

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 100

September Term, 2016

KEITH RODERICK NOCK

v.

STATE OF MARYLAND

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

JJ.

Opinion by Moylan, J.

Filed: March 8, 2017

*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.

A jury in the Circuit Court for Wicomico County convicted Keith Roderick Nock, appellant, of transporting a handgun and carrying a concealed dangerous weapon. He raises a single issue on appeal:

Did the trial court err in admitting evidence of the odor and presence of marijuana in appellant's car when he was not accused of possessing it?

The appellant, however, has not preserved this issue for appellate review. Evidence of the marijuana was admitted without objection at trial. Accordingly, we affirm the trial court.

FACTUAL BACKGROUND

On October 9, 2015, Maryland State Police Trooper Kevin Moore conducted a traffic stop of a vehicle driven by appellant near the intersection of U.S. Route 50 and Woodyard Road. Trooper Moore stopped the appellant for speeding. Trooper Moore testified that when he approached the driver's window, he was "overwhelmed" by the odor of marijuana. He observed an adult female passenger in the passenger seat, a second adult female passenger behind the passenger seat, and a three-year-old male – without a child safety seat – behind the driver.

Trooper Moore asked appellant to exit the vehicle, and appellant complied. Trooper Moore asked appellant if there was anything he "need[ed] to know about" in the vehicle. Appellant replied that there was a gun under the driver's seat. Trooper Moore located a handgun lodged between the driver's seat and the center console; the gun was loaded with five rounds of ammunition, and the safety was off. Trooper Moore testified that the gun was upside-down and pointing toward the rear seat and the child. Appellant informed Trooper Moore that he had "practiced" with the gun the previous day and had "forgot[ten]" that he left it in the car. Trooper Moore later test-fired the recovered handgun and determined that it was operable.

Trooper Moore also located .22 caliber bullet in the center console's cup holder – which was of a different caliber than was the handgun – and a set of metal knuckles from inside the center

console. When Trooper Moore asked appellant about the knuckles, appellant stated that he “did not realize” they were in the car. On redirect examination, the State elicited from Trooper Moore that he found a metal grinder and a small amount of marijuana in a passenger’s purse.

Appellant testified in his own defense. He stated that Trooper Moore asked him about the marijuana, and he responded that there was none that he “kn[e]w of.” Appellant admitted advising Trooper Moore as to the handgun. As to the knuckles, appellant stated that he acquired them in high school, that he had graduated five years ago, and that he was not aware they were in the car.

The State charged appellant with: reckless endangerment; transporting a handgun in violation of Maryland Code (2002, 2012 Repl. Vol., 2016 Suppl.), Criminal Law Article (“C.L.”), § 4-203(a)(ii)¹; and carrying a concealed dangerous weapon (the metal knuckles) in violation of C.L. § 4-101.² The jury acquitted appellant of reckless endangerment and convicted him of the remaining charges. The court subsequently sentenced appellant to a term of imprisonment of two years, with all but 179 days suspended for transporting a handgun, and a suspended concurrent sentence of two years for carrying a concealed weapon, to be followed by a two-year period of probation. The court also imposed a \$500 fine.

THE THRUST OF THE CONTENTION

On appeal, appellant contends that the court erred in admitting evidence of the odor and presence of marijuana in the vehicle. Appellant asserts that the marijuana evidence was not

¹ This statute provides: “[A] person may not wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State.”

² This statute prohibits, with exceptions inapplicable to this case, the “wear[ing] or carry[ing of] a dangerous weapon of any kind concealed on or about the person.” C.L. § 4-101(c)(1).

relevant to any of the charges against him. Moreover, appellant argues that the marijuana evidence was unfairly prejudicial. He maintains that the State impermissibly used the marijuana evidence either as bad character evidence pursuant to Rule 5-404(b) or in an attempt to impeach his credibility – which was not the reason the court admitted it.³ Appellant, moreover, contends that this error was not harmless because the evidence did not demonstrate that he had the requisite *mens rea* to be convicted of transporting a handgun and/or carrying a concealed weapon. The jury, therefore, may have felt compelled to convict him because of the prejudicial effect of the erroneously-admitted marijuana evidence.

NON-PRESERVATION

Although appellant moved *in limine* to exclude the marijuana evidence, such a motion “does not relieve the party, as to whom the ruling is adverse, of the obligation of objecting when the evidence is actually offered. Failure to object at that time results in the non-preservation of the issue for appellate review.” *Wimbish v. State*, 201 Md. App. 239, 261 (2011) (quoting *Reed v. State*, 353 Md. 628, 637 (1999)). Additionally, “objections are waived if, at another point during trial, evidence on the same point is admitted without objection.” *Benton v. State*, 224 Md. App. 612, 627 (2015) (quoting *DeLeon v. State*, 407 Md. 16, 31 (2008)).

In this case, although appellant objected in some instances where the State sought to elicit testimony as to the presence and odor of marijuana, he failed to object in every instance and never sought a continuing objection. Trooper Moore testified, without objection, that he detected the odor of marijuana emanating from the vehicle. Trooper Moore further testified, without objection,

³ Rule 5-404(b) provides: “Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith.”

that he found a small amount of marijuana within the vehicle. Evidence of the odor and presence of marijuana was admitted without objection, and appellant has, therefore, waived this objection.

HARMLESS ERROR

Even if we were to assume, purely *arguendo*, that this contention had been preserved for appellate review and even if we were further to assume that the admission of the evidence about marijuana was error, we would still be persuaded beyond a reasonable doubt that such error was harmless.

The appellant argues that the marijuana evidence, albeit, irrelevant in and of itself, reflected adversely on his credibility and his criminal *mens rea*. Neither the appellant's credibility nor his *mens rea* were in dispute, however. The appellant, on the stand, freely admitted that both the gun and the brass knuckles were his and he did not dispute that they were in the car that he was driving. We confidently assert that the jury did not convict him because he was a user of marijuana. Even if the objection to its admission had been preserved, the evidence did not influence the verdict.

**JUDGMENTS AFFIRMED; COSTS TO BE
PAID BY APPELLANT.**