

Circuit Court for Anne Arundel County
Case Nos.: C-02-CR-17-002287,88, & 89

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2145

September Term, 2018

DONTE ROCARTER MITCHELL

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 30, 2020

*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.

Donte Rocarter Mitchell, appellant, was charged in three cases with distribution of a cocaine, possession of cocaine with intent to distribute, and possession of cocaine. The cases were tried together before a jury in the Circuit Court for Anne Arundel County. Mr. Mitchell represented himself at trial, after discharging his public defender the day before trial began. The jury found him guilty of all charges and the court sentenced him to a total term of 24 years' incarceration. Mr. Mitchell, representing himself in a timely filed appeal, presents the following 10 questions for appellate review, which we quote:¹

1. Did the court err by not giving a hearing for a new trial motion based on double jeopardy *see* criminal procedure 8-301, different than first motion?
2. Did the court err by not giving a fair trial when judge bias shown against the Appellant by waiving his trial rights without consent and hearing his trial and suppression was prejudice?
3. Did the court err by not compelling the State to certify the charges as constitutional?
4. Did the court err by ignoring and denying the Appellant's remedy provided by U.S. Congress, HJR 192 and Public Law 73-10 to discharge the commercial charges *see_* 27 CFR 72.11 all crimes are commercial and unconstitutional, unless remedy is provided by the above named exemption, HJR 192, 1933?
5. Did the court err when two judges waived rights for the Appellant without his consent *see* "Brady waivers"?
6. Did the court err in allowing the State and officers to use evidence of unlawful surveillance video and wiretap without a court order or warrant per Title III?
7. Did the court err in not giving entrapment instructions, knowing Appellant used entrapment as part of his Defense?

¹ We added the question mark to the end of each "question" presented because no punctuation marks were included.

8. Did the court err in restricting cross examination of an Informant witness regarding involvement with the buy in questions *see* witness assertion is a statement of witness giving of the Appellant phone number *see* hearsay rule and right to confront?
9. Did court err in allowing video evidence and chemist report in violation of Brady and the discovery 30 day rule?
10. Did the court err by waiving Hicks date without any good cause reason and the State and trial judge perjured self concerning waived Hicks stating it was done by defense counsel?

Contrary to the Maryland Rules, Mr. Mitchell fails to provide any relevant factual context or argument to assist us in reviewing the questions he presents for appellate review. Although his brief includes a “Statement of Facts” section, the facts he presented are rambling and do not provide a context for all the issues he presented for our consideration. The argument section of his brief is simply a reiteration of each question presented. Maryland Rule 8-504(a)(4) & (6), however, requires that the appellant’s brief include “a clear concise statement of the facts material to a determination of the questions presented” and “argument in support of the party’s position on each issue.” We may dismiss the appeal for failure to comply with the Rule, *see* Rule 8-504(e), because appellate courts “cannot be expected to delve through the record to unearth factual support favorable to [the] appellant.” *Rollins v. Capital Plaza Associates*, 181 Md. App. 188, 201 (quotation omitted), *cert. denied*, 406 Md. 746 (2008). *See also Griner v. State*, 168 Md. App. 714, 740 (2006) (“[O]ur function is not to scour the record for error once a party notes an appeal and files a brief.”) (quotation omitted)).

Nonetheless, to the extent we could discern the issue presented and determine its factual context and a conceivable argument, we addressed it. Finding no errors, we shall affirm the judgments.

BACKGROUND

Mr. Mitchell was charged with various violations of the controlled dangerous substances laws after he sold cocaine to an undercover police officer on three different occasions. A confidential informant had given the officer a phone number and she sent a text message that read: "Hey this Abby, Babe girl you around." The recipient of the text responded and after a few more text exchanges, the officer called the number, spoke with a male, inquired about purchasing heroin, and was told to meet at the 7-11 store on West Street in Annapolis. Upon arriving at the 7-11, the officer contacted the number again to advise that she was there and within a couple of minutes Mr. Mitchell approached her car and got into the front passenger seat. He then sold her crack cocaine. This buy was recorded on a video camera installed in the officer's car. The officer purchased cocaine from Mr. Mitchell on two additional occasions, which again were captured on the hidden video camera in the officer's vehicle. The substances purchased tested positive for cocaine.

DISCUSSION

1. Did the court err by not giving a hearing for a new trial motion based on double jeopardy *see* criminal procedure 8-301, different than first motion?

The record reflects that on June 26, 2018, about two weeks after trial, Mr. Mitchell filed a motion for a new trial. At a hearing held on August 9, 2018, the court heard argument on Mr. Mitchell's motion and denied it. Mr. Mitchell complains, however, that

the court failed to address his second motion for a new trial which he maintains he filed on August 14, 2018. The docket entries, however, do not reflect that Mr. Mitchell filed a second motion for a new trial with the circuit court.² Accordingly, the court did not err in failing to hold a hearing on a motion that was not filed with the court.

2. Did the court err by not giving a fair trial when judge bias shown against the Appellant by waiving his trial rights without consent and hearing his trial and suppression was prejudice?

Mr. Mitchell provides no factual context nor argument on this issue and we are unable to discern the nature of his challenge.

3. Did the court err by not compelling the State to certify the charges as constitutional?

We hold that the court did not err in requiring the State to certify that the charges against Mr. Mitchell were constitutional.

4. Did the court err by ignoring and denying the Appellant's remedy provided by U.S. Congress, HJR 192 and Public Law 73-10 to discharge the commercial charges see 27 CFR 72.11 all crimes are commercial and unconstitutional, unless remedy is provided by the above named exemption, HJR 192, 1933?

We hold that the court did not err in failing to dismiss the charges against him.

5. Did the court err when two judges waived rights for the Appellant without his consent see “Brady waivers”?

We are unable to discern the nature of Mr. Mitchell's challenge.

6. Did the court err in allowing the State and officers to use evidence of unlawful surveillance video and wiretap without a court order or warrant per Title III?

² At the August 9th hearing, the prosecutor informed the court that Mr. Mitchell did not file his June 26th motion for a new trial with the court, but simply mailed it to the Office of the State's Attorney's and a caseworker then filed it for him.

We hold that the court did not err in admitting the video, which included an audio recording, because neither a court order nor warrant were required. There was no evidence that a wiretap was used in this case.

7. Did the court err in not giving entrapment instructions, knowing Appellant used entrapment as part of his Defense?

Mr. Mitchell believed that the officer used “trickery” in contacting him to purchase drugs because when she identified herself in the initial text as “Abby, Babe girl” he understood that to mean that she was the girlfriend of his friend nicknamed Babe. The trial court rejected his entrapment claim and, moreover, Mr. Mitchell did not request an entrapment instruction nor object to the instructions that were given. Accordingly, the court did not err in failing to instruct the jury on entrapment where no such instruction was requested or generated by the evidence.

8. Did the court err in restricting cross examination of an Informant witness regarding involvement with the buy in question? see witness assertion is a statement of witness giving of the Appellant phone number see hearsay rule and right to confront?

In his brief, Mr. Mitchell states that the officer testified at trial that she pretended she was Babe’s girlfriend, but also testified that “Babe don’t exist, it’s made up.” He further states the initial text message he received identified the texter as “Babe girl” and that he knew Babe to be Robert Harvey, yet the court failed to have Mr. Harvey subpoenaed.

Mr. Mitchell appears to be asserting that (1) the trial court erred in restricting his cross-examination of the officer regarding Robert Harvey and whether Mr. Harvey, as Mr. Mitchell suspected, had given the officer his (Mitchell’s) phone number and (2) he was

wrongly precluded from examining the confidential informant, who he assumed was Robert Harvey, because the trial court refused to have him subpoenaed.

On direct examination, the officer testified that a confidential informant had given her the phone number that ultimately lead to the controlled buy from Mr. Mitchell. She testified that she was informed that the number was associated with a person using the street name “Twin,” but she was not targeting Twin. On cross-examination, Mr. Mitchell attempted to elicit from the officer what she “really mean[t]” when she texted “Hey, this is Abby, Babe girl. You around.” The officer responded that she was “not really Abby,” but simply used that name in this undercover operation. She denied having “any clue” as to Mr. Mitchell’s identity when she sent the text. When Mr. Mitchell asked whether the officer’s testimony was that “Babe” was “a make-believe name” and “there’s nobody named ‘Babe,’” the officer testified, “Exactly. I’m somebody’s girlfriend and that’s maybe how I met you to - - .” Mr. Mitchell interrupted the response by asking if the officer knew “anybody named Robert Harvey.” The State objected. At an ensuing bench conference, Mr. Mitchell explained that “Babe” is the name he calls his friend Robert Harvey, and he wished to question the officer about Mr. Harvey “because the informant need to come to light because obvious some deal made (indiscernible).” The prosecutor replied that “there was zero deal made.” The court sustained the objection.

Upon resuming cross-examination, Mr. Mitchell stated in front of the jury, with objections interspersed by the prosecutor, that “Babe’s name is Robert Harvey.” “That’s a friend of mine.” “The jury need to know the truth.” “That I was set up.” When he then asked the officer if she knew Robert Harvey “personally,” the State objected and the court

sustained the objection. Instead of asking another question, Mr. Mitchell stated: “You don’t get to answer this. I know you know Robert Harvey. You know why? Because his name is Babe. It’s in my phone. And until the last police stop holding my phone and give it to me -- (indiscernible) get through a trial until the truth comes out, the God truth.” The court directed Mr. Mitchell to ask the witness a question.

On re-direct, the officer denied that any “deals” were made in this case and denied setting up Mr. Mitchell. On re-cross examination, Mr. Mitchell confirmed that the officer had gotten his phone number from an “informant” and she reiterated that Mr. Mitchell was not a “target.”

In a bench conference after the officer left the stand, Mr. Mitchell informed the court that he wanted to subpoena Robert Harvey. When asked why that would be helpful to his defense, Mr. Mitchell replied: “Because [the officer’s] saying that this is Babe’s girl. That’s how I met her. This is Babe’s girl.” When the court asked Mr. Mitchell if Robert Harvey was the informant, Mr. Mitchell replied: “I don’t know. I’m not sure[,]” but said that he was the only “Babe” he knew. The court explained that, even if Mr. Harvey was the informant, he would not be permitted to testify because “no motions were filed in regard to the disclosure of the informant’s identity.” But in any event, the court also found that the officer’s source of the phone number was not relevant to the fact that Mr. Mitchell had sold drugs to the officer on three occasions. Mr. Mitchell ultimately agreed that his “whole point” was that the officer had “tricked” him into selling her drugs because he would not have sold them to a stranger and identifying herself as “Babe girl” led him to believe it was

okay to sell them to this individual. At the end of the discussion, the court denied the request to subpoena Robert Harvey.

We see no error in the court's denial of the request to subpoena Robert Harvey. We agree with the trial court that the identity of the informant was not relevant and, moreover, Mr. Mitchell does not deny that he had failed to file a pre-trial motion requesting the disclosure of the informant's identity. For the same reason, the trial court did not err in precluding Mr. Mitchell from questioning the officer regarding her knowledge of Robert Harvey. And, as the State points out, the scope of cross examination is left to the discretion of the trial court and, given that the officer was not questioned about her reasons for identifying herself as "Abby, Babe girl" on direct, the court did not abuse its discretion in limiting Mr. Mitchell's inquiries on cross regarding Babe and Robert Harvey as that line of inquiry was beyond the scope of the State's direct examination.

9. Did court err in allowing video evidence and chemist report in violation of Brady and the discovery 30 day rule?

At trial and in his motion for a new trial, Mr. Mitchell claimed that the State had failed to provide him with all three video recordings of the three buys and had also failed to provide him the chemist report. The State disputed that claim, assuring the court that those items had been given to Mr. Mitchell's defense counsel well before trial. We see nothing in the record before us to contradict the State's claim. Accordingly, the court did not err in failing to find a *Brady* violation or any violation of the discovery rules.

10. Did the court err by waiving Hicks date without any good cause reason and the State and trial judge perjured self concerning waived Hicks stating it was done by defense counsel?

The parties agree that the *Hicks* date was May 5, 2018 and that Mr. Mitchell was tried on June 14 and 16, 2018. In ruling on his motion for a new trial, the court rejected Mr. Mitchell’s claim that *Hicks* was violated, noting that a docket entry and a hearing sheet reflect that, at a hearing held on March 27, 2018, the defense requested a postponement of the trial and the court found good cause to go beyond the *Hicks* date. The prosecutor also recalled that defense counsel had requested the postponement in order to have its own expert evaluate Mr. Mitchell’s competency to stand trial, as the State’s expert had found that he was competent. Mr. Mitchell has not produced a transcript of the March 27th hearing and we see nothing in the record to reflect that the docket entry is incorrect or that the court erred in granting the postponement.

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