

Circuit Court for Baltimore City
Case No. 122279020

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 305

September Term, 2023

JASON COOPER

v.

STATE OF MARYLAND

Ripken,
Tang,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 2, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Baltimore City of illegal possession of a regulated firearm, illegal possession of ammunition, and wearing, carrying, or transporting a loaded handgun, Jason Cooper, appellant, presents for our review a single issue, which for clarity we rephrase: whether the court erred in excluding evidence during defense counsel’s direct examination of Mr. Cooper. For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State produced evidence that on September 14, 2022, Baltimore City Police Officers Michael Smith and Zachary Rutherford were dispatched to the 2200 block of Whittier Avenue “to investigate a male in a yellow T-shirt riding a bicycle.” Arriving at the location, Officer Smith observed Mr. Cooper “with a yellow T-shirt riding a bicycle that matched the description perfectly.” Officer Smith “was getting ready to exit [his] vehicle when” Mr. Cooper fled “eastbound into the rear alley of the 2300 block of Whittier.” The officers “began to chase” Mr. Cooper, who “was grabbing his waistband area” and “running [e]ncumbered.” As Officer Rutherford and Mr. Cooper “turned the corner,” Officer Smith “heard a ginormous, loud clanging noise.” Officer Smith “observed a dumpster next to the end house on the block,” “searched the dumpster,” and “located a Sig Sauer P 229 40-caliber handgun.” Officer Smith then “went up the block to” Officer Rutherford, “who had apprehended Mr. Cooper.”

Mr. Cooper contends that the court erred in excluding evidence during direct examination. Following the close of the State’s case, Mr. Cooper took the stand, and the following colloquy occurred:

[DEFENSE COUNSEL: W]hy did you walk up towards Whittier?

[MR. COOPER:] I – I was trying – I was trying – I was buying some pills, some perks.

[DEFENSE COUNSEL:] And why were you doing that?

[MR. COOPER:] I mean I was addicted to them.

[DEFENSE COUNSEL:] And how did that come about?

[PROSECUTOR]: Objection, Your Honor.

THE COURT: Sustained.

* * *

[DEFENSE COUNSEL:] And how long have you been using perks?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

Mr. Cooper subsequently testified that “when the officer drove up on” him, he “got scared” because he “had pills,” and “just took off.” Mr. Cooper further testified that he “never tossed anything” into the dumpster.

Mr. Cooper contends that the court erred in excluding evidence of the “reason [he] became addicted to Percocet and the length of time of his addiction,” because the evidence was relevant, and the “court’s ruling . . . denied Mr. Cooper his right to fully present his defense.” The State counters that “[t]his issue has not been preserved for appellate review,” because Mr. Cooper failed “to make a proffer explaining what the evidence would be and why the evidence was relevant,” and “the substance and relevance of the precluded testimony was not apparent from the context.” Alternatively, the State contends that the testimony “was not relevant,” and “[a]ny error in excluding the testimony was harmless.”

We agree with the State that Mr. Cooper’s contention is not preserved for our review. Rule 5-103(a) states, in pertinent part: “Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and . . . [i]n case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered.” Here, Mr. Cooper did not make the substance of the evidence known to the court by offer on the record, and the substance of the evidence was not apparent from the context within which the evidence was offered. Hence, Mr. Cooper failed to preserve his contention for our review.

Even if Mr. Cooper’s contention was preserved for our review, we would conclude that the court did not err in excluding the evidence. Rule 5-401 states that evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Here, evidence as to how Mr. Cooper became, and how long he had been, addicted to Percocet had no tendency to make the existence of any fact of consequence as to whether Mr. Cooper had possessed the handgun and ammunition more or less probable. Hence, the evidence was not relevant. Even if the evidence was relevant, Rule 5-403 states that relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Here, the jury was charged with determining whether Mr. Cooper had been in possession of the handgun and ammunition. Evidence as to how Mr. Cooper became, and

how long he had been, addicted to Percocet could have unfairly prejudiced the State, confused the issues, or misled the jury. Because Mr. Cooper testified that he fled from the officers because he “had pills” and that he “never tossed anything” into the dumpster, the evidence pertaining to his addiction would have been cumulative, and the presentation of that evidence would have been needless. The probative value of the evidence was substantially outweighed by these dangers and considerations, and hence, the court did not err in excluding the evidence.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**