

Circuit Court for St. Mary's County  
Case No. C-18-CR-21-000252

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND\*\*

No. 1272

September Term, 2022

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TERRY KENT

v.

STATE OF MARYLAND

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Leahy,  
Albright,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

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Opinion by Raker, J.

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Filed: August 17, 2023

\* An unreported opinion of either Court may be cited only (i) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (ii) in a criminal action or related proceeding involving the same defendant,(iii) in a disciplinary action involving the same respondent Md. Rule 1-104(a)(2)(b).

\*\*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant, Terry Kent, was convicted in the Circuit Court for St. Mary's County of four counts of Distribution of Controlled Dangerous Substances and one count of Conspiracy to Distribute Cocaine. Appellant presents the following questions for our review:

1. "Whether the Circuit Court abused its discretion when it denied Appellant's Motion for Severance?"
2. Where Appellant was merely present at the scene on August 3, 2019, was there sufficient evidence to convince a rational trier of fact that Appellant was guilty beyond a reasonable doubt of distribution of any controlled substance?"
3. Where the testimony of Kristana Beggs was the only evidence proffered that Appellant distributed any controlled dangerous substance on August 3, 2019, was the State's failure to provide timely discovery a denial of Appellant's right of confrontation?"
4. Where there was no proof beyond a reasonable doubt that Appellant and Dante Thomas entered into an agreement to distribute cocaine, was there sufficient evidence to convince a rational trier of fact that Appellant was guilty of Conspiracy to Distribute Cocaine on December 28, 2019?"
5. Whether the Circuit Court abused its discretion when it admitted testimony regarding the death of Douglas Woodburn and the proximity of the Woodburn's home to the courthouse, where this testimony was irrelevant and prejudicial?"

Finding no error, we shall affirm.

I.

Appellant was charged by the Grand Jury for St. Mary's County with several counts of Distribution of Controlled Dangerous Substances and one count of Conspiracy between

August 3, 2019 and December 28, 2019. Appellant was convicted of the five counts.<sup>1</sup> Following a jury trial, appellant was sentenced to 60 years in prison, with all but 40 years suspended, followed by 5 years' probation.

On August 4, 2019, Douglas Woodburn was found by his mother, face down on his bed and cold to the touch. He died shortly thereafter of a fentanyl overdose. The police collected as evidence the contents of Mr. Woodburn's pockets, including his cell phone, and commenced an investigation to learn the source of the illicit substances. During the investigation, the police identified Kristana Beggs, one of Mr. Woodburn's co-workers, as a person of interest. On October 8, 2019, the police stopped Ms. Beggs' car and executed a search warrant for her vehicle and phone, discovering cocaine and oxycodone. Ms. Beggs admitted to the police that she purchased the controlled substances for herself and Mr. Woodburn from appellant on August 3, 2019.

Ms. Beggs and the police entered into a cooperation agreement where she agreed to make a series of cocaine buys from appellant. In exchange for her cooperation, the State agreed not to prosecute her in connection with this case, and for an earlier instance of oxycodone possession in 2019. On December 19, 2019, Ms. Beggs purchased cocaine from appellant, and on December 28, 2019, Ms. Beggs purchased cocaine from Dante Thomas. Both purchases were recorded by audio and video.

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<sup>1</sup> Appellant was indicted on August 2, 2021. For the August 3, 2019, transaction, which led to the death of Douglas Woodburn, Appellant was charged with Distribution of Cocaine, Heroin, Fentanyl, and a mixture of Heroin and Fentanyl. For the sale on December 19, 2019, appellant was charged with Distribution of Cocaine. For the sale on December 28, 2019, appellant was charged with Distribution of Cocaine and Conspiracy to Distribute Cocaine.

Appellant filed a pre-trial motion, requesting the court to sever counts against appellant for trial. The court held a hearing, and in that hearing, defense counsel requested the court to sever the counts for separate trials, arguing that there were four separate incidents which constituted separate acts and, therefore, there should be four separate trials. Counsel asserted that the first act was the August 3, 2019 transaction, the second was the December 19, 2019 transaction, the third was the December 28, 2019 transaction, and the fourth was an additional incident on February 12, 2020. The circuit court ruled that all of the 2019 incidents were to be tried in a single trial, while the 2020 incident would be severed and tried in a separate trial.

On the first day of trial, following jury selection, defense counsel advised the court that she had just received a copy of a cooperation agreement executed between the State and Ms. Beggs. She asserted that the late delivery of the written plea agreement was an unfair ambush to the defense. Beyond asserting the unfairness of this delayed delivery, defense counsel made no formal request for a remedy. The prosecutor attempted to respond, but the court moved on to swearing the jury. The trial commenced. Ms. Beggs testified that afternoon. On the second day of trial, defense counsel raised the written-plea-agreement-issue again. The prosecutor responded that the agreement was shared with the defense as soon as it was available. Moreover, the State asserted that because it informed the defense that Ms. Beggs was not going to be charged, she should have inferred that there was an agreement between Ms. Beggs and the prosecution.

Ms. Beggs testified that she had known appellant for 19 years, that she knew Dante Thomas, and that she had purchased cocaine from both men. She stated that appellant and

Mr. Thomas were friends. She testified that on August 3, 2019, at McDonalds, during work, Mr. Woodburn asked her if she could procure some cocaine and heroin for him. She contacted appellant and agreed to meet him at the Callaway Weis grocery store. They met in the parking lot, and she gave him \$80 in exchange for cocaine and heroin. Upon returning to McDonalds, Ms. Beggs gave Mr. Woodburn the heroin and some cocaine. She testified that later in the night Mr. Woodburn started to get sick, which he attributed to a bad reaction to the heroin. Eventually, he was so sick that he had to go home. Ms. Beggs testified that, after she learned that Mr. Woodburn had died, she called appellant to inform him. Appellant denied adding fentanyl to his heroin.

Ms. Beggs also testified to the December 19, 2019 transaction with appellant. Pursuant to her cooperation agreement, Ms. Beggs, witnessed by Detective Potter, called appellant to set up a drug buy. Detective Potter recorded the conversation and provided Ms. Beggs with the money to purchase the drugs. Ms. Beggs then went to purchase \$20 worth of cocaine from appellant at Patuxent Homes. The police equipped Ms. Beggs with a camera to record the transaction. She returned after buying the cocaine from appellant and gave the drugs to Detective Potter. The recording of the call and the video between Ms. Beggs and appellant was played in open court and admitted into evidence.

Lastly, Ms. Beggs testified regarding the December 28, 2019 controlled buy with appellant and Dante Thomas. This time Mr. Thomas answered the phone when Ms. Beggs called the same number she had previously used to contact appellant. She told Mr. Thomas that she wanted to purchase another \$20 worth of cocaine. She returned to Patuxent Home and purchased the cocaine from him. During the transaction, appellant drove past them

twice. Upon returning to the police, she and the police realized that it was less than the amount paid for. Ms. Beggs called appellant back on the phone, Mr. Thomas responded again, and he said he would correct the issue. The police recorded both calls and they were played in open court. Following the State's direct examination of Ms. Beggs, appellant's counsel cross-examined her about her cooperation agreement with the state, among other topics.

Following the conclusion of the State's case-in-chief, defense counsel moved for a judgment of acquittal. At that time, counsel also moved for a mistrial, based on the late disclosure of the cooperation agreement and the denial of the severance motion. The court denied the mistrial motion, noting that defense counsel had used the cooperation agreement to cross-examine Ms. Beggs.

Several witnesses testified at trial about Mr. Woodburn's death. Both of his parents testified, along with some acquaintances. Additionally, a forensic expert, a toxicologist, and the medical examiner testified regarding the crime scene and the overdose. The State admitted a toxicology report, the autopsy, and photos of Mr. Woodburn deceased in his room along with several photos of his personal effects. Defense counsel did not object to any of the testimony or evidence related to Mr. Woodburn's death.

Following the jury verdicts of guilt, the court imposed sentence. This timely appeal followed.

II.

Appellant first argues that the circuit court abused its discretion in denying the motion to sever the counts for trial. Recounting his argument in the trial court, and presumably adopting it before this Court, appellant maintains that the evidence related to each count was not mutually admissible, that weaker claims were bolstered by joinder, that guilt was found cumulatively rather than by having the jury consider each count separately, and that joinder was prejudicial. In sum, he argues that with the exception of the controlled buy on December 19, 2019, each separate incident was backed by insufficient evidence to show that appellant distributed controlled dangerous substances. Therefore, consolidation of the counts for trial was unduly prejudicial.

Appellant next argues that because he was merely present at the scene on August 3, 2019, the evidence was insufficient to support a finding of guilt for distribution of controlled substances. Appellant contends that although an individual's presence during a crime is probative, it is not sufficient to prove the participation in, perpetration of, or commission of a crime beyond a reasonable doubt. Appellant asserts that there was no evidence to support any conclusion beyond his mere presence at the scene of the crime on August 3, 2019.

Appellant then argues that he was denied his right to confrontation under the Sixth Amendment to the United States Constitution because the State failed to provide timely discovery about any plea agreement or benefit offered to the State's main witness, Ms. Beggs. Appellant asserts that by waiting until the first day of the trial to disclose that Ms. Beggs had acted as a confidential informant and was given immunity from prosecution, the

prosecution denied him an opportunity to prepare properly for cross-examination. Appellant argues that the State violated his Sixth Amendment confrontation right because the untimely disclosure limited his time to prepare for an effective cross-examination. Appellant argues that Ms. Beggs' credibility was crucial because she was the only witness to testify that she purchased heroin for Douglas Woodburn, that the heroin was mixed with fentanyl, that Mr. Woodburn admitted that he had consumed this heroin and was sick from it, or that appellant admitted that he mixed heroin with fentanyl while wearing gloves.

Appellant further argues that the evidence was insufficient to establish that appellant and Dante Thomas agreed to distribute cocaine on December 28, 2019. Appellant argues that State's evidence—that Dante Thomas had answered appellant's phone when Ms. Beggs called for cocaine, that appellant and Mr. Thomas were close friends, and that appellant drove by Mr. Thomas and Ms. Beggs during the transaction—was insufficient to prove beyond a reasonable doubt that appellant and Thomas conspired to distribute cocaine. He argues that there was no evidence to show that appellant conspired with Ms. Beggs.

Appellant's final argument is that the circuit court abused its discretion by admitting prejudicial and irrelevant testimony regarding Douglas Woodburn's death and regarding Douglas Woodburn's home's proximity to the courthouse. In appellant's view, Mr. Woodburn's death was not relevant to any of the charges, nor was the location of Woodburn's residence or place of employment relevant to any issue in the case.

The State argues as follows. As to the severance motion, the circuit court did not abuse its discretion in denying the motion. The State maintains that the circuit court was



correct in finding that the evidence on all the counts was mutually admissible, particularly as it goes to the identity of appellant as the person who supplied the drugs. Specifically, the State asserts that Ms. Beggs used the same phone number to make all three of her drug purchases, and that because Mr. Thomas answered Ms. Beggs call for the December 28 transaction, the evidence tying appellant to that phone number from the earlier transactions is admissible to provide his involvement on December 28, 2019. Further, the State argues that, because it relied on Ms. Beggs testimony for the August 3, 2019 transaction, and her credibility was at issue, evidence that appellant used the same number subsequently bolsters Ms. Beggs credibility regarding August 3<sup>rd</sup>.

The State maintains that the evidence was sufficient to support appellant's convictions related to August 3, 2019. The State's argument is based upon the testimony of Ms. Beggs that Mr. Woodburn asked her to get heroin for him on August 2 and that she called appellant to buy cocaine for herself and heroin for Mr. Woodburn. They met at a supermarket, Ms. Beggs handed appellant the money, and appellant handed her a bag of cocaine and a bag of heroin. The State notes that, though appellant argues that the medical examiner found no heroin in appellant's body at the time of death, the medical examiner concluded that Mr. Woodburn died from an overdose of fentanyl and cocaine. That testimony, according to the State, was sufficient to prove that appellant distributed cocaine and fentanyl to Ms. Beggs on or around August 2, 2019.

Turning to appellant's argument that he was denied his Sixth Amendment right of confrontation, the State argues that we should decline to review the claim as unpreserved for appellate review. The State relies on Md. Rule 4-323(a), stating that an objection to

the admission of evidence must be made when the evidence is offered or soon thereafter. If not, the objection is waived. The State argues that appellant waived this issue because he neither objected to Ms. Beggs' testimony nor requested a remedy until after the State rested. Moreover, the State asserts that trial counsel made no discovery-related objections and engaged in a thorough cross-examination.

Alternatively, on the merits, the State disputes appellant's assertion that he was unaware of the agreement until the day of the trial. While the State concedes that appellant was provided with the written agreement on the first day of trial, it argues that the substance of the agreement was disclosed at least a week prior. The State notes that the prosecutor asserted, without any objection or clarification from defense counsel, that the agreement was provided months before the trial. The State argues that, in any case, defense counsel knew of the agreement's contents early enough to effectively cross-examine Ms. Beggs and that counsel thoroughly questioned Ms. Beggs about the details of the agreement. According to the State, the jury knew of the terms of the agreement and could assess whether the "deal" influenced the testimony.

The State also maintains that the evidence was sufficient to sustain appellant's conspiracy convictions relating to December 28, 2019. The question of whether the state proved that appellant conspired with Ms. Beggs is irrelevant because appellant was charged with conspiring with Dante Thomas to distribute cocaine. Summarizing the evidence to support an agreement, the State recounts that Ms. Beggs called appellant's phone to purchase cocaine. Dante Thomas answered appellant's phone on multiple occasions.

Appellant and Dante Thomas were observed making a hand-to-hand transaction. The State argues that this is sufficient evidence to sustain appellant's conspiracy conviction.

Finally, the State argues that appellant waived his complaint about the relevance of evidence concerning Douglas Woodburn's death. At trial, the medical examiner and toxicologist testified without any objection by appellant. Counsel did not object to the toxicology report or the autopsy report coming into evidence. Defense counsel did not object to the photograph of Mr. Woodburn dead in his bedroom. He did not object when the State offered a map that included Mr. Woodburn's house and the courthouse. And, although appellant does not address the issue of waiver or non-preservation, if he is impliedly asserting plain error, although not using the term, any error here does not justify plain error review.

#### IV.

We address first appellant's argument that the trial court improperly denied his motion to sever the counts for trial. Md. Rule 4-253(c) provides as follows:

"If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires."

In *Cortez v. State*, 220 Md. App. 688, 694-95 (2014), this Court reiterated the analysis courts should employ in deciding severance motions, explaining the two-step process as follows:

“The first question is, whether evidence as to each of the accused’s individual offenses would be ‘mutually admissible’ at separate trials concerning the offenses? Because this question requires a legal conclusion, we give no deference to a trial court’s ruling on appeal. To resolve this question, the trial court is to apply the ‘other crimes’ analysis announced in *State v. Faulkner*, 314 Md. 630, 552 A.2d 896 (1989) and its progeny. . . . The second question is, whether ‘the interest in judicial economy outweighs any other arguments favoring severance? This question requires a balancing of interests by the trial court, and we will only reverse if the trial judge’s decision ‘was a clear abuse of discretion.’ To resolve this second question, the trial court weighs the likely prejudice against the accused in trying the charges together against considerations of judicial economy and efficiency, including the time and resources of both the court and the witnesses.”

As to the first factor, the concern of the court is the bedrock principle that evidence of other crimes is inadmissible to prove a defendant’s guilt based on his or her propensity to commit a crime or his or her criminal character. Md. Rule 5-404(b); *State v. Faulkner*, 314 Md. 630, 633 (1989). There exist exceptions to the general rule of exclusion of other crimes evidence. “Evidence of other crimes may be admitted, however, if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant’s guilt based on propensity to commit crime or his character as a criminal.” *Id.* at 633. “Other crimes” evidence may be admissible if introduced to establish motive, intent, absence of mistake, identity, or common scheme or plan. *See* Rule 4-404; *Solomon v. State*, 101 Md. App. 331, 353 (1994).

In the instant case, in looking at the mutual admissibility of the evidence, we look to see whether evidence of any of the incidents was admissible to establish motive, intent, absence of mistake, unanimity, or identity. We conclude that each incident could have been used to establish appellant’s identity and intent. Ms. Beggs used appellant’s phone

number to arrange all of her drug purchases. Each transaction happened in the same place and manner. Appellant was either directly in contact with Ms. Beggs or in the vicinity of each transaction. Evidence from any of the distributions is admissible to prove appellant's engagement in the other distributions, i.e., identity.

Regarding the second step—whether the interest of judicial efficiency outweighs other arguments for severance—we consider appellant's contention that the evidence regarding Mr. Woodburn's overdose was inflammatory. Trial courts have significant leeway to deny severance even in the face of prejudice to the defendant. *Bussie v. State*, 115 Md. App. 324, 338 (1997). The drug overdose here, and Mr. Woodburn's death, were the events precipitating the police investigation. Following Mr. Woodburn's overdose, the police identified Ms. Beggs and entered into the cooperation agreement. It would be difficult to lay the groundwork for the prosecution without mentioning the evidence from the overdose which initiated the original investigation even in a severed trial. We hold that the trial court did not abuse its discretion in denying appellant's severance motion.

We turn to the sufficiency-of-the-evidence argument that the evidence was not sufficient to sustain the conviction for distribution of controlled substances on August 3, 2019. We review the sufficiency of the evidence *de novo*. *Wilder v. State*, 191 Md. App. 319, 335 (2010). In this inquiry, we look to see “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.” *Cain v. State*, 162 Md. App. 366, 378 (2005). We “give due regard to the fact finder's finding of facts, its resolution of

conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.” *Moye v. State*, 369 Md. 2, 12 (2002) (internal quotations omitted).

Appellant is correct that mere presence is probative but not sufficient to prove the commission of a crime beyond a reasonable doubt. *Fleming v. State*, 373 Md. 426, 433 (2003). In this case, Ms. Beggs testified that she contacted the appellant to purchase cocaine and heroin for herself and Mr. Woodburn. She purchased heroin and a small amount of cocaine from appellant. The factfinder was the judge of the credibility of the witnesses, and could, therefore, decide to credit the testimony of Ms. Beggs. We hold that the evidence was sufficient to support the conviction on the August 3, 2019, event.

We turn to appellant’s third argument, that the State violated his Sixth Amendment right of confrontation by disclosing, on the day of trial, the written agreement between the State and Ms. Beggs. We agree with the State that this issue is not preserved for our review.

Rule 8-131(a) states that “ordinarily, the appellate court will not decide [an] issue unless it plainly appears by the record to have been raised in or decided by the trial court.” Additionally, “an objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.” Rule 4-323(a). The record is clear here that appellant’s counsel did not make a timely objection to Ms. Beggs’ testimony. Instead, trial counsel cross-examined Ms. Beggs on the plea agreement. Trial counsel’s failure to object to Ms. Beggs testimony during the trial constitutes a waiver. We shall not consider the argument.

We address appellant's fourth argument, that the State presented insufficient evidence to prove that he entered into a conspiratorial agreement with Dante Thomas to distribute cocaine on December 28, 2019. Maryland law defines conspiracy as "the combination of two or more persons, who, by some concerted action, seek to accomplish some unlawful purpose, or lawful purpose by unlawful means." *Heckstall v. State*, 120 Md. App. 621, 625 (1998) (internal quotations omitted). Our inquiry centers upon whether the State has established, beyond a reasonable doubt, an unlawful agreement. *Anthony v. State*, 117 Md. App. 119, 126 (1997). An overt act is not necessary to establish a conspiracy. *Rudder v. State*, 181 Md. App. 426, 436 (2008). The State may prove a conspiracy by direct, indirect, or circumstantial evidence, and the joint participation by multiple defendants allows an inference that a prior agreement existed to engage in a criminal act. *Sequeira v. State*, 250 Md. App. 161, 204 (2021).

In this case, there are several facts from which a rational trier of fact could infer the existence of an agreement between appellant and Dante Thomas to distribute cocaine. Dante Thomas answered appellant's phone when Ms. Beggs called to purchase cocaine. During the transaction, appellant drove past Dante Thomas and Ms. Beggs. Ms. Beggs had used that phone to purchase cocaine directly from appellant on a prior occasion. After Ms. Beggs' purchase, Detective Meyer witnessed appellant and Mr. Thomas meet in a manner consistent with a hand-to-hand drug transaction. Dante Thomas pled guilty to conspiracy to distribute cocaine with appellant. All this evidence is sufficient for a rational jury to make an inference that there was a conspiracy between appellant and Dante Thomas to distribute cocaine.

Finally, we address appellant's argument, that the circuit court abused its discretion by admitting testimony regarding the death of Mr. Woodburn and the proximity of the Woodburn's home to the courthouse. Appellant argues that the evidence of the death and the proximity to the courthouse were irrelevant and prejudicial. The State argues that appellant waived this argument because trial counsel did not object to the toxicology and autopsy report when offered by the State into evidence, along with a photograph of Mr. Woodburn in his bedroom. In fact, defense counsel stated that she had no objection to the admissibility of the evidence, causing the State to argue here that appellant "affirmatively waived" the objection. Rule 8-131(a) dictates that an appellate court will not decide an issue if it was not plainly raised or decided by the trial court. *Graham v. State*, 325 Md. 398, 411 (1992).

Defense counsel did not object to the testimony of Mr. Woodburn's parents, his acquaintances, the medical examiner, or the toxicologist. When the prosecutor attempted to introduce several photographs of Mr. Woodburn, of his home, and of him in his room, dead, defense counsel expressly stated that she had no objection. While Mr. Woodburn's neighbor was testifying, the State introduced a map of Mr. Woodburn's home into evidence. Appellant's trial counsel stated that she had no objection to it. During the testimony of the State's forensics expert, appellant's trial counsel lodged no objection to the admission of photographs displaying the decedent's effects. Moreover, during the testimony of the Chief Toxicologist for the Medical Examiner's office, the State moved to admit the toxicology report into evidence. Defense counsel stated that she had no objection to the admission of the toxicology report. Each piece of evidence and each witness



regarding the death was introduced and admitted into evidence without objection. We decline to review the issue because it was not preserved.

**JUDGMENTS OF THE  
CIRCUIT COURT FOR  
SAINT MARY'S  
COUNTY AFFIRMED.  
COSTS TO BE PAID BY  
APPELLANT.**