Circuit Court for Anne Arundel County
Case No. C-02-CR-17-000867

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1848

September Term, 2017

DANTE MITCHELL

v.

STATE OF MARYLAND

Wright,
Graeff,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: December 18, 2018

Following a bench trial in the Circuit Court for Anne Arundel County, Dante Mitchell, appellant, was convicted of first and second-degree assault; reckless endangerment; and possession of a dangerous weapon with intent to injure. He was sentenced to twenty years' imprisonment for first-degree assault,[1] all but twelve years suspended; a concurrent three-year sentence for possession of a dangerous weapon with intent to injure; and five years of probation. In this appeal, appellant presents the following questions for our review:

1. Did the trial court misapply the law in rendering the verdict?

2. Did the trial court abuse its discretion in refusing to admit expert testimony regarding the effects of PCP[2] ingestion?

For reasons to follow, we answer both questions in the negative and affirm the judgments of the circuit court.

BACKGROUND

On March 18, 2017, at approximately 11:30 p.m., police officers responded to a call reporting a stabbing at the 24/7 Gas Station located at 1207 Forest Drive, in Annapolis, Maryland. When Officer Brett Schrack arrived at the scene he observed the victim, Donte

[1] The convictions for second-degree assault and reckless endangerment were merged into the conviction for first-degree assault.

[2] PCP is an abbreviation for Phencyclidine, a drug that is illegally used for its hallucinogenic effects. THE MERRIAM-WEBSTER DICTIONARY 539 7th ed. (2015). C.L. § 5–101(f)(1)(i) defines "controlled dangerous substance" to mean "a drug or substance listed in Schedule I through Schedule V." Phencyclidine is listed in Schedule II, set forth in C.L. §§ 5–403(e)(1)(iv).

Mitchell, appellant's twin brother, with a stab wound to the stomach. He also observed appellant standing to the side of his brother holding a bloody knife in his right hand at his side. Schrack drew his service weapon and ordered appellant to drop the knife. Schrack testified that after ordering appellant to drop the knife several times, appellant "retreated back into the store, back towards an ATM machine." At this time, Schrack entered the store accompanied by another officer and saw appellant perched against the ATM machine. Schrack testified that appellant "was kind of shielding the knife with his right hand down to his side out of view." The officers then ordered him to show his hands and drop the knife. Schrack further testified that appellant "took a couple of steps towards [the officers] with the knife in his hand and then dropped the knife and obeyed [] commands to get on the ground," at which point the officers were able to place him into custody.

During a four-day bench trial, the State introduced into evidence police body camera video footage showing appellant's behavior as he was being apprehended. In this footage, appellant can be seen stating, "somebody set me up;" "I didn't mean to stab my brother like that;" "it was all PCP;" and "Don, I'm sorry, Don. I love you." The footage continued to show appellant making erratic statements, while also shouting expletives and racially charged comments at the officers.

A video recording of appellant being interviewed by Detectives Lawrence Deleonibus and Corporal Ascione at the police station was also introduced at trial. During the interview, appellant voluntarily stated "I was on PCP, man[] and he looked like somebody else that was running on me or something." Appellant continued, "do you

believe I stabbed my own brother? [] I was high on PCP, man . . . . He appeared to be a demon to me or something." Appellant claimed that starting at 7:00 a.m. he had smoked four "dippers"[3] throughout the day and that he smoked the last one approximately five to ten minutes before the stabbing. He also told the detectives he's been smoking PCP since he was about thirteen years old, he was accustomed to smoking four dippers throughout the day, and he typically consumed that amount three to four times per week.

Appellant described to the detectives what it is like to smoke PCP, detailing that it can "make you see everything, hell or [sic] earth or everything," and "it's like you're seeing the spiritual world and its brought together." He even claimed PCP made him "tap Donald Trump's phone" and he would sometimes hear voices and "talk to Jesus, or God or the government." Appellant told detectives he stabbed his brother outside of the gas station "probably like three, four times."

During trial, Deleonibus, who has been with the Annapolis Police Department for ten years, testified that he has had contact with at least ten people a year under the influence of PCP. He described the "classic symptoms" of PCP intoxication as "the person's acting very erratic, sweating profusely, pupils usually pinpoint;" "there's usually a very strong chemical odor coming off of their person;" and "an inability to really focus on a conversation." Deleonibus was then asked if he recognized any of these symptoms during

[3] Defense expert, Dr. Lawrence Guzzardi, testified that a "dipper" is a cigarette that has been dipped in liquid PCP.

his police interview with appellant, he stated "[he] did not." Instead, Deleonibus testified that appellant was present and focused while answering questions during the interview.

After the testimony of Delonibus, the State called Corporal Ascione as a witness. Ascione had eight years of experience as a police officer and had encountered between 50 and 100 individuals who had exhibited symptoms of PCP ingestion. When asked to describe the behaviors exhibited by an individual who is under the influence of PCP, Ascione stated an individual may be in a "hypnotic state," "they will be shouting and screaming things that don't make any sense," or "acting [in a] very violent manner." When asked whether appellant exhibited any of these symptoms during the police interview, Ascione testified that he did not.

Following the testimony of Ascione, the State rested its case and appellant moved for judgment of acquittal as to all counts. The court granted the motion as to count one, attempted first-degree murder, and denied the motion as to the remaining counts. The appellant then called as an expert witness, Dr. Lawrence Guzzardi, a "medical toxicologist and emergency physician." During voir dire, Dr. Guzzardi confirmed that the last time he was certified as a medical toxicologist was over thirty-five years ago in 1980, and the last time he treated a patient for ingesting PCP was in 1998. Over objection, the court accepted Dr. Guzzardi as an expert in the field of medical toxicology.

During direct examination, defense counsel questioned Dr. Guzzardi about his basis for determining appellant was under the influence of PCP. He testified that he had the opportunity to review "a lot of information" before giving his expert testimony at trial,

including: information provided by appellant; appellant's medical records; the police interview; fire department records regarding appellant's transport from the police station to the hospital; police body camera video; police reports; and written witness statements. However, Dr. Guzzardi testified there were no toxicology results available for his review:

> [COUNSEL]: And in this particular case and the course of all of those materials, were there any toxicology results available to you?
>
> [DR. GUZZARDI]: No, the -- unfortunately the police did not do -- take any toxicology evaluations. Neither urine nor blood to assist in determining the level or the -- even the definite drugs that were taken in this particular matter. We did have evidence by numerous statements, contemporaneous and statements that were made about [appellant's] use. And we also have statements that were made after he was incarcerated to Dr. Holt about his use and they were all consistent in terms of the use of PCP, marijuana and alcohol at times very close to the incident that we are talking about today.

As Dr. Guzzardi continued his testimony, he testified about the general effects of PCP and the signs of PCP use he observed in appellant:

> [COUNSEL]: In a person that has recently ingested PCP by smoking, what are some of the effects that you would expect to observe?
>
> [DR. GUZZARDI]: Well, I will talk about the effects that were in this matter that I saw evidence of. Okay, so first of all PCP is a drug that was used as an anesthetic. And it is very similar to ketamine or Vitamin K . . . [I]t is a commonly used drug. It is what we call a dissociative hallucinogenic. Dissociative means it dissociates you, makes you feel different. Different from reality and hallucinogenic in that it can cause hallucinations -- delusions, et cetera . . . .

[COUNSEL]: Okay, so regarding the specific case and the materials that you reviewed including the interview, what are some signs of PCP use that you observed in Mr. Mitchell?

[DR. GUZZARDI]: Paranoia. Delusions. Relaxation. Loss of memory. Those were the essential parts. I would say some aspects of numbness or really the anesthetic effects of the PCP, so I will diminution of pain ---.

[COUNSEL]: Now, how do you define the word paranoia?

[DR. GUZZARDI]: Paranoia is the false expectation that someone is trying to hurt you.

[COUNSEL]: Is that something that you observed in the video taped interview of him?

[DR. GUZZARDI]: Where he had -- where his statement about his -- the -- I have the exact statement here. That his brother was -- looked like a demon.

[COUNSEL]: And what is your definition of delusions?

[DR. GUZZARDI]: Delusion is a false -- a false belief. It is a belief not based upon fact. So if I believe that there is martians in the room, that is a delusion . . . .

In rebuttal, the State called Eric Trumbauer, a police officer of fifteen years who was certified as a drug recognition expert ("DRE") and currently serves as the DRE coordinator for Anne Arundel County Police Department. Over objection, Trumbauer was accepted as an expert in the field of drug recognition. Trumbauer testified that he had interacted with approximately sixty individuals who were under the influence of PCP. In addition, he testified the classic signs that someone is under the influence of PCP are "profusely sweating . . . removing their clothing . . . [and] doing things to lower their body

temperature." He also described other classic signs of PCP consumption as "extreme rigidity" and "a catatonic state." Trumbauer stated he reviewed the body camera footage and the police interview recording, and did not observe appellant display any of these behaviors.

In rendering its verdict, the court stated, "I can conclude very easily that the defendant was the culprit in stabbing his brother." In making this observation, the court highlighted that "[w]hen the police arrived, they saw the victim, they saw the defendant holding a knife and the circumstantial evidence as to what occurred, particularly the statements made by the defendant when he was being interviewed he was very apologetic for stabbing his brother." Furthermore, the court framed the issue as "whether or not the evidence I have before me as to the PCP that he ingested . . . would negate any criminal intent that would be [an] affirmative defense to any of the remaining counts."

In resolving this issue, the court noted there was "pretty good photographic evidence, the booking video, the interview video to basically show me this defendant within a reasonable amount of time after the actual stabbing occurred." The court continued, "the video was very revealing that he took caution in crossing the street. He hid in the store which was a consciousness of guilt. And he was aware that he hurt his brother. All of these indicate a guilty conscious on the part of the defendant." With respect to expert testimony, the court expressed that it "gleaned virtually no probative value from either [expert]."

Ultimately the court concluded that although appellant "seemed remorseful, he seemed coherent . . . [the court] can't come to any other conclusion, but he was aware of what had occurred." Further, the court stated:

> So I guess I am commenting on what I actually did not hear in this case. I got no help from either expert. No blood test to help me determine the extent of the PCP. So what do I have left? I have a victim laying on a commercial establishment floor bleeding profusely. I have a defendant standing a short distance away holding the knife that I absolutely am convinced was used in stabbing that victim.
>
> So the whole idea of specific intent I think has been resolved in favor of the State. The defendant has not produced any evidence that would indicate to me that he was under the influence to the extent that it would have caused any negation of the intent required for these particular crimes. So as a result, counts 1 and 2 I have already indicated are gone, I find the defendant guilty of count 3 and count 4, count 5 and count 6.

A sentencing hearing was held on November 6, 2017, and appellant was sentenced to twenty years' imprisonment for first-degree assault, with all but twelve years suspended. In addition, appellant recieved a concurrent three-year sentence for possession of a dangerous weapon with intent to injure and five years of probation. This timely appeal followed.

STANDARD OF REVIEW

In reviewing the verdict of a bench trial, factual findings are given deference under the clearly erroneous standard, however, we conduct a non-deferential review of a trial court's legal conclusions. *See, e.g., State v. Neger*, 427 Md. 582, 595 (2012) (noting that "the clearly erroneous standard . . . does not . . . apply to legal conclusions. For legal conclusions, we conduct a non-deferential review"). Ordinarily, an appellate court will

presume that the trial judge knows the law and applies it properly, however this presumption is rebuttable. *See Thornton v. State*, 397 Md. 704, 736 (2007). "Because of these potent presumptions, we are reluctant to find error, opining that the judge misperceives the law, unless persuaded from the record that a judge made a misstatement of the law or acted in a manner inconsistent with the law." *Medley v. State*, 386 Md. 3, 8 (2005).

DISCUSSION

I. The trial court did not misapply the law in rendering its verdict.

Appellant presents two arguments to support his assertion that the trial court misapplied the law when deciding its verdict. First, appellant argues that "the trial court erroneously predicated its verdict on transferred intent where transferred intent as a matter of law did not apply." Second, appellant argues the trial judge impermissibly shifted the burden on appellant to prove that voluntary intoxication negated his specific intent to harm his brother. We will discuss each argument in turn.

In response to appellant's first argument, the State contends "the trial court did not mistakenly apply the concept of transferred intent" and that "a fair reading of the record reveals that the trial court raised [the] topic [of transferred intent] to satisfy a passing curiosity." We agree with the State. In raising the concept of transferred intent, the trial court presented a hypothetical question to counsel during the start of closing arguments, stating:

> I am going to muddy the waters just a little bit more because we are building a record here and I want to hear from defense counsel on this issue. And it is

> going to sound kind of silly when I say it. He thought he was stabbing a demon. He was conscious that he was stabbing something or someone. The whole idea of transferred intent, you know if I go into a crowd and I -- or the defendant goes into a crowd and said I thought I was shooting a certain person because they wouldn't pay me for a drug deal and happened to shoot another innocent person, I think the whole idea of transferred intent would justify conviction of that person.
>
> So *how much should I weigh that into my thought process* that he thought he was stabbing a demon even though it wasn't the person he thought he was stabbing, he stabbed someone else[?]

Before counsel replied to the court's transferred intent inquiry, the court qualified its statement by stating "or should I have never brought it up because it is an intellectual discussion more than anything else." The State agreed and continued to explain its theory of the case that appellant intentionally stabbed his brother and said that PCP consumption caused him to believe he was stabbing a demon as a pretext to justify his behavior.

> [THE STATE]: Well, it is and the intent to stab obviously the crime that is charged with attempted second-degree murder of his brother and first-degree assault on his brother, I think that the comment that he makes about, "I thought it was a demon" whether -- based on all of the other information we have about his behavior that night and his inconsistency --
>
> [THE COURT]: You don't believe him when he said I thought I was stabbing a demon?
>
> [THE STATE]: I don't believe that, no.
>
> [THE COURT]: So you believe as part of your theory that he intentionally stabbed his brother then?
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> [THE STATE]: Of course I do but --

* * *

[THE COURT]: So you are thinking -- your theory, you think it was well thought out to the point where he realized that he stabbed his brother and then he said I got to make it sound like I was under the influence so that I therefore, I am going to say that I thought I was stabbing a demon? That is --

[THE STATE]: I think that --

[THE COURT]: -- your theory?

[THE STATE]: -- I think that like the case law indicated, somebody who might not otherwise do something but has -- is maybe -- well I want to make sure that I state this correctly. Court's indulgence.

(Pause)

[THE STATE]: This is coming from *Grover*, "[e]vidence of drunkenness which falls short of a proven incapacity in the accused to form the intent necessary to constitute the crime merely establishes that the mind was affected by drink" or I would argue in this case drugs, "so that he more readily gave way to some violent passion and does not rebut the presumption that a man intends the nature consequences of his act." That is what I would say about that.

So the behaviors of the defendant as I have already indicated as the Court observed within the minutes of the stabbing occurring, his recall of that date, his recall of the offense leading right up to the stabbing, his recall of in fact of the stabbing, his recall of going over to the police station and in fact, as you will recall in the interview with the police he even says, "[o]h I think I still had the knife in my hands when the police got there." So he has very good recall.

The State then addressed the court's concern regarding the lack of available evidence to show the degree of appellant's PCP intoxication, noting the police were unable

to find witnesses to corroborate appellant's PCP use nor did the defense present any witnesses that could testify about the effects PCP had on appellant prior to the stabbing. After the State concluded, the court gave defense counsel the opportunity for rebuttal. Defense counsel asserted the State was effectively engaging in burden shifting by referencing the lack of witness testimony. The court made no further comments about the transferred intent hypothetical. However, defense counsel returned to the concept of transferred intent in its closing argument, stating:

> [COUNSEL]: I had thought about the issue that the [c]ourt raised before -- a while ago, which I can't totally articulate what it was, the transferred intent question.
>
> [THE COURT]: I told you it was going to cloud the waters.
>
> [COUNSEL]: I think even if you -- hypothetically --
>
> [THE COURT]: It may be justified killing a demon.
>
> [COUNSEL]: Right.
>
> [THE COURT]: But the example that I gave would not be justified to come into a crowd and you shoot at a person that you intend to shoot and kill and hit an innocent victim, it is a little different. So maybe it wasn't even fair on my part to bring it up. But I think to the extent that he had an intention to kill a demon, could that be transferred to his brother?
>
> [COUNSEL]: I don't -- I don't believe so.
>
> [THE COURT]: Okay.

Based on the court's previous statements, appellant asserts the trial judge "indicated that he intended to give [the theory of transferred intent] 'weight' in his 'thought process' and there is no indication in the record that [the trial judge] changed his mind prior to rendering the verdict." However, appellant mischaracterizes the trial judge's statement. Instead, the trial judge asked, "[s]o *how much should I weigh that into my thought process*[?]"[4] The judge's statement was a question, he did not state his intent.

As a reviewing court, when we are tasked with determining whether a trial judge incorrectly interpreted or applied the law, we resolve that question by examining what the trial judge said in reaching its result. *Mobuary v. State*, 435 Md. 417, 441 (2013). In the present case, the trial judge directed his inquiry about transferred intent to defense counsel, indicating it was an "intellectual discussion." Moreover, following closing arguments, the concept of transferred intent was never mentioned again by the trial judge, nor was it incorporated in his decision. As such, the record does not reflect that the trial judge gave weight to the discussion of transferred intent in rendering his verdict.

The trial judge stated, "[he could] conclude very easily that [appellant] was the culprit in stabbing his brother." The judge noted that he had to decide whether or not the evidence before him regarding appellant's PCP ingestion "would negate any criminal intent that would be [an] affirmative defense." He then stated his decision rested upon to "what extent did the defendant know what he was doing and was he [sic] so far under the influence

[4] In full, the trial judge asked, "[s]o how much should I weigh that into my thought process that he thought he was stabbing a demon even though it wasn't the person he thought he was stabbing, he stabbed someone else[?]"

of PCP that it would be a defense to any of these crimes?" The intellectual discussion previously discussed was not referred to nor did the trial judge predicate his verdict on transferred intent. The judge's decision was based on the credibility of the evidence regarding the extent to which appellant was under the influence of PCP.

Appellant's second argument to support his assertion that the trial court misapplied the law in reaching its verdict, is the court "erroneously placed the burden on appellant to prove that voluntary intoxication negated a specific intent to harm his brother." In contrast, the State maintains appellant "failed to meet his burden of producing evidence sufficient to generate the voluntary intoxication question." We agree with the State. Maryland Criminal Law Code § 3-202(a)(1) governs first-degree assault and provides, in relevant part, "[a] person may not intentionally cause or attempt to cause serious physical injury to another." "Serious physical injury" is defined as "physical injury that: (1) creates a substantial risk of death; or (2) causes permanent or protracted serious: (i) disfigurement; (ii) loss of the function of any bodily member or organ; or (iii) impairment of the function of any bodily member or organ." CL § 3–201(d). To sustain a conviction for first-degree assault, the State must prove a defendant had the requisite "specific intent to cause, or attempt to cause, serious physical injury." *Dixon v. State*, 364 Md. 209, 239 (2001).

Generally, voluntary intoxication is not a defense to a criminal charge, except "when a defendant, charged with a crime requiring a specific intent, is so [intoxicated] that he is unable to formulate that *mens rea.*" *State v. Gover*, 267 Md. 602, 606–07 (1973). The defendant's "intoxication then will excuse his actions and serve as a defense." *Id.* A

defendant remains "criminally responsible as long as he retains control of his mental faculties sufficiently to appreciate what he is doing." *Beall v. State*, 203 Md. 380, 385–86 (1953). *See also, Gover*, 267 Md. at 607. Furthermore, the burden of production is on the defendant to generate the issue of voluntary intoxication. *See State v. Evans*, 278 Md. 197, 207–08 (1976) (*superseded by statute on other grounds*) ("the burden of initially producing 'some evidence' on the issue of mitigation or self-defense . . . sufficient to give rise to a jury issue with respect to these defenses, is properly cast upon the defendant.").

To support his assertion, appellant relies on *Bazzle v. State*, 426 Md. 541 (2012). In *Bazzle*, the defendant was convicted of attempted second-degree murder, attempted armed carjacking, and first-degree assault, all of which required a specific intent. Bazzle claimed that on the night of the crime, he was unable to recall some of the events because he was drunk and had consumed at least three 40-ounce containers of beer and drank more alcohol throughout the night. He requested a jury instruction on voluntary intoxication, but the court denied his request. *Id.* at 547.

On appeal, Bazzle challenged the trial court's denial of his request for the jury instruction, arguing that he had produced "some evidence" of voluntary intoxication in that his blood-alcohol content was nearly twice the legal limit; his inability to recall the events of the night; a witness testified that at one point he was "almost about to pass out;" and the senseless manner in which the assault was committed. *Id.* at 552, 555.

The Court of Appeals rejected Bazzle's argument, holding the evidence of his drunkenness was insufficient to generate an instruction on voluntary intoxication, stating:

> [T]he single fact that one has consumed what some may consider to be an inordinate amount of alcohol, standing alone, with no evidence as to the [effect] of that alcohol on the defendant, would not permit a jury reasonably to conclude that he had lost control of his mental faculties to such an extent as to render him unable to form the intent[.]

Id. at 553 (quoting *Lewis v. State*, 79 Md. App. 1, 12–13 (1989)).

The Court found that to generate an instruction on voluntary intoxication, a defendant must produce more than evidence merely showing that he or she was drunk:

> Evidence of drunkenness which falls short of a proven incapacity in the accused to form the intent necessary to constitute the crime merely establishes that the mind was affected by drink so that he more readily gave way to some violent passion and does not rebut the presumption that a man intends the natural consequence of his act.

Id. at 553–54 (internal emphasis, citations, and quotations omitted).

The Court concluded that Bazzle had merely demonstrated "he was drunk and exhibited the typical characteristics of being drunk" and as such, "[t]his [was] not evidence that he was unable to form a specific intent." In addition to concluding Bazzle failed to generate "some evidence" that he was unable to form the specific intent to commit the charged crimes, the Court went on to highlight other evidence that was inconsistent with a voluntary intoxication defense. Specifically, Bazzle's decision to wear a bandana to cover his face and to wrap a shirt around the weapon that he used to stab the victim "demonstrate[d] a significant amount of design in planning the crime." Also, after he claimed to have been attacked, he was able to escape from his alleged attackers by running away and locating a friend's house; he was able to identify the gender of his alleged

attackers; and he had the ability to speak intelligibly—all of which "contradicted his intoxication theory."

Similarly, in the case at bar, the evidence failed to show appellant was so intoxicated that he lacked the mental capacity to form the specific intent necessary to commit the charged crimes. Mere evidence that appellant took "dippers" throughout the day, claimed to have seen a demon, and made incoherent remarks, only established that he may have been under the influence of PCP. This evidence did not establish that appellant was so intoxicated he lacked the mental capacity to form the requisite specific intent to commit the crimes.

Furthermore, the trial judge pointed to other evidence that contradicted appellant's voluntary intoxication defense. He stated:

> [appellant] took caution in crossing the street. He hid in the store . . . [a]nd he was aware that he hurt his brother. All of these indicate a guilty conscious on the part of the defendant . . . [w]e also know that he experienced pain. . . people under the influence of PCP are somewhat -- not immune from pain but the . . . threshold for pain is different.

The trial court noted these behaviors were inconsistent with being highly intoxicated on PCP. Such inconsistencies supported the court's conclusion that appellant was not under the influence of PCP to the extent that it would have caused any negation of the specific intent required to commit the charged crimes.

II. The trial court did not abuse its discretion by excluding expert testimony regarding the effects of PCP ingestion.

Appellant contends the "trial court abused its discretion by arbitrarily rejecting Dr. Guzzardi's testimony about the dissociative effects of PCP, on the sole basis that the word

'schizophrenia' is commonly associated with the field of psychiatry." Conversely, the State asserts the court's ruling was a "sound exercise of the trial court's broad discretion to determine the admissibility of expert testimony." We agree with the State.

The critical test to determine the admissibility of expert testimony is whether the expert's opinion will assist the trier of fact to understand the evidence or determine a fact in issue. *Bryant v. State*, 393 Md. 196, 204. Maryland Rule 5-702 sets forth the standard for admissibility of testimony by experts:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

"Generally, a trial court has wide latitude in deciding whether to qualify a witness as an expert or to admit or exclude particular expert testimony." *Shemondy v. State*, 147 Md. App. 602, 611 (2002). This decision will be reversed on appeal only if there is an abuse of discretion. *Id.* "An appellate court will only reverse upon finding that the trial judge's determination was both manifestly wrong and substantially injurious." *Brown v. Contemporary OB/GYN Assocs.*, 143 Md. App. 199, 252 (2002) (citations omitted).

Here, Dr. Guzzardi was accepted by the court as an expert in toxicology. During his testimony about the effects of PCP, he referred to the drug as a "dissociative hallucinogenic." To give an example of what he meant by dissociative hallucinogenic, Dr. Guzzardi stated that appellant's comments, "the voices tell you to do [things]. Revengeful

[things] from back in ancient times," indicated a significant disassociation, which could also be known as schizophrenia. The State then objected and moved to strike Dr. Guzzardi's testimony, the court sustained the objection. Defense counsel attempted to clarify by asking Dr. Guzzardi "when you use the word schizophrenia, are you talking about a diagnosis of a mental illness?" Dr. Guzzardi responded by testifying that "the medical model of inducing schizophrenia is the use of Ketamine. Ketamine and PCP are virtually identical chemically. And we give Ketamine to individuals and then we evaluate them and that is our medical model for schizophrenia." Dr. Guzzardi ultimately testified "so that is what PCP does in some instances. It makes you schizophrenic" and "so PCP is we will say controlled schizophrenia. That is how I would define it. As a medical toxicologist." The State objected and moved to strike this testimony, the court sustained the objection, stating, "I will sustain. He has been qualified as a toxicologist, not a psychiatrist." Defense counsel responded, "okay."

On this record, we do not find the court's ruling regarding Dr. Guzzardi's testimony an abuse of discretion. It had been over ten years since Dr. Guzzardi personally treated a patient who had ingested PCP. There was no indication he had any training or experience in the field of psychiatry or specifically schizophrenia. Further, there was no testimony linking his area of expertise with the term "controlled schizophrenia."

In reaching its decision, the court observed that it could have benefited from expert testimony regarding "how much [PCP] was ingested and at what point it was ingested. The defendant's body weight, [and] how that would have affected what was ingested." The

court noted the lack of such evidence. Dr. Guzzardi gave testimony as to the general effects of PCP, but did not offer insight as to how these effects particularly applied in this case. Thus, the court did not abuse its discretion in striking his testimony.

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