Circuit Court for Montgomery County
Case Nos. 133025C
133026C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2087 and 2216

September Term, 2018

NIKKI SHIVONE LONG

v.

STATE OF MARYLAND

INGRID LATONYA LONG

v.

STATE OF MARYLAND

Kehoe,
Friedman,
Wilner, Alan M.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.
Dissenting opinion by Friedman, J.

Filed: October 4, 2019

After a jury trial in the Circuit Court for Montgomery County, Ingrid Latonya Long and her sister, Nikki Shivone Long, were convicted of various drug-related offenses. Each appealed her convictions, and we have consolidated the appeals for purposes of disposition. (In this opinion, for purposes of clarity, we will sometimes refer to the appellants by their first names. We mean no disrespect in doing so.)

Between them, appellants present three issues as to why their convictions should be reversed. We have reworded them:

1. Did the trial court commit plain error when it failed to instruct the jury that it must decide whether the alleged crimes occurred in Maryland?

2. Did the trial court commit plain error when it instructed the jury that "the location of the happening of this incident is not an issue for your consideration"?

3. Did trial counsel render ineffective assistance of counsel by failing to request a jury instruction on territorial jurisdiction and failing to object to the trial court's instruction to the jury?

Ingrid presents an additional issue not raised by Nikki in her briefs:

4. Did the trial court err by failing to conduct an on-the-record inquiry to ensure that Ingrid's waiver of her right to testify was knowing and voluntary?

Our analysis in this appeal will focus on the territorial jurisdiction issues. The State acknowledges that a critical piece of evidence introduced at trial did not accurately depict the boundary between Maryland and the District of Columbia. The inaccurate exhibit—a Google Maps satellite image—misled trial counsel and the trial court and ultimately

resulted in an incorrect "curative" instruction to the jury. Pointing out that trial counsel did not object to the instruction, the State argues this is not an appropriate case for plain-error review. We disagree and reverse the convictions.

Background

Appellants do not challenge the sufficiency of the evidence against them. Therefore, we will summarize the evidence relevant to the parties' appellate contentions in the light most favorable to the State. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008).

On the evening of November 27, 2017, Montgomery County police officer Christopher Murray observed a green Dodge truck stopped on the southerly side of Blair Road, near its intersection with Georgia Avenue. A man was standing at the truck's passenger window. Suspecting—correctly, as it turned out—that he was witnessing a drug transaction, Murray decided to investigate. Moments later, and a bit further down the street, he pulled the truck over. Ingrid Long was in the front passenger seat, with cash in hand, and Nikki Long was behind the wheel, with crack pipes and 0.08 grams of cocaine in her handbag. The man who had been standing at the window of the truck was stopped by another officer and was found to have a small amount of cocaine in his pocket. Ingrid admitted to the police that she had given cocaine to the man, though she denied selling it to him. The Long sisters were charged with distribution of cocaine and conspiracy to distribute cocaine. Nikki was also charged with possession.

At the Longs' joint jury trial, the location of the alleged drug transaction, within a few yards of the intersection of Blair Road and Georgia Avenue, was a focus for both the defense and the prosecution. Murray testified that he was familiar with the area where he spotted the Longs' truck because he had been assigned to the Silver Spring police station for approximately ten years. He told the jury that, as part of his duties, he had to know the location of the boundary between Montgomery County and the District of Columbia.

To reinforce Murray's testimony, the prosecutor introduced a Google Maps satellite image of the area. Defense counsel objected to the presentation of the exhibit:

> There is nothing about that map that indicates that it is actually a map of Montgomery County . . . with the designations of the county line versus the district[. A]nd also the police officer may be authorized to work in Montgomery County and occasionally go over into D.C. That does not make him an expert in the exact location of the county boundaries. . . [T]here is nothing that indicates officially per Montgomery County that this is where the boundary is.

The court overruled the objection, and the photograph was admitted as State's Exhibit No. 1. Murray testified that the aerial image was a fair and accurate representation of the area. Critically for this appeal, Murray then told the jury, over defense counsel's renewed objection, that a line superimposed on the image accurately represented the boundary between Maryland and the District near where the alleged crimes took place.

We set out the State's Exhibit No. 1 below. (We have added text blocks to identify Eastern Avenue and Blair Road, as well as the red arrow indicating where Google Maps places the border.) In the relevant location, the exhibit depicted the border between

Maryland and the District as running down the center of Eastern Avenue and, on the other side of Georgia Avenue, about 60 or 70 feet to the south of the corner where Blair Road and Georgia Avenue meet.

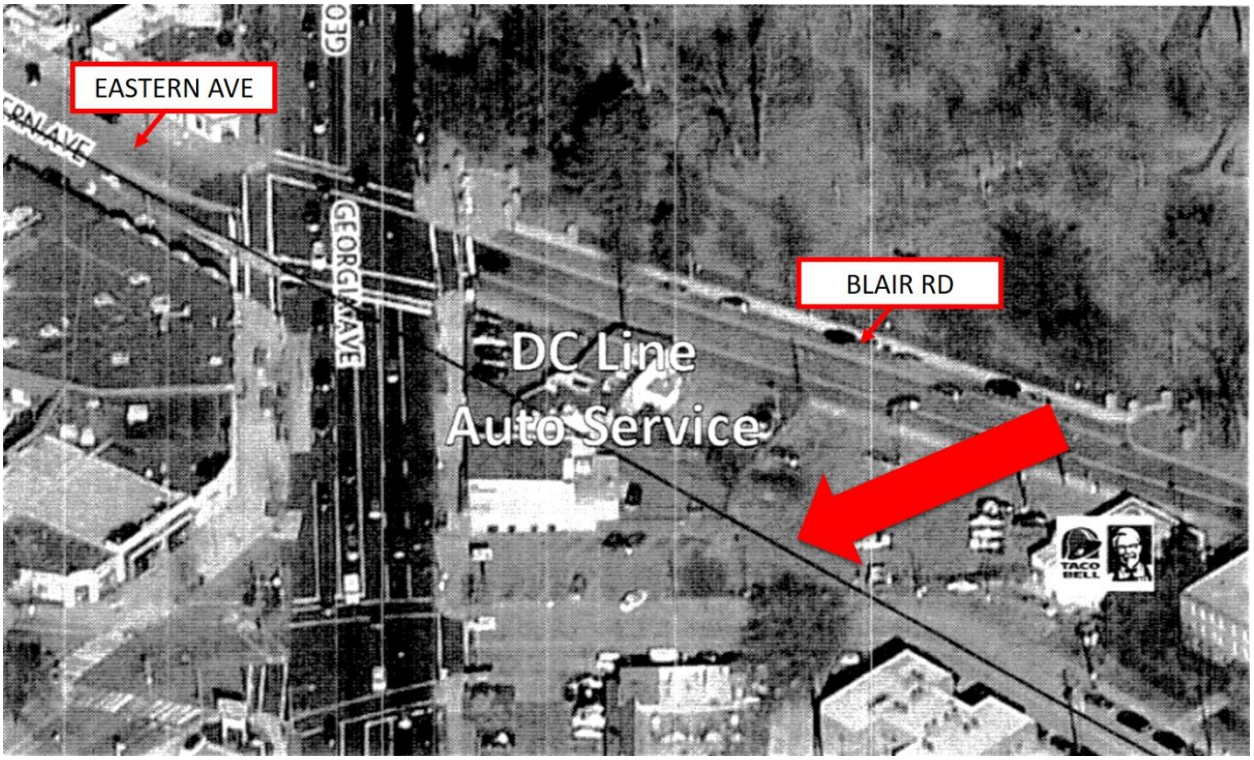

Figure 1. *This aerial image was marked at trial as State's Exhibit No. 1. The dark line across the map, indicated here by a large red arrow, is the erroneous boundary used at trial. On the basis of this map, the trial judge said she was "satisfied" the events occurred in Maryland and foreclosed any argument to the contrary. Officer Murray testified that the Longs' vehicle was stopped just above the C in "DC Line Auto Service."*

In fact, and apparently unbeknownst to anyone at trial, the boundary between the District of Columbia and Maryland in the vicinity does not run with the center line of Eastern Avenue. The actual boundary between the two jurisdictions is to the north of that street. The Assistant Attorney General who prepared the State's briefs in these cases realized the problem, notified appellants' counsel, and attached a satellite image that

depicts the correct boundary as an appendix to the State's briefs in this case. We set out that image below, and have added the red arrow to point out the boundary:[1]

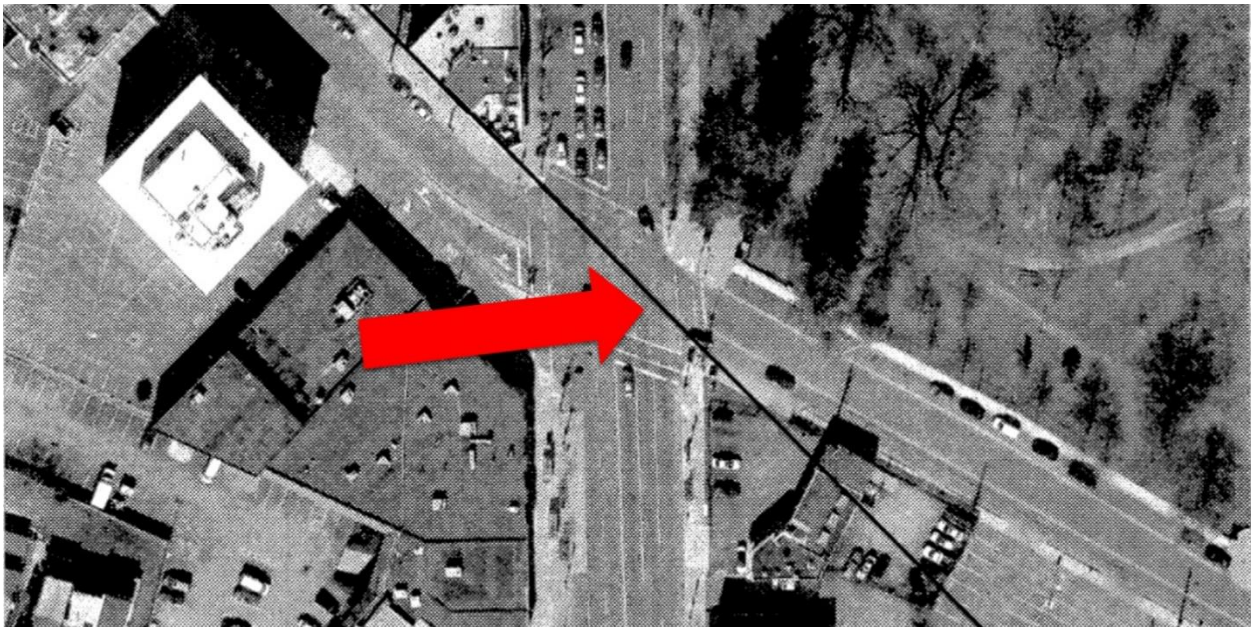

Figure 2. *This aerial image was submitted as an appendix to the State's brief in this appeal. The line indicated with a red arrow represents the actual boundary between Maryland and the District. It was drawn using data from a GPS resurvey of the District's borders by the District's Office of the Chief Technology Officer. The line lies about 60 to 70 feet north of the line shown to the jury at trial and bisects the sidewalk on the south side of Blair Road, within feet of where the alleged drug sale took place.*

[1] The image submitted by the State with its brief was derived from satellite images depicting the boundaries of the District of Columbia, composed after a resurvey of the boundary lines using global positioning system data. District's Office of the Chief Technology Officer, *District Boundary as Defined by Boundary Stones*, OPEN DATA DC, https://opendata.dc.gov/datasets/district-boundary-as-defined-by-boundary-stones (last visited September 10, 2019). The boundary shown on the map maintained by the District coincides with the boundary depicted on the Montgomery County Official Zoning Map, which is maintained by the Montgomery County Planning Office. *See Montgomery County Zoning*, MCATLAS, http://mcatlas.org/zoning/ (last visited September 10, 2019). An image of the relevant part of the zoning map is attached as an appendix to this opinion.

We take judicial notice of both maps. *See* Md. Rule 5-201(b) (Courts, including appellate courts, may take judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

It was with the flawed map, however, that Murray showed the jury where the Longs' truck was when he saw the alleged drug transaction—just above the C in "D.C. Line Auto Service." He also told the jury that the Longs' truck was "in the roadway."

The state's next exhibit was a Google Street View of Blair Road—a photographic representation of Murray's view when he turned onto Blair Road that evening. On this image, Murray drew a circle and an arrow to indicate where the Longs' truck was when he first saw it stopped along the road. The officer's markings suggested the truck had pulled off to the side of Blair Road.

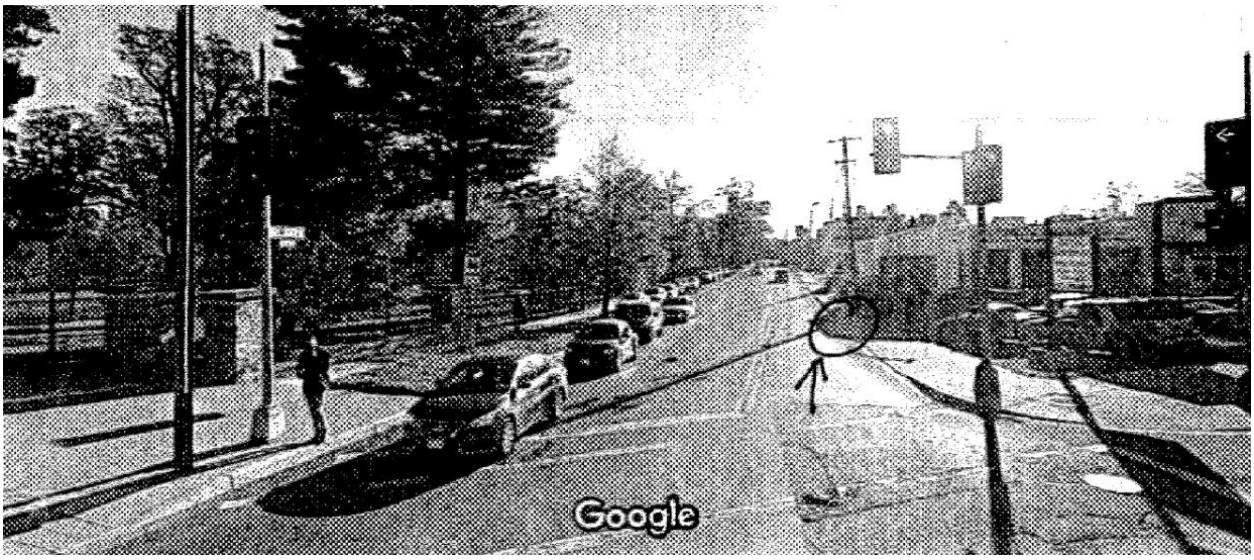

Figure 3. *The circle and arrow in this Google Street View image of Blair Road, marked at trial as State's Exhibit No. 2, were drawn by Officer Murray. The markings show where, he testified, he saw the Long sisters' truck was stopped during the alleged drug sale. During cross-examination of Officer Murray, defense counsel's questioning revealed the car was at least partially off the roadway, bringing the events closer to the boundary between Maryland and the District of Columbia.*

In addition to the objections to the prosecution's map, defense counsel made some efforts to controvert the State's evidence about where the alleged transaction took place. On cross-examination of Officer Murray, defense counsel showed the officer other Google

Street View images of the area. One image showed the sidewalk and a gate blocking the entrance to D.C. Line Auto Service, an auto-repair shop sited at the southeast corner of the intersection of Blair Road and Georgia Avenue. Using this image, counsel asked Murray whether the Longs' car had pulled off the roadway (emphasis added):

Defense counsel:	And *they had pulled slightly in to the parking lot or the driveway of [D.C. Line Auto Service]*?
Officer Murray:	*No. They were on the roadway.*
Defense counsel:	*Neither tire had pulled at all into that driveway?*
Officer Murray:	Like on the sidewalk?
Defense counsel:	Well, where you had marked is actually an entrance or a driveway entrance?
Officer Murray:	Right. But that's gated off at night.

. . .

Defense counsel:	But *the gate does not extend all the way to the sidewalk.*
Officer Murray:	Right.
Defense counsel:	And *the area from the sidewalk to the street there is an area that has a depression where a car can pull into the business. Correct?*
Officer Murray:	*Yes.*
Defense counsel:	*So, it's not a curb. There is a curb above and below it but in that area the car can pull in?*
Officer Murray:	*Yes.*
Defense counsel:	And that is the area where the car stopped?

Officer Murray:	*Yes. It was—it was in here.* It wasn't off the roadway up in here.
Defense counsel:	*. . . [N]o part of the car went off the roadway in your memory?*
Officer Murray:	*I'm not sure if maybe part of it wasn't* but the majority of the car was still out on Blair Road. It wasn't up on the sidewalk or over here for sure because I had to go around it.

Thus, a fact-finder could conclude that the Long sisters' truck was not "in the roadway," as the officer had testified on direct examination, but was straddling the roadway and the sidewalk on the south side of the street.

Defense counsel then showed Murray another Street View image. This showed a street sign at the intersection of Blair Road and Georgia Avenue, identifying the street as "BLAIR RD NW." The image also showed the sign for D.C. Line Auto Service, providing a phone number with a 202 area code. Officer Murray testified that District streets—not Maryland streets—use quadrant designations like "NW." He also testified that the 202 number for the auto-repair shop was a District phone number.

After the close of the prosecution's case, defense counsel moved for a judgment of acquittal. Among other arguments made for acquittal, Ingrid's counsel noted the following evidence, suggesting the state had not proved the crime occurred in Maryland:

> The car was stopped in front of a D.C. business. The testimony was that the business where the car was stopped has a D.C. phone number. . . . And the street sign in front of the business says, Blair Road, Northwest, which is a D.C. designation, not a Maryland or Montgomery County designation. The

> map that was presented is Google Maps. The officer didn't prepare it. He is not a Montgomery County planning agent who maps out the county line.

The trial court denied the motion to acquit, telling counsel this (emphasis added):

> [T]he Court is satisfied that the incident occurred in Montgomery County, Maryland. *I don't know if it's judicial notice or knowledge of the location.* So the Court's satisfied that this incident took place in Montgomery County, Maryland.

Defense counsel chose not to put on evidence, and both of the Long sisters, through counsel, waived their right to testify. The parties discussed jury instructions with the court, and then the court gave the instructions. Although defense counsel did not request an instruction on territorial jurisdiction,[2] they raised the issue in closing argument. Nikki's counsel sought to undermine the probative value of the Google Maps images introduced by the State (emphasis added):

> [T]hey have a Google picture. How do we know that's accurate? How do we know anything about that? Especially when this picture, Blair Road, Northwest, Washington, D.C.

[2] Maryland's pattern jury instructions provide a ready-made instruction for territorial jurisdiction:

> You have heard evidence that the crime of (offense) was not committed in the State of Maryland. While not all of the elements of the crime of (offense) must occur in Maryland, in order to convict the defendant, the State must prove, beyond a reasonable doubt, that at least one of the following elements of the crime occurred in Maryland: (essential element(s) for territorial jurisdiction).

MPJI–Cr 5:09. Per the instruction's "notes on use," the instruction is to be used "only if the evidence generates an issue of territorial jurisdiction."

> . . . [P]roof is something that they have to come up with. . . . Proof beyond a reasonable doubt. *They haven't even proven to you where those things even took place*.

At this point, the prosecutor objected. In a bench conference, the following colloquy took place (emphasis added):

> Prosecutor: *Jurisdiction is not an issue for the jury. It's not an issue of fact for the jury.* It's an issue that Your Honor already ruled on on a motion that they made, and it's completely inappropriate to throw that for the jury to entertain in the jury room. . . .
>
> Nikki's counsel: . . . I'm just saying that they have an obligation to prove things. . . .
>
> The Court: Well, it sounded to me like you were saying . . . that this incident happened in the District of Columbia, and it—
>
> Nikki's counsel: I don't—
>
> The Court: —should not be here in this Court . . .
>
> Nikki's counsel: I understand it's jurisdiction. The only thing I said about that was that, they haven't even proven a simple fact. Proof. That's all. . . . This is not a question of taking anything away from the Court on jurisdiction. This is simply a question of the kind of proof that they can come up with.
>
> Prosecutor: . . . I think a curative instruction needs to be given, that they are not to be concerned with that.
>
> The Court: Well, I would say, since the jurisdictional issue is not an issue that's for this jury to consider—
>
> Nikki's counsel: I'm not asking them to find Nikki Long not guilty because of the jurisdictional issue. That's not what I'm asking. I'm just saying, why can't the State prove something?

The Court:	But why can't they prove what? That it happened in Maryland?
Nikki's counsel:	Yes.
The Court:	Well, that's a jurisdictional issue.
Nikki's counsel:	Well, right, no, why can't they prove anything better than with a Google map? That's all. . . . Well, I'm not suggesting that . . . jurisdiction is the answer. I already made that argument with the State, and they didn't agree with me. But—
The Court:	Well, I think you're walking a fine line there and you may have tipped a little on to the side of a jurisdictional argument. So I will instruct the jury. *I will give a curative instruction that the location, or the location of the . . . incident is not an issue for their consideration. I mean, it's not.*
Nikki's counsel:	It isn't. I understand. But—
The Court:	All right. Okay. Well, that's my instruction to the jury.

The trial court then instructed the jury accordingly (emphasis added):

> Ladies and gentlemen, I just want to let you know that *the location of the happening of this incident* is not an issue for your consideration.

At the end of closing arguments, the jury retired for its deliberation and eventually returned guilty verdicts on all charges.

It is clear that the prosecution's position at trial was that the location of the alleged drug sale was unquestionably within Maryland. Apparently relying in significant part on the Google Maps satellite image presented by the prosecution, the trial court agreed. If this image were accurate—and it isn't—then the location of the crimes would lie comfortably within Montgomery County. But the actual boundary between the District and Maryland

is much closer to the location of the alleged crimes than is suggested by the Google image. That fact is critical in this case.

Analysis

A. Territorial jurisdiction

The first part of the Longs' appeals focuses on the issue of territorial jurisdiction. The Long sisters argue that the trial court erred in failing to instruct the jury on territorial jurisdiction and, later, in admonishing the jury, through a "curative" instruction, that "the location of the happening of this incident is not an issue for your consideration." Acknowledging that these issues were not preserved for appellate review, the appellants ask that this court evaluate their claims under the rubric of plain-error review.

The State counters that the exercise of plain-error review is not appropriate in this case. First, it argues that the trial court did not err in failing to give an instruction on territorial jurisdiction because, as the location of the alleged crimes was "undisputed," no jury issue as to territorial jurisdiction was generated. In the alternative, the State argues that even if the failure to instruct the jury on territorial jurisdiction were an error, the error was not material and would thus not warrant reversal of the Long sisters' convictions.

We do not agree with the State. The precise location of the alleged crimes was a legitimate issue at trial and should have been resolved by the jury. That the issue was not more obvious was only because the map used by the prosecution to show the boundary was

materially inaccurate. Responsibility for that error lies solely with the State and not appellants.

1. Plain-error review

Under Md. Rule 4-325(e), "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Generally, then, purported instructional errors must be properly preserved at trial to be reviewable on appeal. Rule 4-325(e) also states, however, that "[a]n appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object."

The exception in Md. Rule 4-325(e) does not swallow the rule. The Court of Appeals has instructed that Maryland appellate courts should exercise their discretion to review unpreserved errors with restraint:

> considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

Chaney v. State, 397 Md. 460, 468 (2007).

Plain-error review may be inappropriate for instructional errors that are "purely technical, the product of conscious design or trial tactics or the result of bald inattention." *State v. Brady*, 393 Md. 502, 507 (2006). But when the instructions given lack some "vital detail" or convey a "prejudicial or confusing message," the jury cannot fairly discharge its duty to render a true verdict based on the evidence. *Brady*, 393 Md. at 507–08 (quoting *State v. Hutchinson*, 287 Md. 198, 204 (1980)). When the circumstances surrounding such unpreserved instructional errors are "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial," *Brady*, 393 Md. at 507 (quoting *Hutchinson*, 287 Md. at 202), a reviewing court should not sit on its hands.

The Supreme Court articulated a four-prong test for invoking plain-error review in *Puckett v. United States*, 556 U.S. 129, 135 (2009):

> First, there must be an error or defect—some sort of [d]eviation from a legal rule—that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [trial] court proceedings. Fourth and finally, if the above three prongs are satisfied, the court of appeals has the discretion to remedy the error—discretion which ought to be exercised only if the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings. Meeting all four prongs is difficult, as it should be.

The *Puckett* formulation was adopted by the Court of Appeals in *State v. Rich*, 415 Md. 567, 578–79 (2010).

Applying the teachings of *Brady* and *Rich* to the present case, we conclude that plain-error review is appropriate.

2. Applying the plain-error doctrine[3]

a. The trial court erred in failing to instruct the jury on territorial jurisdiction and, by giving its "curative" instruction, taking the issue away from the jury.

To exercise its power over a criminal defendant, a Maryland court must have territorial jurisdiction over the crime to be prosecuted. *State v. Butler*, 353 Md. 67, 78 (1999). Because a court's territorial jurisdiction extends only to crimes committed within the state's "territorial limits," *State v. Cain*, 360 Md. 205, 212 (2000), a person generally

[3] There is an alternative basis for our review of the questions raised in this appeal. Maryland Rule 8-131(a) states that "[t]he issues of jurisdiction of the trial court over the subject matter . . . may be raised in and decided by the appellate court whether or not raised in and decided by the trial court." This exception to the general preservation requirement is "based on the premise that a judgment entered on a matter over which the court had no subject matter jurisdiction is a nullity and, when the jurisdictional deficiency comes to light in either an appeal or a collateral attack on the judgment, ought to be declared so." *Lane v. State*, 348 Md. 272, 278 (1997).

Though Rule 8-131(a) is written in terms of jurisdiction, we believe it applies of equal force to cases in which an appellant argues the trial court lacked territorial jurisdiction. *Cf. Bowen v. State*, 206 Md. 368, 374–75 (1955) (holding that the question of the trial court's territorial jurisdiction to convict for embezzlement, an issue unpreserved in the trial court, was reviewable on appeal); *see also Medley v. Warden of Md. House of Correction*, 210 Md. 649, 652 (1956) (discussing territorial jurisdiction and noting that *subject-matter jurisdiction* "attaches" in the state in which a crime is consummated or where certain acts are performed with the intention of producing some unlawful result). To the extent that the concepts of territorial jurisdiction and subject-matter jurisdiction can be distinguished conceptually, we do not believe any such distinction is relevant in the context of this case.

cannot be convicted in Maryland for crimes committed in another state, *Butler*, 353 Md. at 73 (citing *Bowen v. State*, 206 Md. 368, 375 (1955) ("[A]n offense against the laws of the State of Maryland is punishable only when committed within its territory.")). This requirement that the prosecuting state have proper territorial jurisdiction is rooted in the Sixth Amendment, which provides that "in all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury of the State . . . wherein the crime shall have been committed." *Trindle v. State*, 326 Md. 25, 38 (1992) (Eldridge, J., dissenting in part and concurring in part) (quoting U.S. CONST. amend. VI).

Though courts always must have territorial jurisdiction, the issue does not crop up in every case. As the Court of Appeals held in *Butler*, the issue arises only when "some supportive evidence" presented at trial raises a genuine factual dispute about the court's territorial jurisdiction. 353 Md. at 79. If a defendant generates the issue by more than "mere bald allegations" then the State must prove to the jury, beyond a reasonable doubt, that it possesses territorial jurisdiction over the alleged crime. *Id.* at 84–85. This is because, although territorial jurisdiction is not an element of the crime to be proved in every case, it is "a necessary and fundamental element of the broader concept of jurisdiction[,]. . . entirely necessary to proceed properly in any criminal case." *Id.* at 83. In the absence of territorial jurisdiction, a criminal proceeding is *coram non judice* and any resulting conviction void.

The "some supportive evidence" standard is not high bar to meet. *Cf. Bazzle v. State*, 426 Md. 541, 551 (2012) ("If there is any evidence relied on by the defendant which, if believed, would support his claim . . . the defendant has met his burden."). But a "bald conclusory assertion" that an offense was committed outside Maryland's territorial jurisdiction is not, standing alone, enough to create territorial-jurisdiction question for the jury. *Id.* at 79. Nor is it enough for defense counsel to make a "bare allegation," lacking an evidentiary foundation, that it is *possible* that the crime occurred outside the State. *McDonald v. State*, 61 Md. App. 461, 487 (1985).

It is helpful to see these rules in application. In *Butler*, the defendant had been charged with the murder of his ex-girlfriend, her brother and her 3-year-old son. 353 Md. at 70. The bodies of all three, wrapped in bedding and cellophane tape, were discovered in northwest Washington, D.C., in a car set ablaze and abandoned. *Id.* Evidence at trial connected Butler to the gun used to kill the victims, supplied a motive for the murders, and placed Butler in the District at a location close to where the bodies were found on the night that the murders occurred. *Id.* at 70–71.

Because the bodies were found in the District of Columbia, an inference arose that the killings took place there. *Id.* at 79 n.4 (citing *Breeding v. State*, 220 Md. 193, 200 (1959)). But the prosecution put on other evidence suggesting the killings actually took place in Maryland. For example, the bedding used to wrap the bodies belonged to Butler's girlfriend, who lived in Maryland. *Id.* at 70. And one of the girlfriend's neighbors also

testified that he saw Butler leave his girlfriend's apartment the evening of the murders in a burgundy rental car. *Id.* at 71. Because there was evidence that would allow the jury to find the killings took place on either side of the Maryland–District line, a factual dispute about the court's territorial jurisdiction had been generated and, the Court of Appeals held, should have been resolved by the trier of fact. *Id.* at 79.

In *Jones v. State*, 172 Md. App. 444 (2007), this Court held that a request for a jury instruction on territorial jurisdiction was properly denied. The victim in that case was intoxicated outside a bar in the Randallstown area of Baltimore County when strangers accosted her and put her in their car. *Id.* at 447–48. The defendant was assaulted in the back seat as the car drove around for four hours early one December morning. *Id.* at 448–49. The victim was, in the end, left beaten badly and bleeding in Baltimore City's Leakin Park—only a few miles from where she had been abducted. *Id.*

On cross-examination of the victim at trial, defense counsel aimed to raise doubt about where exactly the crimes occurred during the hours-long drive. Counsel asked whether the driver *could have* taken the victim on the Beltway, whether the driver *could have* instead been "on the Baltimore-Washington Parkway headed toward D.C." or whether the assault *could have* taken place in District, when the victim was still in the car. *Id.* at 450. This Court held that defense counsel's line of questioning was insufficient to raise a jury question about territorial jurisdiction:

> Evidence of a mere possibility that a crime did not take place in Maryland is not sufficient to create a genuine factual dispute about territorial jurisdiction. . . .
>
> In this case, . . . there is no evidence whatsoever that the car in which the victim was sexually assaulted traveled into the District of Columbia or Pennsylvania . . . during the early morning hours of December 4, 1998. To be sure, in the several hour time frame involved, the person at the wheel of the car could have driven it into the District or Pennsylvania, and back to Leakin Park; or for that matter he could have driven into Virginia, West Virginia, Delaware, or southern New Jersey, and back to Leakin Park . . . . The mere fact that it was physically possible for [Jones] and his accomplice to have driven the victim out of state and then back to Maryland in that time period, standing alone, is speculation, not evidence.

Id. at 457–58.

This case is different than *Butler*. The question at trial was not whether the alleged drug deal took place at a location in Maryland or somewhere indisputably in the District of Columbia. This case is also unlike *Jones*. The defendant does not argue a question of territorial jurisdiction was generated for the jury merely because it was *physically possible*, given the timing of the events at issue, that the alleged transaction happened beyond the bounds of the State. In the case at bar, the parties actually agree about when and, *roughly*, where these events took place.

Nonetheless, defense counsel did elicit through cross-examination of Officer Murray "some supportive evidence" to suggest the alleged drug sale occurred on the District side of the boundary line. While the evidence noting the District addresses and phone numbers of the nearby businesses suggested only that the sale occurred *near* the District and not in it, defense counsel elicited from the officer an important qualification to his testimony that

the Long sisters' truck was stopped "in the roadway." On cross-examination, Murray told the jury that "maybe part of [the truck] wasn't [on the roadway]." The truck was instead straddling the roadway and the sidewalk. The man who allegedly bought the drugs from the Long sisters was, *a fortiori*, standing on the sidewalk or on the auto-shop's property.

The back-and-forth about the precise location of the truck—defense counsel's apparent attempt to raise a factual dispute—may have seemed pointless under the circumstances. But this is only because of a series of errors muddied the waters. The prosecution's map, used to provide critical geographic context to the officer's testimony, was woefully inaccurate. It suggested to the court, and to the jury, that the line separating Maryland and the District of Columbia was about 60 or 70 feet south of the sidewalk where the alleged sale occurred. Set against a map so wide of the mark, it did not seem to matter just how far off the road the Long sisters' truck was when Officer Murray spotted it. But, in reality, the boundary between our State and the District cuts across this sidewalk on the south side of Blair Road, within, at most, a few feet of where the Long sisters were stopped and their alleged customer was standing.

Critical decisions by the trial court were affected by the inaccurate map. If the court had been aware of the actual boundary between the District and Maryland, surely the court would not have admitted the Google Map image into evidence. But the court unquestionably erred when it, in effect, took judicial notice of the boundary line presented on the map, decided it was "satisfied" these events took place in Montgomery County and

instructed the jury that the location of the alleged sale was not an issue for its consideration. *See* Md. Rule 5-201(g) ("The court shall instruct the jury to accept as conclusive any fact judicially noticed, *except that in a criminal action, the court shall instruct the jury that it may, but is not required to, accept as conclusive any judicially noticed fact* adverse to the accused.") (emphasis added).

These errors may have obscured the factual dispute required, under *Butler*, to create a jury question on territorial jurisdiction. But the dispute was present nonetheless.

In short, a genuine and consequential issue about where exactly the alleged sale took place vis à vis the boundary was generated by the direct and cross-examination of Officer Murray. *Butler* makes it clear that, in such cases, it is the role of the jury, and not the court, to decide whether the crime took place in Maryland. Thus, the instructions given were "lacking in some vital detail." *Brady*, 393 Md. at 507 (quoting *Hutchinson*, 287 Md. at 204). And the trial court's curative instruction to the jury in during Nikki's closing argument was directly contrary to the holding of *Butler*.

We reiterate that the question to be decided by the jury is not where the territorial boundaries of the court's jurisdiction lie. Rather, the jury's task, when the situs of the crime is disputed, is to decide whether the crime or certain elements thereof occurred within the state's territorial limits.

Using the correct map, as the State conceded at oral argument, whether the trial court was possessed of territorial jurisdiction to convict the Long sisters case was a question of

feet, not of yards. It was therefore up to the jury to decide where exactly the alleged sale took place.

b. The trial court's error was material.

We conclude that the errors were material because they deprived appellants of their constitutional right to have the merits of the cases against them decided by the jury, and not the court. In arguing otherwise, the State, both in its in its briefs and at oral argument, made much of the fact that no evidence presented by the defense contradicted the officer's testimony about where he saw the appellants' truck during the alleged sale. The State also suggested at argument that this Court could, using the record generated below and taking judicial notice of the correct boundary line, decide for itself whether the "undisputed" location of the sale falls within Maryland's territorial jurisdiction. Taking such an approach deprives the jury of its constitutionally protected role as factfinder in criminal cases. It is the jury that makes credibility determinations and decides how much probative weight should be given to the evidence presented to it. *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) ("[A fact-finder is] entitled to accept—or reject—*all, part, or none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence.") (emphasis in original). We cannot be sure a jury properly informed and instructed—and free to reject the officer's testimony—would have found the alleged sale took place in Maryland beyond a reasonable doubt, as *Butler* requires. The State's suggested approach also circumvents *Butler*'s specific holding: that the critical territorial-

jurisdiction determination *must be made by a jury*—not by judicial factfinding, whether done by the trial court or this Court on appeal.

c. Declining to exercise plain-error review would undermine confidence in the judiciary.

The final factor in the plain-error analysis does not require much elaboration. As is noted above, territorial jurisdiction is "a necessary and fundamental element of the broader concept of jurisdiction[,]. . . entirely necessary to proceed properly in any criminal case." *Butler*, 353 Md. at 83. When the court lacks territorial jurisdiction, any criminal proceeding is *coram non judice*, and any conviction that results from said criminal proceeding is void.

To leave a conviction undisturbed when the trial court's territorial jurisdiction is cast into doubt would "seriously affect[] the fairness, integrity or public reputation of judicial proceedings." *Givens v. State*, 449 Md. 433, 481 (2016). Correcting this unpreserved error is "fundamental to assure the defendant a fair trial." *Brady*, 393 Md. at 507 (quoting *Hutchinson*, 287 Md. at 202).

B. Additional claims on appeal

Our exercise of plain-error review moots the alternative contentions raised by the Long sisters: that trial counsel provided ineffective assistance of counsel, in violation of the Sixth Amendment, and that the trial court was required to voir dire the appellants to ensure that their decision to waive their right to testify was knowing and voluntary.

Conclusion

For the reasons that we have explained, the trial of appellants was rendered fundamentally unfair by mistakes made initially by the prosecution and, ultimately, by the trial court. An issue of territorial jurisdiction was raised at trial and, under *Butler*, should have been resolved by the jury. Accordingly, we reverse the convictions and remand the cases to the circuit court for new trials or other proceedings consistent with this opinion.

CASE NO. 2087, SEPTEMBER TERM 2018 (NIKKI SHAVONE LONG V. STATE):

THE JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY ARE REVERSED AND THE CASE IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY MONTGOMERY COUNTY.

CASE NO. 2216, SEPTEMBER TERM 2018 (INGRID LATONYA LONG V. STATE):

THE JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY ARE REVERSED AND THE CASE IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY MONTGOMERY COUNTY.

Appendix

The boundary depicted on this snapshot of Montgomery County's electronic zoning map accurately depicts the boundary line between Maryland and the District of Columbia. *See* Montgomery County Zoning, MCATLAS, http://mcatlas.org/zoning/ (last visited September 10, 2019). The shaded areas depict the footprints of buildings. We have added a red arrow to indicate the boundary line, as well as labels to identify the streets shown.

Circuit Court for Montgomery County
Case Nos. 133025C
133026C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2087 and 2216

September Term, 2018

NIKKI SHIVONE LONG

v.

STATE OF MARYLAND

INGRID LATONYA LONG

v.

STATE OF MARYLAND

Kehoe,
Friedman,
Wilner, Alan M.,
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Friedman, J.

Filed: October 4, 2019

When the location at which a crime occurred is challenged, our caselaw permits two courses of action. *State v. Butler*, 353 Md. 67, 79-80 (1999). If there is a genuine factual dispute about the location at which the crime occurred, it is a jury question. *Id.* If there is no dispute about the location at which the crime occurred, however, it is for the judge to decide whether the identified location is within the State. *Id.*

In this case, to my way of thinking, there was no dispute about where the crime occurred.[4] As a result, the judge needed only to determine if the crime occurred within the State of Maryland. The judge made that determination and was correct in finding that the identified location is in Maryland.[5] Even if the judge's determination was wrong, which I

[4] The Long sisters offer two pieces of evidence that they claim provide some supportive evidence to demonstrate the existence of a factual dispute: the street sign that says, "BLAIR ROAD NW" and the sign for D.C. Line Auto Service, which also includes a 202-area code as part of its telephone number. Slip op. at 8. The majority properly rejects these as proof only that the drug sale occurred *near* the District of Columbia, not that the crime occurred *in* the District of Columbia. Slip op. at 19. Despite this, my colleagues find that Officer Murray's testimony about the placement of the Longs' truck's wheels relative to the roadway and sidewalk created a factual dispute. Slip op. at 6-8, 19-20. In my view, Officer Murray's testimony doesn't provide any supportive evidence that the truck was in the District or that the sale occurred in the District. Even if the truck had been "straddling" the roadway and the sidewalk, slip op. at 20, the whole truck was, to my eye, still entirely in Maryland.

[5] My point is not to absolve the State's Attorney for the mistake of building the State's case around a defective map, nor to congratulate the Attorney General's office for calling the defective map to our attention. Rather, my focus is exclusively on whether the trial court erred, which in my view, it did not. *DeLuca v. State*, 78 Md. App. 395, 397-98 (1989) ("Only a judge can commit error."); *Braun v. Ford Motor Co.*, 32 Md. App. 545, 548 (1976) ("Error in a trial court may be committed only by a judge, and only when the judge rules, or in rare instances, fails to rule on a question.") (cleaned up).

sincerely doubt, it is not the kind of "blockbuster" error[6] for which plain error review is reserved.

I, therefore, dissent.[7]

[6] *United States v. Moran*, 393 F.3d 1, 13 (1st Cir. 2004) (cleaned up).

[7] As to the remaining issues, I would decline to rule on the sisters' ineffective assistance of counsel claims, which are more properly raised in a post-conviction proceeding. *Mosley v. State*, 378 Md. 548 (2003). I would also reject Ingrid's claim that the trial court erred in failing to conduct an on-the-record inquiry regarding the voluntariness of her decision not to testify. *Sibug v. State*, 445 Md. 265, 279 n.8 (2015) ("[W]hen a defendant is represented by counsel, there is no obligation on the part of the court to advise the defendant of the right to testify.").