

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 847

September Term, 2017

RANDY BENNETT

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 2018

*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.

Randy Bennett, appellant, was convicted by a jury in the Circuit Court for Prince George's County of possession of a firearm following a disqualifying conviction. On appeal, Bennett contends that the circuit court erred in (1) declining to voir dire the jury panel regarding any prejudice they may have had against users of marijuana, and (2) admitting evidence that Bennett's vehicle was searched after police became aware that there was marijuana in the vehicle. Because we find that Bennett failed to preserve the first claim, and waived the second, we affirm.

Appellant's proposed voir dire included two questions regarding the jury panel's personal views about marijuana:

- a. You are going to hear that Mr. Bennett and two friends were smoking marijuana in a parked car. Does anyone here think that just because Mr. Bennett was smoking marijuana, it makes him more likely to have a gun?
- b. Does anyone have strong feelings about marijuana that you don't think you can focus on the evidence and decide the only question, which is did [Bennett] knowingly wear, carry or transport a firearm without being permitted to do so?

The prosecutor objected to both voir dire questions, stating that they were not relevant because appellant had not been charged with a marijuana related offense. The court agreed and stated that it would not question the panel about marijuana. Defense counsel did not object to the court's ruling. Accordingly, appellant's claim that the trial court erred by not asking his requested voir dire questions was not preserved for review. *See Smith v. State*, 218 Md. App. 689, 700-01 (2014) ("An appellant preserves the issue of omitted voir dire questions under Rule 4-323 by telling the trial court that he or she objects to his or her proposed questions not being asked.")

In opening statement, the prosecutor mentioned that police smelled marijuana in appellant's vehicle. Defense counsel objected, stating that the jury panel had not been asked about marijuana in voir dire, and explaining that she had not objected to the proposed voir dire questions not being used because she was "under the belief that no mention of marijuana" would be made. The court overruled the objection, stating that reference to the marijuana would be allowed "just for the purpose of the probable cause [to search the vehicle]."1

Any objection to the evidence regarding Bennett's use or possession of marijuana was waived, however, when defense counsel failed to object to the testimony of the police officer, in which he stated that, as he approached Bennett's parked vehicle to investigate a citizen complaint, he observed that "the back seat passenger was actively smoking a marijuana cigarette" and that when he asked Bennett, the driver, if there was any other marijuana in the vehicle, Bennett "reached down by his feet and grabbed a glass mason jar . . . filled with the suspected marijuana." *See Benton v. State*, 224 Md. App. 612, 627 (2015) ("[o]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection.")

¹ At this point in the trial, if there was still a concern that members of the jury might have strong feelings about marijuana that would affect their ability to render an impartial verdict, defense counsel could have requested a mistrial or other curative measure. No such request was made.

Moreover, any objection was affirmatively waived when defense counsel cross examined Detective Darren Dalton about Bennett's use of marijuana prior to his interrogation:

[DEFENSE COUNSEL]: You told us that you knew Randy Bennett had been smoking marijuana, right, the day you interrogated him at the precinct, right?

[WITNESS]: Well, I was told by patrol officers that they recovered marijuana, and he proceeded to tell me in the interview room that he was smoking marijuana.

[DEFENSE COUNSEL]: You just watched the interrogation with us, right?

[WITNESS]: Yes.

[DEFENSE COUNSEL]: And in there you guys talked about his smoking marijuana?

[WITNESS]: Right.

[DEFENSE COUNSEL]: And he was smoking marijuana right before his arrest, right?

[WITNESS]: That's what he told me, yes.

[DEFENSE COUNSEL]: And that was an hour [sic] of your interrogation.

[WITNESS]: I can't give you an exact time, so I don't know how long patrol officers were on the scene. I interviewed him around 2:00 p.m.

[DEFENSE COUNSEL]: So at the time that you interviewed him, you were aware of the fact that he had marijuana in his system, right?

[WITNESS]: Yes.

Then, in closing argument, defense counsel suggested that Bennett confessed that the gun belonged to him because he was under the influence of marijuana:

[DEFENSE COUNSEL]: I also think it's worth noting that [Bennett] had been smoking marijuana. And the officer said that's not criminal. It's just a citation. But when you're smoking marijuana, that could affect your judgment and maybe affect what you decide is a good idea in your best interest of what to do. So that could have clouded his judgment also.

Accordingly, the trial court's admission of evidence regarding Bennett's use and possession of marijuana is not subject to appellate review. *See Exxon Mobil Corp. v. Ford*, 433 Md. 426, 463 (2013) ("a voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review.") (citations and internal quotation marks omitted).

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