

Circuit Court for Carroll County
Case No. C-06-CR-22-000434

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2110

September Term, 2022

BRANDON LEON SHIELDS

v.

STATE OF MARYLAND

Wells, C.J.,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 6, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Carroll County of possession of cocaine with intent to distribute, possession of fentanyl with intent to distribute, and related offenses, Brandon Leon Shields, appellant, presents for our review a single issue: whether the court erred “in allowing a State’s witness to testify to an expert opinion.” For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State produced evidence that on June 15, 2022, Deputy First Class James Martin, Corporal Thomas Shawver, and Detective Timothy Lookingbill of the Carroll County Sheriff’s Office conducted a traffic stop of a car driven by Mr. Shields. When Deputy Martin “started approaching” Mr. Shields’s car, Mr. Shields drove away, turned left, and began traveling south on Maryland Route 97. Deputy Martin and Corporal Shawver followed Mr. Shields, who turned onto eastbound Maryland Route 140. When Mr. Shields’s car came to a stop, Deputy Martin and Detective Lookingbill approached Mr. Shields and ordered him to exit the car. Westminster Police Officer Timothy Pheabus subsequently searched the area of the ramp from Route 97 southbound to Route 140 eastbound and “located a plastic bag that contained several capsules in small plastic baggies.” Deputy Martin arrived at the ramp and seized the plastic bag, inside of which police discovered 36 small bags containing a substance later determined to be cocaine, and eleven capsules containing substances later determined to be fentanyl and xylazine.

Mr. Shields contends that the “court erred in allowing a State’s witness to testify to an expert opinion regarding an intent to distribute.” Prior to trial, the State filed its “Initial Disclosures, Notices, and Motions,” in which it stated, in pertinent part, that “[u]pon reasonable notice . . . , Defendant or Defendant’s Counsel may inspect and review the

State’s file at a mutually convenient time and at least 14 days before trial.” The State subsequently filed a “Notice of State’s Intent to Introduce Expert Testimony,” in which the State “provide[d] notice of its intention to call Det[ective] Christopher Youman, Carroll County Sheriff’s Office, as an expert witness in CDS detection, observation, packaging, manufacturing, and street level distribution,” and stated that the detective was “expected to testify that [Mr. Shields] possessed with the intent to distribute a controlled dangerous substance.”

At trial, the State called Detective Youman and offered him “as an expert in CDS . . . detection, observation, packaging, manufacturing[,] and street level distribution.” During voir dire, Detective Youman testified that he met with the prosecutor “about this case,” and had told her “what [the detective’s] opinion would be” and “how [he] arrived at that opinion.” Defense counsel subsequently asked the court to “not find [Detective Youman] as an expert,” on the ground that the State had failed to provide the “grounds for [the detective’s] conclusion” and “the substance of any oral report” by the detective in violation of Rule 4-263(d). The prosecutor countered that “everything that [Detective Youman] looked at has been provided and [the State] gave the conclusion that he would be reaching in [its] notice.”

Interpreting defense counsel’s request as a motion to exclude expert testimony by Detective Youman, the court stated, in pertinent part:

The [c]ourt does not[e] that Defense Counsel did not file a motion to compel which [he] could under [Rule 4-263(i)] if [he] found that to be inadequate[,] and that combined with [the State’s] opening [of its] file, the [c]ourt would find that under [Rule 4-263(d)] that there has been adequate notice of a substance of what was going to be testified both given the notice

provisions along with the . . . open file[] discovery and all of the information was therefore, allowed.

. . . . [I]t is abundantly clear in this [c]ourt’s opinion that based on what had been previously submitted and that there was not only not a surprise but that he would be testifying based on his background and experience that in his opinion this was going to be that but in addition, there was no objections raised in that prior to today.

[E]ven assuming that there had been a violation, I certainly am willing to give you additional time for cross examination and would not make you do that today, [defense counsel], if you felt just assuming for the sake of argument that you needed additional time, the [c]ourt would be willing to satisfy that. I don’t think even if I were to find a violation that the remedy would be in this [c]ourt’s opinion[,] the appropriate remedy would be to exclude his testimony.

So I will give you the additional time if you believe having now heard his experience, you want additional time before that opinion is rendered but otherwise I will deny the motion to exclude.

Defense counsel declined the court’s offer of “additional time to prepare [him]self” and his cross-examination. The court subsequently accepted Detective Youman as an expert in the fields of “CDS detection, observation, packaging, manufacturing[,] and street level distribution.” The detective subsequently testified that in his opinion, “the evidence collected in this case is consistent . . . with an intent to distribute” cocaine and fentanyl.

Mr. Shields contends that the court erred in allowing Detective Youman’s testimony, because “the expert notice that the State provided before trial did not include the grounds for the [detective’s] opinion or the substance of [his] oral report.” Mr. Shields further contends that Detective Youman’s “opinion was essential [to] the State’s case[,] because he was the only witness who opined that the evidence suggested distribution rather than personal use.” The State counters that the “discovery notices . . . provided pre-trial

were sufficient,” because “the State explained that ‘everything that [Detective Youman] looked at’ to reach his conclusion was ‘provided [to Mr. Shields] and . . . gave the conclusion that [the detective] would be reaching.’” Alternatively, the State contends that the “court offered . . . an adequate remedy for any potential discovery violation.”

Sykes v. State, 253 Md. App. 78 (2021), is instructive. “Brandon Sykes . . . and Jessica Feldmeier . . . were arrested after police discovered packages of controlled dangerous substances . . . , heroin and fentanyl, tucked between the driver and passenger seat of [Ms.] Feldmeier’s car.” *Id.* at 85. At trial,

[t]he State . . . called Sergeant Crouch, who was offered as an expert in field drug investigations and interdictions with expertise in drug paraphernalia, sales, and terminology.

The defense objected to Sergeant Crouch’s testimony, arguing that the State had not disclosed the substance of Sergeant Crouch’s findings and opinions or the summary of the grounds for those opinions in violation of Rule 4-263[(d)](8)(a). The State responded that it had sent a formal expert notification to the defense in July of the previous year. In the notification, the State named Sergeant Crouch and indicated that he was being offered as an expert in packaging, sales, street value, and narcotics terminology, and that he would testify as such. The State also specified that Sergeant Crouch would offer opinions as to whether the factual circumstances surrounding [Mr.] Sykes’s arrest were indicative of personal use or distribution. Such opinions would be based, according to the State, on what he learned in court. The court overruled the defense’s objection and accepted Sergeant Crouch as an expert in the field of drug investigations and interdiction.

. . . . [Sergeant Crouch subsequently] testified that the amount of drugs – the 84 packages of heroin and fentanyl – found in [Ms.] Feldmeier’s car was consistent with quantities used for distribution.

Id. at 88-89. Mr. Sykes was subsequently convicted of possession of controlled dangerous substances with intent to distribute. *Id.* at 85.

On appeal, Mr. Sykes contended that the “court erred in allowing Sergeant Crouch to render expert testimony as to . . . the factual circumstances surrounding [Mr.] Sykes’s arrest because the State failed to comply with the applicable discovery rules.” *Id.* at 108.

Affirming the judgment, we stated:

Discovery rules exist in the criminal context for the purpose of assisting a defendant in preparing a defense and protecting a defendant from surprise. The relevant portion of . . . Rule 4-263 provides that, for each expert consulted by the State in connection with the action, the State shall provide to the defense:

- (A) The expert’s name and address, the subject matter of the consultation, the substance of the expert’s findings and opinions, and a summary of the grounds for each opinion;
- (B) The opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and
- (C) The substance of any oral report and conclusion by the expert[.]

Md. Rule 4-263(d)(8). The failure of a party to comply with Rule 4-263 “does not automatically disqualify a witness from testifying,” as disqualification is within the court’s discretion. Md. Rule 4-[26]3(n).

. . . . [W]e proceed to consider, based on the facts before us, whether the trial court abused its discretion in declining to exclude Sergeant Crouch’s testimony. This Court has stated that in exercising such discretion, the circuit court is to consider (1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice with a continuance; and (4) any other relevant circumstances.

The information allegedly omitted from the expert notice – the substance of Sergeant Crouch’s findings and the grounds for his opinions – was not given to [Mr.] Sykes because in June 2017 Sergeant Crouch had not yet reviewed the evidence or rendered an opinion. [Mr.] Sykes was nonetheless aware that Sergeant Crouch was an expert in narcotics

investigations and that he would eventually render an opinion based on the trial evidence as to whether the heroin seized from [Mr.] Sykes was for distribution or personal use. Based on this information, [Mr.] Sykes could generally anticipate Sergeant Crouch’s testimony

On appeal, [Mr.] Sykes has failed to explain how the expert notice prejudiced his defense. . . . If, as [Mr.] Sykes believes, the State was required to disclose more information about Sergeant Crouch’s training, he could have filed a motion to compel He did not do so. Nor did he request a continuance for the purported discovery violation. We discern no abuse of discretion in the court’s decision to allow Sergeant Crouch to testify.

Id. at 109-11 (internal citations, quotations, and footnotes omitted).

We reach a similar conclusion here. Like Mr. Sykes, Mr. Shields was aware that Detective Youman was an expert in narcotics investigations and that he would eventually render an opinion as to whether the cocaine and fentanyl seized by Officer Pheabus and Deputy Martin was for distribution or personal use. Based on this information, Mr. Shields could generally anticipate Detective Youman’s testimony. Mr. Shields has also failed to explain how the expert notice prejudiced his defense, which, as presented by defense counsel in argument, was not that Mr. Shields possessed the cocaine and fentanyl for personal use, but that he had not possessed the cocaine and fentanyl. Finally, Mr. Shields failed to file a motion to compel additional information about Detective Youman’s training, and declined the court’s offer of “additional time for cross examination” and a continuance to prepare that examination. In light of these circumstances, we conclude that the court did not abuse its discretion in allowing Detective Youman’s testimony.

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