UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2650

September Term, 2014

JOSEPH LAMAR SMITH

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 18, 2016

*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.

Joseph Lamar Smith was convicted of cocaine distribution after a trial by jury in the Circuit Court for Talbot County. The State's key evidence against him was video footage of him handing off a "small white object," and the State's key witnesses were two police detectives who saw the interaction on a camera feed and who made the arrest at the scene. Both detectives testified at trial, and both testified that the interaction they witnessed was a "hand-to-hand drug transaction." Mr. Smith appeals his conviction, and we affirm.

I. BACKGROUND

On February 1, 2014, Detectives Robert Schuerholz and Shane McKinney of the Easton Police Department Narcotics Unit were monitoring a camera feed of the intersection of Locust and Higgins Streets in Easton.[1] Shortly after three o'clock that afternoon, the feed showed Mr. Smith walking toward South Higgins Street. As the detectives watched, a woman they recognized as Vicky Green approached Mr. Smith on a silver bicycle, and Mr. Smith handed her a small white object. Believing that they had witnessed a drug transaction, both detectives went to investigate further. Detective McKinney found Ms. Green about two blocks away from the intersection of Locust and Higgins, and informed her that he'd observed her buying crack cocaine from Mr. Smith. Upon receiving this news, Ms. Green reached into her pocket and dropped an item to the ground that resembled a loose rock of crack cocaine. Detective McKinney seized the item and placed Ms. Green under arrest.

[1] Rather than recording video, the camera took pictures continuously at a rate of about two frames per second. When the images are compiled, they resemble a video.

Detective McKinney communicated what had happened to Detective Schuerholz, who had been following Detective McKinney in a separate vehicle. Detective Schuerholz then located Mr. Smith coming out of a barber shop down the street from the Locust and Higgins intersection. Detective Shuerholz placed Mr. Smith under arrest based on what he had witnessed on the video and the suspected crack cocaine that Detective McKinney found near Ms. Green. No cocaine was found during a search of Mr. Smith's person; however, lab reports later confirmed that the item Ms. Green dropped from her pocket was in fact crack cocaine.

At trial, held January 14, 2015, Ms. Green testified that she had not purchased any drugs from Mr. Smith. According to her account of their interaction, Mr. Smith hadn't handed her anything; rather, she handed *him* two five-dollar bills folded up into a cube shape to repay an outstanding debt. Although she admitted to discarding a rock of crack cocaine as Detective McKinney approached her, she testified that it had been in her pocket prior to her interaction with Mr. Smith.

Detectives Schuerholz and McKinney also testified. Both Detectives recounted what they observed on the camera feed (more on that in the Discussion). The video was also entered into evidence, and played for the jurors over defense counsel's objection. The jury convicted Mr. Smith of distribution of cocaine, and he was sentenced to twelve years' incarceration, two years suspended, followed by three years of probation. Mr. Smith filed a timely appeal. We will include additional facts as necessary to our analysis below.

II. DISCUSSION

Mr. Smith raises three issues on appeal.[2] *First*, he argues that the detectives' testimony that they witnessed a "drug transaction" on camera was impermissible lay opinion testimony or, in the alternative, improperly admitted expert testimony. *Second*, he argues that the trial court erred by refusing to give the jury instruction on expert testimony. *Third*, Mr. Smith argues that the trial court abused its discretion by refusing to permit defense counsel to recross-examine Detective Schuerholz. We agree with the State, though, that the defense's actual trial objection didn't encompass the lay v. expert opinion concern Mr. Smith argues here, and since no witness was ever identified as an expert, we find no error in the court's decision not to instruct the jury about experts. Nor do we find error in the court's refusal to subject Detective Shuerholz to recross-examination.

[2] Mr. Smith phrases the issues as follows:

> 1. Did the trial court err in permitting the detectives to testify that they observed a "drug transaction" take place?
>
> 2. Did the trial court err in refusing to propound the jury instruction on expert opinion testimony?
>
> 3. Did the trial court err by failing to exercise its discretion, or, in the alternative, abuse its discretion, in not permitting recross-examination of Detective Schuerholz?

A. Mr. Smith's Challenge To The Detectives' Testimony Was Not Preserved.

Mr. Smith challenges the detectives' testimony that they observed a "drug transaction," arguing that they should have been admitted as experts, and that permitting them to label the exchange as a "drug transaction" encroached on the jury's fact-finding function. The State counters *first* that defense counsel's objection to Detective Schuerholz's testimony ("objection to what appeared to be") did not adequately preserve the question of whether the detectives should be admitted as experts; and *second*, that defense counsel waived his claim of error by failing to object when Detective McKinney subsequently gave the same contested testimony. We agree with the State that neither objection was preserved.

As the State asked Detective Schuerholz what he observed on the camera feed, the defense objected not to the lay or expert nature of his testimony, but to the fact that he characterized the events he observed at all:

> [THE STATE]: So tell me what you were doing in relation to this case when you decided to essentially leave your location where you were watching this camera? What did you see?
>
> [DETECTIVE SCHUERHOLZ]: Via the camera, I observed what appeared to be a hand-to-hand drug transaction take place.
>
> [DEFENSE COUNSEL]: Objection. *Objection to what appeared to be.*
>
> THE COURT: Overruled.
>
> [DEFENSE COUNSEL]: It's like saying it appeared he was speeding down the road. *Objection to appeared to be.*

> [THE STATE]: Your Honor, I believe the officer is qualified to offer an opinion as to what he believed he was observing.
>
> THE COURT: At this point I think that's the proper level of testimony so overruled.

(Emphasis added.) Later on, Detective McKinney gave similar testimony regarding what he had seen on the camera feed. The defense again objected to the Detective's characterization of the object he saw, but did not object to the Detective's opinion about the interaction itself:

> [THE STATE]: Okay. Now based on what you saw, what did you do next?
>
> [DETECTIVE MCKINNEY]: . . . I watched Mr. Smith walk towards South Higgins Street from South Lane. At which time I saw Mrs. Green driving a silver bicycle. She approached the curb, the sidewalk where Mr. Smith was standing. Mr. Smith pulled out a clear plastic bag and handed Ms. Green what I believe to be a piece of crack cocaine.
>
> [DEFENSE COUNSEL]: I'm going to object. *I object to what he believed to be.*
>
> [THE STATE]: Well, Your Honor, at this point maybe we should let the video speak for itself. I'll just ask him what he did as a result of what he saw.
>
> THE COURT: I'm going to overrule the objection. He saw what he believed to be and what it actually is is determined by the lab.
>
> [THE STATE]: Okay, so.
>
> [DETECTIVE MCKINNEY]: I can elaborate for the jury if you want to go through training, buys or things like that.
>
> THE COURT: Wait, wait till you have a question.

> [THE STATE]: Well, you had an opinion of what it was, you had an opinion of what it was you saw, correct?
>
> [DETECTIVE MCKINNEY]: Yes.
>
> [THE STATE]: Okay. And your opinion was that you had witnessed a what?
>
> [DETECTIVE MCKINNEY]: My opinion, I witnessed a drug transaction of crack cocaine.

(Emphasis added.)

We agree with the State that neither objection gave the trial court the opportunity to consider and decide the questions Mr. Smith raises here. In neither instance did the defense object that the Detective's statements either were improper lay opinions or that the Detective needed to be qualified as an expert. The objection to Detective Scheurholtz's statement about what the transaction "appeared to be" challenged his uncertain characterization of the events on the video, not his inability to describe them as a lay witness or the State's failure to qualify him as an expert. The objection to Detective McKinney's testimony came only in response to his description of the *object* Ms. Green had dropped, not to any opinion about the transaction. When Detective McKinney opined later that he had witnessed a drug transaction, the defense did not object at all. The specific objections the defense lodged did not afford the trial court the opportunity to decide the lay-or-expert opinion issues Mr. Smith raises here, *see Stewart-Bey v. State*, 218 Md. App. 101, 127 (2014) (limiting appellate review to "the ground assigned" in the objection during trial) (citation omitted), and waived any grounds not specified. *Webster v. State*, 221 Md.

App. 100, 111 (2015) ("where a party asserts specific grounds for an objection, all other grounds not specified by the party are waived") (citation omitted). And even if the defense had objected previously to testimony opining that a drug transaction had occurred, it was waived independently when Detective McKinney was allowed to offer testimony to that effect without objection. *See DeLeon v. State*, 407 Md. 16, 31 (2008) ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection.").

Moreover, even if we were to read the defense's objections at trial to encompass the grounds he asserts here *and* to assume that the court erred in overruling those objections, any error in admitting the detectives' testimony was harmless. Above and beyond the Detectives' "opinion" testimony, the State introduced other strong evidence that Mr. Smith and Ms. Green's interaction was in fact a drug transaction: the video, which the jurors were able to see for themselves, depicting Mr. Smith handing Ms. Green a small white object; Detective Schuerholz's testimony that at the time of Mr. Smith's arrest he had $330.00 in cash on his person; the lab report proving that the object Ms. Green dropped from her pocket when the detectives approached was in fact crack cocaine; and finally, Detective McKinney's testimony that Mr. Smith said to Ms. Green "tell them I gave you $5," to which Ms. Green replied "well they know you didn't give me $5 because I don't have $5 on me."

Our decision also resolves Mr. Smith's contention that the court erred in failing to instruct the jury that it was not required to accept expert testimony, for two reasons. *First*,

the defense acquiesced to the instructions after the court read them, saying "[n]o, I think you've covered it all" when the court asked if either party had "anything further" to raise. *See Choate v. State*, 214 Md. App. 118, 130 (2013). *Second*, no witness was ever identified to the jury as an expert, so an instruction about how to consider expert testimony that didn't exist could not have made sense to this jury.

B. The Circuit Court Made No Error in Denying Defense Counsel Recross-Examination For Detective Schuerholz.

Mr. Smith also argues that the circuit court erred by refusing to permit defense counsel to recross-examine Detective Schuerholz as to whether any DNA testing or fingerprinting had been conducted in the police investigation. Mr. Smith contends that the court abused its discretion by refusing to permit recross *first* because it reflected a "blanket policy prohibiting recross-examination in all trials," and *second*, because the court was required to allow recross-examination on any new matter that had been introduced during cross-examination.

"[T]rial courts have broad discretion to control the presentation of evidence." *Thurman v. State*, 211 Md. App. 455, 470 (2013). When a new subject is raised in redirect examination, the court "must allow the new matter to be subject to recross-examination." *Id.* Thus, a trial court that imposed a blanket prohibition on recross-examination *would* abuse its discretion. *Id.* at 451. But that's not what happened here.

On cross-examination of Detective Schuerholz, defense counsel asked whether the detective had taken Mr. Smith's jacket into custody in order to test it for evidence of cocaine residue in the pockets. This was new information that had not been addressed

during Detective Schuerholz's direct examination. The State responded to that new information on redirect by eliciting testimony from Detective Schuerholz that such forensic testing is usually conducted in homicide or serious assault cases, rather than in drug cases. The defense asked generally for the opportunity to conduct recross, but didn't proffer what new information it would bring in in response to the State's redirect.[3] Although, as we held in *Thurman*, arbitrary or overly aggressive denial of opportunities for recross can, at some point, prejudice the parties, we see no abuse of discretion in the circuit court's decision not to permit recross-examination under these circumstances.

JUDGMENTS OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] Mr. Smith points in a footnote to an objection counsel made to a question the State asked during redirect, but neither there nor here proffers what he would have sought to accomplish on recross.