UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2421

September Term, 2014

STEVEN DONNELL WILLIAMS

v.

STATE OF MARYLAND

Krauser, C.J.,
Arthur,
Kenney, James A., III,
Retired, Specially Assigned,

JJ.

Opinion by Krauser, C.J.

Filed: April 14, 2016

Convicted by a jury, sitting in the Circuit Court for Prince George's County, of possession with intent to distribute crack cocaine as a volume dealer[1] and other drug-related charges,[2] Steven Williams, appellant, presents a single issue for our review, and, that is, whether the circuit court erred in admitting into evidence documents purportedly belonging to Williams, which were found during a search of an apartment the State claimed was Williams's residence, and where drugs and drug paraphernalia were found. For the reasons that follow, we affirm.

I.

The Search

At 6:00 a.m. on February 4, 2014, police officers, armed with a search warrant, knocked on the front door of Apartment 823 at 2130 Brooks Drive, in Forestville, Maryland.[3] After receiving no response, the officers forced their way into the apartment. They found, inside, three individuals: Vincent Harrell, Brittany Baldwin, and Steven

[1] To be convicted as a volume dealer, a defendant must possess "448 grams or more of cocaine." Md. Code Ann., Crim. Law § 5-612 (West).

[2] In addition to possession with intent to distribute crack cocaine as a volume dealer, Williams was convicted of possession with intent to distribute crack cocaine, possession of crack cocaine, and possession with intent to use drug paraphernalia.

[3] The briefs of both sides incorrectly identified this address as "8120 Brooks Drive." The residence actually searched was "2130 Brooks Drive." The error appears to have originated in Detective Gaston's testimony, as she initially stated that the address was "8120" but then corrected herself and stated it was "2130."

Williams (appellant). Williams was, notably, wearing, at that time, only a pair of boxer shorts and a t-shirt.

Detective Natalie Gaston, the lead investigator in the case, then introduced herself to the apartment's occupants, and explained that she was there to execute a search warrant. She then read them their rights.

Then, after a K-9 unit dog "alerted" to the presence of drugs on the premises, officers began to search the apartment. In the kitchen, the police found crack cocaine, and drug paraphernalia containing a cocaine residue, along with several sales receipts, a credit notification letter, and a lease agreement. Although the lease agreement was in the name of a "Joanne Williams,"[4] the credit notification letter bore Steven Williams's name, and each of the sales receipts were in his name (though they bore the address of "3903 Donnell Drive"). In the master bedroom, police found more drug paraphernalia exhibiting a cocaine residue and, in a dresser in that bedroom, an expired Maryland driver's license, which was in Williams's name and included his picture, but indicated that his address was "1112 Ring Bill Loop, Marlboro, MD," and not the Brooks Drive address. Moreover, during the course of the search, Williams made statements to the officers in which he, not only denied the presence of any illegal drugs in the apartment but asserted that the apartment and everything in it belonged to him.

[4] The sales receipts, lease agreement, and credit notification letter were not provided to this Court, but photographs of those documents were.

II.

The Trial

At trial, the State contended that the apartment was Williams's residence, which Williams denied. In fact, he asserted that it was Harrell's home (Harrell was one of the other individuals present in the apartment at the time of the search at issue). Detective Gaston testified, however, that Williams told her, during the search of the Brooks Drive apartment, that his address was "3903 Donnell Drive." He further asserted, testified the Detective: "[T]here is no drugs in here, anything in here is mines. There ain't no drugs in here. You ain't going to find anything. None in here." Moreover, according to another officer, who testified, at trial, Williams stated during the search: "[T]his is my apartment, and anything in here is mine."

In any event, the license, sales receipts, credit notification letter, and lease agreement that the officers recovered were admitted into evidence, over Williams's objections, as were photographs of those documents. Ultimately, Williams was convicted of four of the offenses for which he was charged. [5]

[5] Williams was found guilty of possession with intent to distribute crack cocaine as a volume dealer, possession with intent to distribute crack cocaine, possession of crack cocaine, and possession with intent to use drug paraphernalia, but was found not guilty of manufacturing a controlled dangerous substance.

III.

The Documents

Williams contends that the circuit court erred in admitting the expired driver's license, the sales receipts, the credit notification letter, the lease agreement, and the photographs depicting those documents, as each of the documents, according to Williams, constituted inadmissible hearsay. The State responds that those documents at issue did not constitute "hearsay" but were "non-assertive circumstantial evidence." Because the issue presents a question of law, it merits a *de novo* review. *Bernadyn v. State*, 390 Md. 1, 8 (2005).

At trial, Detective Gaston testified that the expired driver's license was recovered from the top drawer of the dresser in the master bedroom at the Brooks Drive apartment, while the receipts, credit notification letter, and lease agreement were recovered from drawers in the apartment's kitchen. Those documents, and photographs of those documents as they lay in their respective drawers, were admitted over Williams's objection. Then, during the State's closing argument and rebuttal, the prosecutor referred to the recovered documents seven times:

> You never heard any evidence that this was Mr. Harrell's apartment. In fact, the evidence that you will take back with you are a bunch of documents in the name of Williams, not Harrell.
>
> * * *
>
> In that [bedroom] dresser drawer was an ID that you will have that was Mr. Williams'[s]. He had his stuff there. . . .

* * *

> Just like folks who go to work during the day keep things of their own in their office, personal items, paper, and you will see those as well. Those are found in the kitchen.

* * *

> You have expired licenses that are kept in the apartment. That's the defendant's. You have receipts that are kept in the apartment in the name of Steven Donnell Williams, and you will have those. You will see a lease agreement. Mr. Woods is correct. It doesn't say Steven Donnell Williams. It says, Jo- . . .

* * *

> You have those documents. You can look at them. You can see what names are on them.

* * *

> [A person drug] dealing . . . is that person going to go to the MVA and say, let me tell you what my address is? That person isn't . . . an attorney, offering up his office address. You don't go to the MVA and put that information out there.

* * *

> He's the one with all of his things in that apartment – his documents, his ID, his drugs.

During the prosecutor's rebuttal, Williams, after objecting, once again, to the admission of the documents on the grounds that they constituted inadmissible hearsay, moved for a mistrial. His objection was overruled, and his request for a mistrial was denied.

Maryland Rule 5-801(c) defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." When a hearsay objection is raised, the trial court must decide "(1) whether the declaration at issue is a 'statement,' and (2) whether it is offered for the truth of the matter asserted." *Stoddard v. State*, 389 Md. 681, 688-89 (2005). A "statement," as defined by Maryland Rule 5-801(a), is "an oral or written assertion[,] or nonverbal conduct of a person, if [the nonverbal conduct] is intended by the person as an assertion."[6] And, as to whether it is offered for the truth of the matter asserted, we note that, in contrast to most federal and state courts,[7] Maryland follows the "implied assertion" doctrine, which deems an utterance or other act as "hearsay," "if an assertion, however attenuated, could be implied from the utterance or act." *Fields v. State*, 168 Md. App. 22, 31 (2006). In making the later determination, however, "[a] declarant's lack of intent to communicate a belief in the truth of a particular proposition is irrelevant to the determination of whether the words are hearsay when offered to prove the truth of that proposition." *Stoddard*, 389 Md. at 703.

But not all the inferences that may be drawn from a statement implicate the "implied assertion" doctrine. Indeed, when a statement is introduced as circumstantial evidence of a proposition different from that which it asserts, that statement is not hearsay. *Bernadyn*,

[6] Rule 5-801 does not define what constitutes an "assertion."

[7] Unlike Maryland, most, if not all, federal appellate courts, as well as most state courts, have held that implied assertions are not hearsay. *See Stoddard v. State*, 389 Md. 681, 731-33 (2005) (Wilner, J., concurring) (providing a list of federal and state cases holding implied assertions as non-hearsay).

390 Md. at 13-14. Such a statement is commonly referred to as "non-assertive circumstantial evidence." The distinction between it, and an implied assertion, which, as noted does constitute hearsay, has been laid out in four Maryland cases: *Stoddard v. State*, 389 Md. 681 (2005); *Bernadyn v. State*, 390 Md. 1 (2005); *Fields v. State*; 168 Md. App. 22, *aff'd* 395 Md. 758 (2006); and *Fair v. State*, 198 Md. App. 1 (2011). Each addresses this evidentiary distinction in a different context, and, in so doing, illuminates the boundaries of these two competing concepts.

In *Stoddard v. State*, 389 Md. 681 (2005), the Maryland Court of Appeals reaffirmed its adherence to the "implied assertion doctrine," which it first adopted in *Waters v. Waters*, 35 Md. 531 (1872). While Erik Stoddard babysat three young children, specifically, his girlfriend's two children and their eighteen-month-old cousin, one of his girlfriend's children sustained multiple blunt force injuries to her abdomen, resulting in her death several hours later. At trial, the State called Stoddard's girlfriend to the stand, and, during direct examination, inquired if the cousin, who was now twenty-seven-months old and obviously not competent to testify at the time of trial, had asked her, after the beating in question, "Is Erik going to get me?" *Stoddard*, 389 Md. at 683. That testimony was admitted over Stoddard's objection. Ultimately, Stoddard was convicted of second-degree murder and child abuse resulting in death.

The Court of Appeals first noted that the question asked was offered by the State, not to only show that the cousin was afraid of Stoddard, but to suggest that the child had reason to fear Stoddard, because she had witnessed Stoddard strike the victim. Then,

invoking the implied assertion doctrine, the Court reasoned that, even though the declarant (the cousin), had no intention, when she asked the question at issue, to communicate the proposition for which it was offered by the State, namely, that she was afraid because she had witnessed Stoddard strike the victim, the question she asked was offered to prove that implied assertion. *Id.* at 681. Consequently, the Court found that, notwithstanding the fact that she did not intend to communicate that assertion, the State had, indeed, offered her words as evidence of the proposition it sought to prove, and thus, that statement constituted hearsay. *Id.* at 689.

The very day the Court of Appeals issued the *Stoddard* decision it also rendered a decision in *Bernadyn v. State*, 390 Md. 1 (2005). Bernadyn was charged with various drug offenses after a search of a residence, which was purportedly his home, uncovered illegal drugs. To establish that the home was Bernadyn's, and thus that the drugs recovered from that dwelling were his, the State introduced a medical bill, found in the home, which was in Bernadyn's name and set forth that residence's address. Over Bernadyn's objection, the bill was admitted into evidence.

The State introduced the bill, because it believed that the author of that bill was, in effect, asserting that Bernadyn lived at the address it bore. During closing argument, the prosecutor stated, "I am sure that any institution is going to make sure they have the right address when they want to get paid," and then, on rebuttal, asserted "[t]his bill . . . isn't anyone else's bill because it says, 'Patient, Michael Bernadyn, Jr.' . . . did they randomly pick that address? I don't think so." *Id.* at 6.

In holding that the document was inadmissible hearsay, and therefore improperly admitted by the trial court, the Court of Appeals observed that, for the jury to believe that the bill was evidence that Bernadyn lived at the address that appeared on the bill, it would have to conclude that the bill's author believed that Bernadyn did so, and, then, determine that the author's belief was true. *Id.* at 11. In short, the bill was introduced to prove the truth of what its author had asserted. The Court went on to explain that, had the State offered the bill solely for a limited non-hearsay purpose, that is, only as circumstantial evidence connecting Bernadyn to the address, and, had the court given a limiting instruction, its admission would have been permissible for this limited purpose. *Id.* at 11-17.

In *Fields v. State*, 168 Md. App. 22, *aff'd* 395 Md. 758 (2006),[8] a police officer, responding to a bowling alley shooting, observed the names listed on the television monitors above the lanes in the bowling alley. One of those names was "Sat Dogg," Fields's nickname. At trial, Fields maintained he was not present at the bowling alley that night and moved to preclude the mentioning of what was on that television monitor, as, in his view, it constituted "inadmissible hearsay." After the circuit court denied the motion, the responding officer testified that he had observed the name "Sat Dogg" on a monitor at

[8] The Court of Appeals granted *certiorari*, "to consider whether the Court of Special Appeals erred in holding that the petitioner's nickname, 'Sat Dog[g],' which was displayed on a television monitor above a bowling lane, was not hearsay." *Fields*, 395 at 759. It did not reach the issue, "[b]ecause [it held] that even if the court erred with respect to the evidentiary issue, the error was harmless beyond a reasonable doubt." *Id.*

the scene, and then, later, the prosecutor, in his closing argument, mentioned the name at issue twice: First, he stated that "[the responding officer] wrote down the names from all the screens. And when he did that . . . he did this all with the hope, with the idea that he could-the system could bring someone to justice," and, then, he subsequently added, "what about the name on the television monitor? Connection to the crime scene. There was testimony about how it got there, how the names get up there. And we know the Defendant has a nickname Sat Dogg." *Id.* at 31.

This Court upheld the admission of the testimony regarding the name on the television monitor as "non-assertive circumstantial crime scene evidence." *Id.* at 37. We explained that the prosecutor had not claimed, at trial, that the name on the monitor alone was proof that Fields was at the bowling alley on the night the victim was shot there, but sought its admission only to show that the name, "Sat Dogg," which matched Fields's nickname, was found at the scene. While admittedly the evidence at issue may have suggested that Fields was present at the bowling alley and therefore was present at the shooting, we pointed out that "[a]ny item at the crime scene that could be connected to the appellant in some way, regardless of the veracity of the source, also would have the probative value." *Id.* at 38. Since the name on the screen of the monitor was not, in our view, used as an assertion, implied or otherwise, that Fields was present, but just as non-assertive circumstantial evidence, it was not, we concluded, hearsay.

In *Fair v. State*, 198 Md. App. 1 (2011), Fair was arrested after a police officer noticed him smoking a marijuana cigar. Then, the officer observed, inside the center

console of a vehicle, which he believed was Fair's, marijuana. A search of the car was then performed, and, the officer also found, in that console, both a firearm, and a paycheck, which was made out in Fair's name. Fair was subsequently charged with possession of a firearm by a convicted felon and possession of marijuana.

Fair consistently maintained that he had no knowledge of what was in the car's console. The State, to establish, at trial, Fair's knowledge and possession of the console's contents, introduced the paycheck, made out in Fair's name, that had been found in the console. After the court admitted the paycheck into evidence, over Fair's objection, the State, during closing argument, stated: "Fair . . . knew that there was a gun in there when he put his paycheck in there within the last 24 hours, because the paycheck was dated the day before and it had to be within 24 hours." *Fair*, 198 Md. App. at 7. Fair was subsequently convicted of both possession of a firearm by a convicted felon and possession of marijuana.

This Court upheld the admission of the paycheck, reasoning that "the only assertions implied by the paycheck [were] that the City owed, or believed it owed, a named employee wages for a period worked, and that the Payroll Division had, or believed it had, the funds in its account to cover the check for those wages." *Id.* at 38. Because the paycheck was not introduced by the State to prove the truth of any of these assertions, we concluded that it was properly admitted as "non-assertive circumstantial evidence" that Fair had knowledge of the console's contents. *Id.*

We reach a similar conclusion, here, as to the expired driver's license, the sales receipts, the credit notification letter, and the lease agreement that were admitted into evidence below. As the check in *Fair* did, those documents fell into the category of non-assertive circumstantial evidence and, therefore, did not constitute hearsay.

They, like the paycheck in *Fair*, were not offered by the State for the truth of what they asserted. The expired license, for example, asserts nothing more than that the name of the individual pictured was "Steven Williams"; that he had lived at "Ring Bill Loop"; and that he held a valid Maryland Driver's License for the period set forth in that license. There was no assertion, express or implied, that a "Steven Williams" lived at "2130 Brooks Drive," the residence at which the drugs were found. In fact, the license clearly suggested otherwise.

Moreover, although the receipts asserted that Williams had made the purchases listed in the document, they too indicated that Williams lived somewhere else than "Brooks Drive," namely, "Donnell Drive." Similarly, the assertions in the credit notification letter and lease agreement were not that Williams resided at 2130 Brooks Drive. In fact, the lease agreement did not even contain Williams's name, but indicated that the lessee was a "Joanne Williams." And, as the paycheck was in *Fair*, the documents, here, were introduced for where they were found and not for what they impliedly asserted.

We acknowledge, however, that the State did not couch its language in describing to the jury the relevance of the documents at issue as carefully, here, as did the prosecutor in *Fields*. In *Fields*, the prosecutor never expressly argued to the jury that the name on the

monitor *was* Fields's nickname. And the Court, in *Fields*, noted that, had the prosecutor attempted to use the monitor evidence as proof that the declarant (specifically, the individual, who had placed the name on the monitor in question), believed Fields was present at the bowling alley, and was correct in that belief, that would have rendered the name listed on the monitor as inadmissible hearsay. *Fields*, 168 Md. App. at 37. But, that was not the case, as the prosecutor simply asserted, noted the Court, that Fields's nickname was observed at the bowling alley, and thus, it was no more than non-assertive circumstantial evidence.

Admittedly, the prosecutor in the instant case was more specific in describing the relevance of the documents. He stated that the documents were Williams's and that Williams's ownership of the documents was supported by his name on the documents. But that does not alter the conclusion that the documents were admissible as non-assertive circumstantial evidence, because, unlike *Fields*, the documents neither expressly nor impliedly asserted that the apartment was Williams's home address, or that he had any connection with the Brooks Drive apartment.

Williams next notes that the *Fields* Court, in holding that the monitor-name evidence at issue was non-assertive circumstantial evidence, pointed out that the prosecutor, in that case, only referred to the disputed evidence twice in closing argument. He then contrasts those two references in *Fields*, with the fact that the prosecutor, in the instant case, invoked the documents at issue a total of seven times during closing argument and rebuttal. We observe, however, that though the *Fields* Court did take note of the

sparsity of the *Fields*'s prosecutor references to the monitor evidence, it hardly based its holding on the number of direct references to that evidence made by the State. Indeed, the *Field* Court stressed that it is the evidence itself, and the purposes for which it is used, that determines whether it is hearsay, not the number of times it is invoked. In short, a proponent's repeated invocation of the disputed evidence, for a non-hearsay purpose, does not transform it into inadmissible hearsay.

Nor did the admission of the documents require a limiting instruction, a remedial measure proffered by the *Bernadyn* Court. In *Bernadyn*, the Court of Appeals suggested that the evidence at issue, there, a medical bill with the Bernadyn's name and the address of the home from which the drugs were recovered, might have been admissible had the jury been provided with a limiting instruction that they were not to use the bill, itself, as evidence that Bernadyn lived at that address, but that it viewed the bill's presence as circumstantial evidence that he resided there. Here, as previously discussed, the expired license, sales receipts, credit notification letter and lease agreement did not assert, directly or impliedly, that Williams resided at Brooks Drive, but in fact, suggested that he lived elsewhere. Consequently, the admission of the documents did not require a limiting instruction, as there was no risk that the jury could misuse the documents.

IV.

The Record

Finally, we feel impelled to address a troubling issue with the respect to the record in this case. Copies of the expired license, receipts, credit notification letter, and lease

agreement that were provided to the jury at trial, were not available for appellate review, having been destroyed. Fortunately, a photograph of the bedroom drawer, which depicts the license, and a photograph of the kitchen drawer, which depicts the receipts, lease agreement, and credit notification letter, were. The names and addresses on the license and the receipts can be readily identified. But the names and address on the lease agreement and the credit notification letter cannot be read.

At oral argument, Williams's counsel asserted, first, that the lease was in the name of "Joanne Williams" (which, when a magnifying glass is employed, it does appear to be), but she did not offer any address, and second, that the credit notification letter contained Williams's own name and the "Brooks Drive" address. Although the State did not dispute the name on the lease or offer an address, it did take issue with defense counsel's claim that the credit notification letter contained the "Brooks Drive" address. The transcript of the trial appears to support the State.[9]

If the credit notification letter did contain Williams's name along with the Brooks Drive address and was offered to prove that Williams resided at Brooks Drive, the document would have been comparable to the hospital bill deemed hearsay in *Bernadyn*. As in *Bernadyn*, a document, containing the defendant's name and the relevant address, would have been admitted to prove that the defendant did, in fact, reside at that address. Therefore, the credit notification letter would have been hearsay and, consequently,

[9] During closing argument Williams's counsel declared that "none of those documents had Williams'[s] name on the apartment in that apartment."

improperly admitted. Maryland case law provides, however, that we may uphold "criminal convictions, notwithstanding error committed by the trial court, when the evidence of guilt was so 'overwhelming' as to render the court's error harmless beyond a reasonable doubt." *Simms v. State,* 194 Md. App. 285, 323 (2010), *affirmed,* 420 Md. 705 (2011) (citations omitted). And, here, the admission of the credit notification letter amounted to harmless error, as there was overwhelming evidence that Williams did reside at the Brooks Drive address.

Police found Williams inside the Brooks Drive apartment at issue at 6 a.m., in a state of undress, wearing just boxer shorts and a t-shirt, when the search warrant was executed, which suggested he was not just dropping by. And, far more inculpatory were Williams's declarations to one officer that the apartment's contents were his, and then, to another officer that the apartment itself was his. Finally, the expired license in Williams's name, recovered from the bedroom dresser, and the receipts, recovered from the same kitchen drawer as the credit notification letter, were, as noted, admissible as non-assertive circumstantial evidence and amply supported the conclusion that Williams resided at the Brooks Drive apartment. In sum, the evidence was overwhelming that Williams resided at the Brooks Drive apartment, where the drugs and drug paraphernalia that led to his conviction were found.

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