

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1099

September Term, 2014

ROGER K. LEGGETT

v.

STATE OF MARYLAND

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Kehoe, J.

Filed: August 10, 2015

*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.

On July 2, 2014, in the Circuit Court for Wicomico County (Hon. W. Newton Jackson, III, presiding), a jury convicted appellant Roger K. Leggett of cocaine distribution. The trial court sentenced him, as a subsequent offender, to the mandatory minimum sentence of ten years imprisonment without parole. In his timely appeal to this Court, appellant raises the following questions, which we have reworded:

1. Did the circuit court err in permitting a police witness to offer impermissible lay opinion testimony?
2. Was the evidence sufficient to sustain the conviction for distribution of cocaine?

For the reasons set forth below, we answer these questions in the negative and shall affirm the judgment of the circuit court.

Factual Background

Appellant was tried and convicted based upon an October 2013 incident in Salisbury, Maryland. Corporal Brooks Phillips of the Maryland State Police testified that on the evening of October 16, 2013, he was working undercover with local detectives in a drug investigation. At about 6:30 p.m., he was in the backseat of an unmarked car with Detective Franklin Savage and Detective Johns.¹ Detective Savage was sitting in the front passenger seat when he observed appellant walking on the sidewalk of Isabella Street. Detective Savage proceeded to ask appellant for \$40 worth of crack cocaine. Appellant directed the detectives to drive to a nearby convenience store, where, during a

¹The transcript does not reveal the first name of Detective Johns.

further conversation regarding the drug sale, appellant told them to meet him at the back of the store. At that location, appellant handed Detective Savage an amount of crack cocaine in exchange for \$40 cash from the Salisbury police funds. The detectives' car was equipped with a video camera system, and Corporal Phillips's role that evening was to operate the camera system. Afterward, he downloaded the recordings onto the hard drive of a computer at the police office, and downloaded the exact video made that evening onto a DVD.

While the recording was being played for the jury, Corporal Phillips answered questions that helped to explain the persons' identities and what was taking place at the time. When asked why the recording was dated October 17, 2013, he explained that the video camera's battery had died on a couple of occasions that evening, which caused the date and time to reset.

At one point in the video, Corporal Phillips was heard to say that appellant was "breaking it up." The State's Attorney inquired as to what Corporal Phillips meant, and the following exchange occurred:

[State's Attorney]: What does it mean when you said the Defendant is breaking it up?

[Defense Attorney]: Object.

THE COURT: Pardon me?

[Defense Attorney]: Object.

THE COURT: To what?

[Defense Attorney]: Now he's narrating the video.

THE COURT: Well, that's okay, he was there. He can describe it step by step.
That's what he's doing, isn't it?

[Defense Attorney]: My objection is the video speaks for itself.

THE COURT: He can narrate, as long as he was there.

[State's Attorney]: What did you see when you said he's breaking it up now?

Corporal Phillips: At that time, I mean you hear us say multiple times his jacket is hanging low.

[Defense Attorney]: Object, nonresponsive.

[State's Attorney]: Specifically as to breaking it up.

Corporal Phillips: Sure. At that time I saw him pull an object out of his pocket and I could see it was a clear plastic baggie. He actually bit part of the plastic baggie off and I could see he was taking items out of the plastic baggie and putting them into his other hand. Which we believed that he had-

[Defense Attorney]: Object to what we believed.

THE COURT: Don't speculate. [State's Attorney], maybe you could rephrase the question so he's not speculating.

[State's Attorney]: How far were you from the Defendant when you observed him break off a piece of the suspected substance?

Corporal Phillips: Maybe from here to the doors, to the double doors.

[State's Attorney]: Okay. (Continued playing the video.)

Corporal Phillips further testified that he was within ten feet of appellant when he observed him “break off a piece of the substance.” When the drug deal actually occurred, the corporal was “within an arm’s length” of appellant. Corporal Phillips positively identified appellant for the record. He also acknowledged that appellant’s act of biting off the substance and placing it in a baggie was not captured by the video footage.

Detective Franklin Savage of the Pocomoke City Police Department testified that, on October 16, 2013, he was a narcotics detective with the Worcester County Criminal Enforcement Team, which was assisting the Salisbury City Police Department by making random drug purchases from individuals in the Salisbury area. On that date, as part of an undercover operation with Detective Johns and Corporal Phillips, Detective Savage made contact with appellant on Isabella Street and attempted to purchase \$40 worth of crack cocaine. After appellant directed them to pull around to the back of a Top Ten convenience store, he sold Detective Savage four pieces of crack cocaine for \$40 cash. The transaction was part of a “buy walk” operation, whereby police let sellers leave the area without being arrested at the time of the sale. Afterward, the suspected contraband was submitted to Salisbury Police Corporal Christopher Devoe, who testified regarding its chain of custody. Detective Savage positively identified appellant in a photo array for local authorities on November 8, 2013.

Salisbury Police Officer Ryan Brittingham was involved with the undercover operation as part of its backup safety team. He testified that on October 16, 2013, after receiving a call to be on the lookout for a male matching appellant's description, he located him on Isabella Street. Later that evening, Corporal Devoe gave him the suspected contraband, and Officer Brittingham placed it in a heat-sealed bag for testing by the State. On November 8, 2013, Officer Brittingham showed a photo array to Detective Savage, who immediately identified appellant as the one who sold him the suspected crack cocaine.

Maryland State Police forensic scientist Catherine Savage testified as an expert witness in chemistry and the identification and analysis of controlled dangerous substances. She described State's Exhibit 3 as a Ziploc bag containing four smaller bags that contained a total of .3 grams of an off white rock like substance which was confirmed, after chemical analysis, to be cocaine.

At the close of the State's evidence, the trial court denied defense counsel's motion for judgment of acquittal on the count of distribution of cocaine.

Analysis

I. The Police Officer's Lay Opinion Testimony

Appellant's first argument is that the trial court abused its discretion in permitting a police witness to offer an impermissible lay opinion. According to appellant, by allowing Corporal Phillips to narrate the DVD recording that purportedly depicts

appellant’s cocaine distribution to the police, “the trial court abused its discretion because the corporal’s narration constituted impermissible lay opinion under Md. Rule 5-701.” He contends that “the trial court should have precluded the corporal’s testimony because it addressed an ultimate fact within the province of the jury to resolve: whether, in fact, [appellant] distributed cocaine.” The State maintains that, as a preliminary matter, appellant’s “argument is not preserved for review as his objection below was grounded on a different legal theory than the one he now raises.” Even if preserved, because the corporal “simply recounted what he observed and never offered an opinion as to the significance of appellant’s behavior,” the State maintains that the court was correct to admit it as lay opinion testimony. We agree with the State on both issues.

Ordinarily, a general objection to the admission of evidence preserves for appeal all grounds which may exist for the inadmissibility of the evidence. The only exceptions to this principle are ““where the rule requires the ground to be stated, where the trial court requests that the ground be stated, and where the objector, although not requested by the court, voluntarily offers specific reasons for objecting to certain evidence.”” *Bazzle v. State*, 426 Md. 541, 561 (2012) (quoting *Boyd v. State*, 399 Md. 457, 476 (2007)). “It is well settled that a party who fails to object altogether, or who specifies one particular ground for objection, waives all grounds not articulated.” *Rosenberg v. State*, 129 Md. App. 221, 251 (1999) (appellant who objected to testimony as irrelevant during

trial could not argue, on appeal, that the testimony was inadmissible “other crimes” evidence because it was not preserved for appellate review), *cert. denied*, 358 Md. 382 (2000). “A principal purpose of the preservation requirement is to prevent ‘sandbagging’ and to give the trial court the opportunity to correct possible mistakes in its rulings.” *Bazzle*, 426 Md. at 562. At trial, trial counsel objected to the relevant part of Corporal Phillips’s testimony because (1) the video spoke for itself and therefore the witness was not permitted to provide narration; (2) one of the witness’s answers was non-responsive; and (3) one of the witness’s responses was speculative. None of these objections preserve appellant’s contention to this Court that the police officer’s narration was impermissible opinion testimony.

In any event, we note that the trial court properly admitted the corporal’s testimony through which he explained the meaning of his statement, during the video recording, that appellant was “breaking it up.” Maryland Rule 5-701 provides:

If the witness is not testifying as an expert, the witness’s testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.

A police officer’s lay opinion that a substance he had visually observed was, in fact, crack cocaine would be inadmissible because “a lay witness could not rationally identify a substance as crack cocaine based upon a visual inspection alone.” *Robinson v. State*, 348 Md. 104, 115 (1997); *Ragland v. State*, 385 Md. 706, 725-26 (2005) (A

witness’s opinion that he observed a “drug transaction” is not a lay opinion because it was based upon specialized knowledge, experience, and training.).

In the case *sub judice*, Corporal Phillips simply testified to what he saw appellant do on the October evening.² The corporal referred to the suspected crack cocaine only as “the object” appellant pulled out of his pocket, bit a piece off of, and put into his other hand; and further testified that he observed appellant “break off a piece of the substance.” That the witness was testifying while the video was playing does not transform these direct observations into opinions. Assuming *arguendo* that Corporal Phillips was expressing opinions, such first-hand observations do not violate Rule 5-701 because they were “rationally based on the perception of the witness” and are helpful to the jury’s “determination of a fact in issue.” Rule 5-701. *Accord Rosenberg*, 129 Md. App. at 257 (testimony was properly admitted where it “was based on detective’s first

²Appellant relies on *Moreland v. State*, 207 Md. App. 563 (2007), and *Washington v. State*, 179 Md. App. 32 (2008), *rev’d on other grounds* 406 Md. 642 (2008). Neither case provides support for his contentions. In *Moreland*, the witness was not present for the events depicted on the video (a bank robbery), but the witness had personally known the defendant for more than 40 years. 207 Md. App. at 567. We held that the witness’s long acquaintance with the defendant gave him a basis to express an opinion that the defendant was one of the persons involved in the robbery. *Id.* at 573. In *Washington*, the police officer witness did *not* testify that the defendant was shown in the photographs, but rather that the photographs depicted the same person, albeit from different angles, with some differences in attire. 179 Md. App. at 59–60. We concluded that the detective’s opinion satisfied the requirements of Md. Rule 5-701. *Id.* at 61.

hand knowledge, was rationally connected to the underlying facts, and was helpful to the jury”).

II. The Sufficiency of the Evidence

Appellant next argues that the evidence was insufficient to sustain his conviction for distribution of cocaine, as prohibited by Section 5-601(1) of the Criminal Law Article. While acknowledging the testimony of several witnesses, including expert Catherine Savage’s confirmation that the substance was cocaine, appellant contends that the video recording of the transaction was “at best inconclusive.” Appellant also complains that the “evidence was too speculative to be sufficient under the applicable case law” because of various answers given during trial by police detectives. The State counters that the evidence was sufficient.³ We agree with the State.

When we review the legal sufficiency of evidence supporting a conviction for cocaine distribution, the proper standard is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is not the role of this Court to retry the case. “Because the fact-finder possesses the unique opportunity to

³ The State also asserts that appellant’s claim is not preserved for appellate review because his motion for judgment of acquittal lacked the specificity required by Md. Rule 4-324(a). We view the preservation issue as a close one, and will give appellant the benefit of the doubt.

view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.” *Id.* at 185. ““The primary appellate function . . . is to determine whether the [fact-finder] made reasonable, *i.e.*, rational, inferences from extant facts.”” *Neal v State*, 191 Md. App. 297, 315, *cert. denied*, 415 Md. 42 (2010) (quoting *State v. Smith*, 374 Md. 527, 547 (2003)).

In the case before us, five witnesses testified for the State, two of whom were police officers who provided first-hand eyewitness testimony regarding appellant’s act of selling \$40 worth of crack cocaine on the night of October 16, 2013, and both of whom positively identified him for the jury. The witnesses’ testimony was supplemented by a video recording of appellant’s actions during the drug transaction, as well as the cocaine itself. Based upon the record before the court, the evidence was sufficient to support the jury’s verdict.

**THE JUDGMENT OF THE CIRCUIT COURT FOR
WICOMICO COUNTY IS AFFIRMED; COSTS TO BE
PAID BY APPELLANT.**