the motorcycle for $4,500 dollars just prior to the arrival of police officers…." [Appellant] advised further he was "…from Florida and was going to school there and saw the motorcycle on 'Craig's List' and came up from Florida to purchase it…."

After the trial court read the statement of charges, the following colloquy ensued:

> THE COURT: Well, I see the statement of charges include certain statements made that are in quotations, and the State's position is those are the statements which you agreed?
>
> [STATE]: Not to use in my case-in-chief.
>
> THE COURT: What is your response?
>
> [DEFENSE]: My understanding was it was the entire conversation.
>
> THE COURT: After the stop was done, you're saying the officer asked him his name.
>
> [STATE]: No. That was not included.

[1] Also referred to as the "statement of charges."

THE COURT: Is that the part you're trying to elicit? That the officer asked him his name?

[STATE]: Yes. Right.

THE COURT: You're saying that was included in that?

[DEFENSE] Yes.

THE COURT: Certainly I wasn't there. In reviewing the statement and the statements of counsel, based on the position of the State, the portion he intends to use in his case-in-chief and in the opening is when [Appellant] gave his name at the time the officer pulled him over. The objection is overruled as to the remark, but there appears to be an understanding as to all others?

[STATE]: Yes.

During the State's case-in-chief, the State questioned Detective Gross about the events following Appellant's apprehension:

[STATE]: At the time did you process [Appellant]?

[WITNESS]: I took him to the hospital first. Just for a check-up.

[STATE]: Then did you process him?

[WITNESS]: Yes.

[STATE]: Can you describe that process?

[WITNESS]: During the transport to the hospital, I was attempting to get his information so I can check him into the hospital.

[STATE]: What question did you ask to get that information?

[WITNESS]: What was his name and date of birth.

[STATE]: Did you get that information?

[WITNESS]: I got a name that he provided, which turned out to be a false –

[DEFENSE]: Objection.

THE COURT: Overruled.

[STATE]: What name did he provide?

[WITNESS]: I would have to look at my report to recollect. I believe it was Derek Richardson, I believe.

* * *

[STATE]: Showing you what's been marked as State's Exhibit 3 for identification purposes, what is that?

[WITNESS]: This is the statement of probable cause that I wrote on [Appellant] on the 18th of June.

[STATE]: And you wrote that?

[WITNESS]: I did, yes.

[STATE]: Does that refresh your recollection as to that information?

[WITNESS]: It does.

[STATE]: What information was provided to you by [Appellant]?

[WITNESS]: That his name was George Reed Richardson, with a date of birth of 2/3/90.

[STATE]: And based on that, what did you do?

[WITNESS]: Well, he had no identification on his person. I conducted checks through our law enforcement computers to attempt to verify the information and it did not check out.

[STATE]: Were you able to determine an identity for him?

[WITNESS]: Yes.

[STATE]: How were you able to do that?

[WITNESS]: About halfway through the hospital visit, [Appellant] admitted that he had given a fake name.

[STATE]: Did he give you his real name?

[WITNESS]: He did. And we had to redo the hospital paperwork.

[STATE]: And what was that real name?

[WITNESS]: Warren Eugene Richardson.

When the defense presented its case, Appellant denied giving a false name to Detective Gross. In addition, defense counsel attempted to put forth the theory that Detective Gross got the name "George Richardson" when Appellant was in the hospital. On direct, defense counsel asked Appellant what name he gave the nurse and if he knew where Detective Gross got the name George Richardson. The State objected each time, and the court sustained the objections. Defense counsel then requested a bench conference, at which time the following colloquy ensued:

[DEFENSE]: The name George Richardson was contact information. He was right there when the police officer got that information from the hospital. He didn't – [Appellant] did not provide that information. The detective got that information from the hospital while he was standing right there.

* * *

THE COURT: You want him to be able to testify that he told someone else to tell the officer that?

[DEFENSE]: No.

THE COURT: What do you want him to do?

[DEFENSE]: No. It was on a piece of paper and the detective pulled it up and got the information right – I'll ask it that way.

THE COURT: You haven't laid any basis of knowledge. I don't have a clue what he's going to say or how he knows that. That's why I sustained the objection.

Following the bench conference, defense counsel again attempted to ask Appellant where Detective Gross got the name George Richardson. The State objected, and the court sustained the objections.

DISCUSSION

I.

Appellant's Statement

Appellant argues that the trial court erred in allowing the State to introduce evidence that Appellant gave a false name to the police. Appellant maintains that he and the State had a prior agreement in which Appellant agreed to forego his "right to a pre-trial hearing" in exchange for the State's promise not to use, in its case-in-chief, any statements made by Appellant following his arrest, including his giving of a false name. The State counters that Appellant has mischaracterized the nature of the agreement between the parties. The State proffers that the agreement was limited to statements made by Appellant, which were memorialized in the statement of charges, wherein Appellant indicated that he purchased the motorcycle on Craigslist.

This issue is not preserved. It is well established that a party opposing the admission of evidence must object at the time the evidence is offered. *Ware v. State,* 170 Md. App.

1, 19 (2006). If such objection is not made "at the time the evidence is offered or soon thereafter…the objection is waived." Md. Rule 4-323. In addition, "objections must be reasserted [after each question or answer] unless an objection is made to a continuing line of questions." *Ware,* 170 Md. App. at 19. This holds true even when the court makes a prior ruling on the admission of evidence and a party attempts to introduce the same evidence later in the trial. *See Brown v. State,* 90 Md. App. 220, 224 (1992).

In the present case, defense counsel objected during the State's opening argument; however, he failed to lodge the requisite objections when the State introduced Appellant's statement in its case-in-chief. Although we recognize that defense counsel lodged one objection during Detective Gross's testimony, it appears from the record that defense counsel was objecting to Detective Gross's characterization of the name as "false." Nevertheless, there is no indication that this objection was meant to be a continuing objection, and defense counsel did not lodge any other objections during Detective Gross's testimony regarding Appellant's statement. As such, the issue was not preserved.

Assuming, *arguendo*, that the issue was preserved, we would nonetheless find Appellant's argument unavailing. We begin by noting that agreements between the State and a defendant "are based on contract principles and must be enforced." *Hillard v. State,* 141 Md. App. 199, 207 (2001). "In construing a contract, we look first to the particular language of the contract, and 'we give effect to its plain meaning and do not delve into what the parties may have subjectively intended.'" *Eller v. Bolton,* 168 Md. App. 96, 116 (2006) (internal citations omitted). In other words, "where the language employed in a contract is unambiguous, . . . there is no need for further construction by the court." *Wells*

v. Chevy Chase Bank, F.S.B., 363 Md. 232, 251 (2001). "[T]he determination of ambiguity is one of law, not fact, and that determination is subject to *de novo* review by the appellate court." *Calomiris v. Woods,* 353 Md. 425, 434 (1999).

The only record of the agreement between Appellant and the State comes from the transcript of the motions hearing held on January 9, 2015. From this, it appears that, prior to going on the record, defense counsel and the State "discussed motions," which is presumably when the terms of the instant agreement were struck. Defense counsel then memorialized the agreement on the record by stating that the "only motion" he "possibly" had was a motion regarding "a custodial statement that was non-Mirandized" and that the prosecutor "agreed that he would not use it in the State's case in chief." The hearing court then declared "motions withdrawn with agreement not to use statement, oral statement, in case in chief." From this, the plain language of the agreement suggests that defense counsel agreed to withdraw a motion regarding a "custodial statement that was non-Mirandized" in exchange for the State's assurance not to use the "statement" in its case-in-chief.

The parties now dispute what was meant by the term "statement." Appellant argues that the term encompassed everything Appellant said to Detective Gross while he was in custody, including his giving of a fake name. The State, on the other hand, contends that the term included only Appellant's statements regarding how he obtained the motorcycle.

Although both interpretations are reasonable, we cannot say that the plain language lends more support to one interpretation. Defense counsel's reference to the statement as being "non-Mirandized" suggests that the statement at issue was subject to the provisions of *Miranda*, which contradicts Appellant's interpretation because *Miranda* does not apply

to questions "aimed at accumulating basic identifying information…[such as] the suspect's name[.]" *Hughes v. State,* 346 Md. 80, 94-95 (1997) (internal citations and quotations omitted). As for the State's interpretation, there is simply not enough information in the transcript to discern the substance of the statement at issue, and there is certainly no mention by defense counsel of the statement being specific to Appellant's acquisition of the motorcycle.

Given that the term "statement" is reasonably susceptible to more than one meaning, we find that the agreement is ambiguous. *See Prison Health Services, Inc. v. Baltimore County,* 172 Md. App. 1, 9 (2006). When an agreement between the State and a defendant is ambiguous, the trial judge must make a finding as to its meaning. *Butler v. State,* 55 Md. App. 409, 435 (1983). In addition, when such agreements implicate due process, as when a defendant is facing pending criminal charges, the agreement "must also be interpreted by 'the standard to be applied to plea negotiations…of fair play and equity under the facts and circumstances of the case[.]'" *Sifrit v. State,* 383 Md. 77, 93-94 (2004). (internal citations omitted).

In the present case, the trial court found that the "statement" at issue did not include Appellant's giving of a fake name to police. The court reasonably concluded that, based on the arguments given at trial and the statement of charges, the "statement" was limited to the two statements quoted in the statement of charges regarding the motorcycle. Based on our review of the record, we cannot say that the trial court's findings were clearly erroneous. *See City of Bowie v. Mie Properties, Inc.,* 398 Md. 657, 683 (2007) (ambiguities in a contract are a question of fact, which we review for clear error). As noted above,

Miranda does not apply to questions "aimed at accumulating basic identifying information…[such as] the suspect's name[.]" *Hughes,* 346 Md. at 94-95. Moreover, we would find it curious had the trial court interpreted the agreement in Appellant's favor, as it defies logic that the State would proceed on the charge of making a false statement knowing that it had already agreed not use the only piece of evidence that would sustain the charge. *See Brethren Mut. Ins. Co. v. Buckley,* 437 Md. 332, 348 (2014) ("[W]e always strive to interpret contracts in accordance with common sense.").

Appellant argues that, even if the trial court was correct in determining the existence of an ambiguity, the court erred in resolving the ambiguity in favor of the State. Appellant insists that he was "induced" to "waive a hearing, to his detriment," based on the State's promise not to use the statement. Therefore, Appellant contends that "fair play and equity require that the ambiguities must be resolved" in his favor because he "waived a substantial constitutional right."

Appellant's arguments are unpersuasive. To begin with, there is no support in the record that Appellant waived a pre-trial hearing. The court held a pre-trial hearing on February 9, 2015, at which defense counsel was present and during which the agreement was put on record. Even so, the right to a pre-trial hearing is not a constitutional right.

It appears that Appellant derives his argument from *Cuffley v. State,* 416 Md. 568 (2010), in which the Court of Appeals stated that "ambiguity in a plea agreement must be resolved against the government because a plea agreement constitutes a waiver of substantial constitutional rights." *Id.* at 583. This language, however, is inapplicable in the present case, as the agreement was not part of a plea agreement and Appellant did not

waive any constitutional right. Moreover, even though Appellant may have relinquished his right to pursue a pretrial *motion* regarding the statement, he did not, in essence, "waive" anything, as he had ample opportunity at trial to challenge the State's introduction of the statement into evidence once the trial court made its ruling.[2] As such, Appellant was afforded the necessary due process and, even under the penumbra of fair play and equity, we conclude that the trial court did not err in ruling in favor of the State.

II.

Appellant's Testimony

The second issue raised by Appellant involves defense counsel's attempt to elicit information from Appellant regarding how Detective Gross may have gotten the name "George Richardson." Appellant argues that the trial court unduly restricted his right to present the alternate theory that Detective Gross got the name "George Richardson" from a source other than Appellant. The State responds that this issue was waived because defense counsel failed to make the appropriate offer of proof after each objection. If preserved, the State maintains that the trial court afforded Appellant sufficient opportunity to introduce evidence relevant to his defense.

We first address the State's contention that this issue was waived. The State notes that, although "the trial court sustained a number of the prosecutor's objections, defense counsel made an offer of proof only as to one ruling." Therefore, according to the State,

[2] Although Maryland Rule 4-252 requires a challenge to an unlawfully obtained statement to be raised pretrial, such challenges may be raised later upon a showing of good cause. *Id.*

"defense counsel obviated any ground for appeal to this Court from those specific rulings." We disagree.

Under Maryland Rule 5-103(a)(2), appellate error may not be predicated upon a ruling excluding evidence unless "the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered." *Id.* As such, "[a] claim that the exclusion of evidence constitutes reversible error is generally not preserved for appellate review absent a formal proffer of the contents and materiality of the excluded testimony." *Muhammad v. State,* 177 Md. App. 188, 281 (2007). Nevertheless, the purpose of this rule is to provide an appellate court with an adequate record so that it may determine, based on the proffered evidence and theory of admissibility, whether the trial court erred in excluding the evidence. *See Bruce v. State,* 328 Md. 594, 626 (1992). Moreover, the failure of a party to make a specific proffer is not an automatic bar to appellate review, provided "the tenor of the questions and the replies they were designed to elicit is clear[.]" *Peregoy v. Western Md. Ry. Co.,* 202 Md. 203, 209 (1953).

In the present case, the record reflects that defense counsel wanted Appellant to testify that he did not provide a false name to Detective Gross and that he gave the name "George Richardson" as contact information at the hospital. Defense counsel also wanted Appellant to testify that Detective Gross was present at the time and that Detective Gross got the name "George Richardson" at that time. Although defense counsel did not make this specific proffer after each of the State's objections, it's clear from the record that defense counsel's questions were designed to elicit the above information. Therefore, we

conclude that defense counsel's proffer was adequate. We now turn to the merits of Appellant's argument.

"It is frequently stated that the issue of whether a particular item of evidence should be admitted or excluded 'is committed to the considerable and sound discretion of the trial court[.]'" *Ruffin Hotel Corp. of Md. v. Gasper,* 418 Md. 594, 619 (2011) (internal citations omitted). This discretion, however, must be exercised with proper deference to a defendant's right "to have his defense fully presented to the jury." *Gray v. State,* 368 Md. 529, 561 (2002). In short, "the state's interest in excluding evidence must at times yield to a defendant's due process right to present a defense…especially where the proffered testimony has a direct link to the defendant[.]" *White v. State,* 324 Md. 626, 640 (1991). A defendant's right to present relevant evidence, however, "is not unlimited, but rather is subject to reasonable restrictions." *U.S. v. Scheffer,* 523 U.S. 303, 308 (1998). These reasonable restrictions include, among other things, "rules excluding evidence from criminal trials." *Id.*

Under Maryland Rule 5-602, "a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." *Id.* If the witness is a non-expert, any testimony "in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." Md. Rule 5-701. "The personal knowledge prerequisite requires that '[e]ven if a witness has perceived a matter with his senses,' he must also have, the experience necessary to comprehend his perceptions.'" *Rosenberg v.*

State, 129 Md. App. 221, 255 (1999) (internal citations omitted). "The rational connection prerequisite requires that there 'be [a] rational connection between [the] perception and the opinion.'" *Id.*

In the present case, Appellant attempted to give lay opinion testimony regarding how Officer Gross may have obtained the name "George Richardson" from a source other than himself. Accordingly, the trial court asked defense counsel to provide some basis for how Appellant derived this knowledge. Defense counsel failed to provide such a foundation. Therefore, the trial court properly excluded Appellant's testimony, as required under Md. Rule 5-602 and 5-701.

In any event, the trial court did not, as Appellant suggests, completely bar him from presenting his theory to the jury. The court did allow Appellant to testify to other facts in support of his theory:

> [DEFENSE]: Now, did there – you've heard the testimony from the detective that you gave him a name of George Reed Richardson with a date of birth 2/3/90. Did you give him that name?
>
> [APPELLANT]: No.
>
> * * *
>
> [APPELLANT]: When they took me to the hospital, they continued to ask my name, and I told them I didn't have nothing to say to them. So when they got to the hospital, the nurse told them to leave the room for a minute so she can check me out.
>
> [DEFENSE]: Did they leave?
>
> [APPELLANT]: They went outside the curtain.

[DEFENSE]: Well, that's what I meant?

[APPELLANT]: Yes. They asked for my emergency contact…

* * *

[DEFENSE]: What name did you provide to [the nurse]?

[APPELLANT]: I gave her two names.

* * *

[DEFENSE]: Did you see [the detective] do anything?

[APPELLANT]: Yes.

[DEFENSE]: What did you see him do?

[APPELLANT]: Ask for a copy of the paperwork.

This testimony provided the jury with a reasonable basis to conclude that Detective Gross may have obtained the name "George Richardson" from a source other than Appellant. In short, despite the trial court's restriction of Appellant's testimony in adherence to the Maryland Rules of evidence, the trial court did not unduly restrict Appellant's right to present a defense. Accordingly, we hold that the trial court did not abuse its discretion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.