

Circuit Court for Wicomico County
Case No. C-22-CR-18-000632

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1302

September Term, 2019

DONALD EDWARD TATE

v.

STATE OF MARYLAND

Fader, C.J.,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 31, 2021

*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.

Convicted by a jury in the Circuit Court for Wicomico County of distribution of cocaine and related offenses, Donald Edward Tate, appellant, presents for our review two questions: whether the court “allow[ed] inadmissible hearsay into evidence,” and whether the court “allow[ed] inadmissible and prejudicial ‘other crimes’ or ‘bad acts’ into evidence.” For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Cynthia Harmon, who testified that in 2017, she and Evron Strand were “involved with one another and . . . business partners in selling drugs.” When Mr. Strand was “taken into custody,” Ms. Harmon “agreed to buy drugs for him.” Mr. Strand introduced Ms. Harmon to Mr. Tate, whom she knew as “Trill.” Mr. Tate subsequently sold Ms. Harmon nine ounces of cocaine in exchange for \$10,800. Ms. Harmon identified Mr. Tate in court as the person from whom she purchased the cocaine.

Mr. Tate’s contentions challenge testimony given by Virginia State Police Special Agent Scott Wade, who stated that he is “the coordinator for the Eastern Shore Drug Task Force.” During Agent Wade’s testimony, the following colloquy occurred:

[PROSECUTOR:] Did your task force have contact with Wicomico County authorities in November of 2017?

[AGENT WADE:] Yes, I did.

[PROSECUTOR:] Why?

[AGENT WADE:] We were working an investigation involving a murder for hire for one of our informants. And during that investigation I conducted an interview of Ms. Cynthia Harmon that was one of the individuals that was arrested related to that investigation, and we were attempting to identify a source of supply of cocaine from Wicomico County, Maryland.

[PROSECUTOR:] And did you identify that source of supply?

[AGENT WADE:] Yes, we did.

[PROSECUTOR:] Who was that source of supply?

[AGENT WADE:] He was identified as Donald Tate.

[DEFENSE COUNSEL]: Judge, I would object.

THE COURT: Basis?

[DEFENSE COUNSEL]: It's hearsay if he's testifying to what Ms. Harmon said.

THE COURT: Foundation.

[PROSECUTOR:] What information did you have about the Wicomico County source of supply initially?

[AGENT WADE:] We had a nickname of Trill is all I was provided.

[PROSECUTOR:] Were you provided photographs –

[] Madam Clerk, marking four photographs, I will number the pages as State's 9 page one, page two, page three and page four. Previously provided to defense in discovery.

[DEFENSE COUNSEL]: Your Honor, can we approach?

THE COURT: Yes.

(Whereupon, counsel approached the bench and the following occurred at the bench:)

[DEFENSE COUNSEL]: I believe the State's trying to introduce a picture of my client but my client is in jail clothes from a prior case.

[PROSECUTOR]: It's an identification.

[DEFENSE COUNSEL]: If the State wants me to stipulate that it's Trill, I'll do it.

THE COURT: Do it that way, does that work?

[PROSECUTOR]: Maybe, can I think about it?

THE COURT: You can.

(Whereupon, counsel returned to the trial tables and the following occurred in open court:)

[PROSECUTOR:] Were you provided – I’m trying to be careful, Judge, if I can have a little bit of latitude.

Why did you reach out to Wicomico County?

[AGENT WADE:] I have individuals that work for the Wicomico County Sheriff’s Office and their investigations unit that I’ve worked with in past investigations and I’m familiar with those individuals and have their contact information. So I reached out to them to try to identify the subject that was the source of supply of cocaine for Ms. Harmon.

[PROSECUTOR:] Did you receive potential suspects from them with the nickname Trill or potential suspects?

[DEFENSE COUNSEL]: Judge, again, I would object.

THE COURT: Overruled.

[PROSECUTOR:] Did you receive potential suspects?

[AGENT WADE:] I received potential suspects, yes.

[PROSECUTOR:] Did you receive a series of photographs?

[AGENT WADE:] I did.

[PROSECUTOR:] I’m showing what has been marked only for identification at this point four photographs marked as State’s Exhibit 9. Do you recognize those?

[AGENT WADE:] Yes, ma’am. These appear to be the same photographs that were sent to me from Wicomico County Sheriff’s Office.

[PROSECUTOR:] Were those photographs shown to Cynthia Harmon during an interview?

[AGENT WADE:] They were.

During a subsequent bench conference, defense counsel reiterated his objection and argued that the “testimony that [Mr. Tate] was a possible suspect” was “highly prejudicial” and “shows evidence of prior bad acts.” The court replied: “Understood, except that your attempt at Ms. Harmon was to attack her credibility and I think [the prosecutor] has a right to do some rehabilitation.” The following colloquy then occurred:

[DEFENSE COUNSEL]: Again, this whole line of questioning is to elicit that Trill is my client? Because anything else is just duplicative. I mean I said I would submit to that.

[PROSECUTOR]: I understand what he’s offering to stipulate to and I’m not satisfied. How anybody –

[DEFENSE COUNSEL]: Then what else is probative here?

THE COURT: What are you looking for?

[PROSECUTOR]: How she was shown these photographs. She was shown one that wasn’t him, she was shown another, that wasn’t him, she was shown another, that wasn’t him, then the fourth one she identified as this Defendant.

THE COURT: Why can’t you ask were there several photos that were shown and did she ultimately identify the Defendant. Is that the stipulation you would agree to?

[DEFENSE COUNSEL]: Sure. She already identified him, also.

THE COURT: Will that do it?

[PROSECUTOR]: I think so, Judge.

THE COURT: It does. Let’s do it that way.

(Whereupon, counsel returned to the trial tables and the following occurred in open court:)

[PROSECUTOR:] How many photographs were shown to Ms. Harmon?

[AGENT WADE:] Four.

[PROSECUTOR:] Which one of those photographs was this Defendant?

[AGENT WADE:] The last photograph in this stack which is –

[DEFENSE COUNSEL]: Judge.

THE COURT: It's okay, go ahead.

[AGENT WADE]: The last photograph in the stack which is marked four.

Mr. Tate first contends that the court erred in allowing Agent Wade's testimony "that the source of cocaine was identified as Mr. Tate," because the testimony "called for impermissible hearsay." The State counters that the contention is waived, and alternatively, that the testimony "was admissible because it was a statement of identification."

We agree with the State. Trial counsel did not renew his objection to the challenged testimony after the prosecutor laid a foundation for it, and hence, Mr. Tate's contention is not preserved for our review. Even if the contention was preserved for our review, Rule 5-802.1 states that a "statement that is one of identification of a person made after perceiving the person" is "not excluded by the hearsay rule" when it is "made by a witness who testifies at . . . trial . . . and who is subject to cross-examination concerning the statement." Here, Ms. Harmon identified the photograph of Mr. Tate after perceiving him, and was

subject to cross-examination at trial concerning the statement. Hence, Agent Wade’s testimony regarding the statement did not constitute impermissible hearsay.

Mr. Tate next contends that the court erred in allowing Agent Wade’s testimony that the photographs that he received from the Wicomico County Sheriff’s Office were of “potential suspects,” because the testimony “was irrelevant,” “was far more prejudicial than probative,” and “represented evidence of ‘other crimes, wrongs, or acts.’” We disagree. The testimony was relevant because, as the State notes, it “explain[ed] how [Agent Wade] came into possession of the four photographs [that] he showed [Ms.] Harmon.” Also, we have recognized that “[p]robative value is outweighed by the danger of unfair prejudice when the evidence produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case.” *Newman v. State*, 236 Md. App. 533, 550 (2018) (internal citation, quotations, and emphasis omitted). Here, we cannot say that Agent Wade’s testimony produced such a response, especially since Ms. Harmon had already identified Mr. Tate as the person from whom she purchased the cocaine. Finally, in *Somers v. State*, 156 Md. App. 279 (2004), we stated that a state trooper’s testimony that he knew Mr. Somers’s name “from other cases” did not constitute impermissible “other crimes” evidence, because the prosecutor’s “question . . . did not seek information about a past crime and produced an answer that did not directly elicit information about any criminal past on [Mr.] Somers’s part.” *Id.* at 313-14. Here, the

prosecutor's question was not unlike that of the prosecutor in *Somers*, and hence, Agent Wade's testimony was admissible.

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