

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2581

September Term, 2015

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TORIANO MENDELL PARKER

v.

STATE OF MARYLAND

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Krauser, C.J.,  
Nazarian,  
Moylan, Charles, E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 1, 2016

\*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.

During a traffic stop of a vehicle driven by Torino Mendell Parker, appellant, police officers found cocaine in the vehicle's glove box. Parker was charged by criminal information, in the Circuit Court for Wicomico County, with possession of cocaine, possession with intent to distribute cocaine, possession of drug paraphernalia, obstructing a police officer, resisting arrest, displaying expired registration plates, operating an unregistered vehicle, driving an uninsured vehicle, and attempting to elude a uniformed police officer by fleeing on foot (attempting to elude). After the information was filed, Parker appeared for trial, in the District Court for Wicomico County, on the charges of displaying expired registration plates, operating an unregistered vehicle, driving an uninsured vehicle, and attempting to elude. Parker was given a citation for each charge, when his vehicle was stopped, on the date of his arrest. Parker ultimately pleaded guilty to attempting to elude and the District Court sentenced him to ten days' incarceration.

Parker subsequently filed a motion to dismiss all of the charges pending in the circuit court. He asserted that his continued prosecution for those offenses was barred by the Maryland common law prohibition against double jeopardy because they arose out of the same transaction as the attempting to elude charge to which he had pleaded guilty in the District Court. The circuit court found that only the attempting to elude charge was barred on double jeopardy grounds and that the State could proceed against Parker on the remaining counts. Parker then pleaded guilty to possession with intent to distribute cocaine, reserving the right to appeal his double jeopardy claim. On appeal, Parker now contends that his conviction and sentence for possession with intent to distribute cocaine

was barred by the Maryland common law prohibition against double jeopardy. For the reasons that follow, we affirm.

As an initial matter, Parker attempts to distinguish *Powers v. State*, 70 Md. App. 44 (1987), which was discussed at length by the parties during the hearing on his motion to dismiss in the circuit court. In *Powers*, this Court held that the appellant’s guilty plea to a lesser-included offense in the District Court, via the payment of a fine, was a nullity, and therefore that his subsequent prosecution in the circuit court for the greater offense was not barred by double jeopardy, because, at the time of the plea, the State had already filed a criminal information based on the same incident which divested the District Court of subject matter jurisdiction. *Id.* at 48-49. Parker contends, however, that “there is a fundamental difference between [the appellant in *Powers*] merely paying a traffic ticket and [his] entering a guilty plea, in open court, where the State was represented, getting a jail sentence, and actually going to jail” and, therefore, that his guilty plea to attempting to elude should not be considered a nullity in this case.

We need not resolve this issue because, even if *Powers* is distinguishable and the District Court had jurisdiction to accept appellant’s plea to attempting to elude, the State was not precluded from prosecuting him on the drug offense to which he ultimately pleaded guilty in the circuit court. Appellant’s argument in the circuit court was that double jeopardy principles barred his prosecution because the attempting to elude charge arose from the same transaction as the other offenses charged in the criminal information. The Court of Appeals, however, has rejected the argument that a defendant is entitled to have all charges arising from the same transaction tried in one proceeding. *See State v. Long*,

405 Md. 527, 537 (2008). Instead, as appellant concedes in his brief, both the Court of Appeals and the United States Supreme Court “have adopted the ‘same evidence’ test for resolving sameness of law questions and have declined to accept the same transaction test.” *Id.* (citation omitted). Therefore, only when offenses charged are essentially the same offense, does double jeopardy bar separate prosecutions. *In re: Michael W.*, 367 Md. 181, 186 (2001).

Here, Parker did not contend, in the circuit court, that the offenses of attempting to elude and possession with intent to distribute cocaine were the same offense under the “required evidence test” and ,therefore, to the extent that this issue is raised in his brief, it is not preserved for appeal. *See* Md. Rule 8-131 (a) (stating this court will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court”). Moreover, even if the issue were preserved, the offenses clearly do not meet the “required evidence” test because the offense of attempting to elude did not require the State to prove that Parker possessed drugs and the offense of possession with intent to distribute cocaine did not require the State to prove that Parker attempted to flee a law enforcement officer on foot. *See Thomas v. State*, 277 Md. 257, 267 (1976) (stating that if each offense “requires proof of a fact which the other does not, or . . . if each offense contains an element which the other does not, the offenses are not the same for double jeopardy purposes even though arising from the same conduct or episode”). Accordingly, Parker’s conviction and

sentence for possession with intent to distribute cocaine was not barred by Maryland common law prohibition against double jeopardy.

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