Circuit Court for Charles County
Case No. C-08-CR-18-000271

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1556

September Term, 2021

TIMOTHY RUSSELL HAGENS

v.

STATE OF MARYLAND

Graeff,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 28, 2022

*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.

Following a jury trial in the Circuit Court for Charles County, Timothy Russell Hagens, appellant, was convicted of possession with intent to distribute cocaine. His sole contention on appeal is that the circuit court abused its discretion in admitting testimony that a K-9 had "alerted" to the presence of narcotics when walking around his van. For the reasons that follow, we affirm.

At trial, the State presented evidence that Detective Charles Smith of the Charles County Sheriff's Office observed appellant park his minivan in the parking lot of the JSB Apartments in Waldorf and enter apartment 613. That apartment was not leased to appellant. Approximately 15 minutes later, officers executed a search warrant at the apartment. When the police entered the residence, appellant was standing next to the dishwasher in the kitchen. On the counter next to appellant was the cover to a digital scale, a razorblade, and a box of plastic sandwich bags. Officers also found a bag containing cocaine in the kitchen sink.

After appellant and the other occupants of the apartment were detained, the officers observed a black vest on the couch. When asked, appellant admitted that the vest belonged to him. Moreover, officers had observed appellant wearing a black vest when he entered the apartment. A search of the vest uncovered a large plastic bag containing several smaller bags of cocaine, several hundred dollars in U.S. currency, a wallet with appellant's identification card, and keys to the minivan. A subsequent search of appellant's pants pockets also revealed $183 and a five-dollar bill with .13 grams of cocaine inside it. The total amount of cocaine recovered from the sink and appellant's vest was approximately 25 grams. The State offered testimony from an expert witness in the "field of the

identification packaging, distribution, evaluation and use of controlled dangerous substances" who opined that the evidence recovered in the case indicated an intent to distribute.

In addition to the foregoing evidence, Officer Claude Clevenger testified that he was a "K-9 handler" and that, after appellant went into the apartment, he was asked to have his dog "Eno" walk around the minivan. While walking around the van, Eno "alerted" to the driver and passenger side door. Officer Clevenger acknowledged that Eno was trained to detect numerous controlled substances and could not determine what substance Eno was alerting to. The van was searched based on the alert, but no drugs or paraphernalia were found inside.

On appeal, appellant claims the court abused its discretion in admitting Officer Clevenger's testimony that Eno "alerted" to the van. In so arguing, he alternatively asserts that this testimony was irrelevant; if relevant, its probative value was substantially outweighed by its prejudicial effect; and that it constituted inadmissible "other crimes" evidence pursuant to Maryland Rule 5-404(b). At trial, however, appellant objected solely on the ground that "it would be *prejudicial* for the officer to testify that his dog alerted to cocaine" because after the "vehicle was searched there was no cocaine found." (Emphasis added.) Consequently, that is the only contention that is preserved for appellate review. *See Perry v. State*, 229 Md. App. 687, 709 (2016) ("[W]here an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal." (citing *Klauenberg v. State*, 355 Md. 528, 541 (1999)).

As to the issue of prejudice, appellant now asserts that the admission of Officer Clevenger's testimony was unfairly prejudicial because "it [left] the indelible impression on [the] jury that even if [he] was not possessing or distributing cocaine, he must have been in possession of and/or distributing some other illegal substance" and thus "[t]he danger existed [] that the jury might improperly infer guilt based on character." Again, however, this was not the argument that he raised at trial. Rather, he only claimed that it would be prejudicial for Officer Clevenger to testify that his "dog alerted to cocaine" because no cocaine was found in the van. But following appellant's objection, Officer Clevenger did not actually testify that Eno alerted to cocaine. Rather, he testified that Eno alerted to the presence of an unknown controlled substance and that he could not differentiate what that substance might have been.

But even if we construe appellant's objection more broadly to encompass the claims that he now raises on appeal, we are not persuaded that Officer Clevenger's testimony was unfairly prejudicial. Though evidence may be relevant, it nonetheless may be excluded if the probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Md. Rule 5-403. However, "[e]vidence is never excluded merely because it is prejudicial." *White v. State*, 250 Md. App. 604 (2021) (internal quotations omitted) (quoting *Moore v. State*, 84 Md. App. 165, 172 (1990)). Nor is the evidence excluded because the danger of prejudice simply outweighs the probative value; it must, "as expressly directed by Rule 5-403, do so *substantially*." *Montague v. State*, 471 Md. 657, 696 (2020) (emphasis added in *Montague*) (quotation marks omitted) (quoting *Molina v. State*, 244 Md. App. 67, 135 (2019)).

Here, the State presented evidence demonstrating that several individually wrapped baggies of cocaine were recovered in appellant's vest. To cast doubt on that evidence, defense counsel argued that the cocaine could have been placed in his vest by one of the other persons found in the apartment. Thus, evidence that Eno alerted to the presence of controlled substances in appellant's van was highly relevant as to whether the cocaine was in his vest prior to his entering the apartment. This is especially true given the close temporal connection between the alert and the search of the apartment. As such, that evidence bore a specific nexus to an element of the charged crime: possession. To be sure, the evidence was "prejudicial" to appellant in that it made the jury more likely to convict him. But there is nothing in the record to suggest that the State relied on that evidence for another impermissible purpose, such as to suggest that appellant was a bad person, or that he might have committed some other criminal offense. Nor is there anything to suggest that the admission of the evidence was likely to cause unfair prejudice. Consequently, we hold the court did not abuse its discretion in admitting Officer Clevenger's testimony

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.