UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1840

September Term, 2015

ROBERT LEE TAYLOR

v.

STATE OF MARYLAND

Graeff,
Friedman,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: September 15, 2016

After a jury trial in the Circuit Court for Wicomico County, Robert Lee Taylor, appellant, was found guilty of possession of cocaine, possession of drug paraphernalia, driving a vehicle while under the influence of alcohol, driving under the influence of alcohol per se, and driving while impaired by alcohol. He was sentenced to incarceration for a period of six months for possession of cocaine and a consecutive term of one year for driving under the influence of alcohol. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the trial court erred in permitting a police witness to read from an unidentified document to describe what happened on the night of the incident. For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

In the early morning hours of April 18, 2015, Maryland State Trooper Gary Mazet was on "DUI patrol" on Route 12 in Salisbury when he observed a Jeep driving fifteen miles under the speed limit and crossing the center and shoulder lines repeatedly. He stopped the vehicle, which pulled into a gas station at the intersection of Route 12 and College Avenue. Before Trooper Mazet could exit his vehicle, the driver, identified as appellant, exited the Jeep and stood outside it, using the Jeep door to maintain his balance. There was a woman in the front passenger seat of the Jeep at the time the vehicle was pulled over. Trooper Mazet ascertained that there was an active arrest warrant for her, and she was arrested.

When Trooper Mazet approached appellant and spoke to him, he detected the "odor of an alcoholic beverage coming from his breath and person" and saw that

appellant's eyes were blood shot. Trooper Mazet asked appellant to produce his driver's license. Appellant appeared confused by that request, but then looked through his wallet for several minutes and eventually produced a driver's license that belonged to his mother. Appellant was not able to produce any other license. In response to Trooper Mazet's inquiry as to whether he had been drinking, appellant stated that "maybe he had one beer."

Trooper Mazet conducted a horizontal gaze nystagmus test that indicated appellant had been drinking. Appellant was asked to perform a walk and turn test, but was unable to stand in the position requested while the instructions were given. During the test, appellant walked off the line, held his hands up to maintain his balance, and had difficulty following instructions. Trooper Mazet asked appellant to perform a one leg stand test, but during the first ten seconds of a thirty second test, appellant lifted his left arm to about shoulder height and swayed heavily back and forth. Appellant then put his foot down and failed to continue the test. A preliminary breath test for alcohol content showed that appellant had .12 grams of alcohol for 210 liters of breath. Thereafter, appellant was arrested.

In lieu of having the vehicle towed, appellant asked Trooper Mazet to park the Jeep in the gas station parking lot and to retrieve his personal belongings, including his wallet, cell phone, and keys, from the center console area of the vehicle. Trooper Mazet agreed to do so and, while parking the Jeep, he observed in the center console, among other things, a smoking device that had inside of it a substance that appeared to be burnt

crack cocaine. Forensic testing later identified the substance in the smoking device as a trace amount of cocaine.

DISCUSSION

Appellant contends that the trial court erred in permitting Trooper Mazet to read from an unidentified document to describe what happened on the night of the incident. At trial, the following occurred:

> [PROSECUTOR]: Could you describe for the ladies and gentlemen of the jury your initial encounter with Mr. Taylor?
>
> [TROOPER MAZET]: I observed – I was traveling on Route 12 towards Carroll Street. I was following behind a blue Jeep. Following behind that blue Jeep –
>
> [DEFENSE COUNSEL]: Your Honor, I'm going to object to the witness reading the testimony.
>
> THE COURT: He can use his report for notes. Go ahead.
>
> [PROSECUTOR]: You may continue trooper.
>
> [TROOPER MAZET]: As I was following behind that Jeep I did observe it make several traffic violations, to [sic] including it was approximately 15 miles an hour under the speed limit. As I was behind the vehicle traffic began to build up and it was a single lane road. As I was behind the vehicle it began to swerve back and forth across the center yellow line and it had to overcorrect to the point where it crossed over the shoulder line and both passenger side tires were over the shoulder line. At that time I did stop the vehicle, initiated a traffic stop on the vehicle.

Appellant maintains that although it was unclear as to what report Trooper Mazet was reading from, reading the document was not permitted by either the doctrine of present recollection refreshed or past recollection recorded and, as a result, reversal is required. We disagree and explain.

Preliminarily, we note that the record does not provide any details about the document used by Trooper Mazet at the beginning of his testimony. Trooper Mazet testified that he did not take any notes except for recording the "clues" that he observed in appellant's field sobriety tests. Nevertheless, after the judge stated that he could "use his report for notes," there was no further objection and no indication in the record that the trooper engaged in any other objectionable behavior with respect to reading from a document. "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Md. Rule 4-323. The Court of Appeals has explained the purpose of requiring a contemporaneous objection as follows:

> The requirement of a contemporaneous objection is a necessary and salutary one, designed to assure both fairness and efficiency in the conduct of trials. A party cannot be permitted to sit back and allow the opposing party to establish its case, or any part of its case, through unchallenged evidence and then, when it may be too late for the opposing party to recover, to see to strike the evidence.

Perry v. State, 357 Md. 37, 77 (1999).

In the instant case, no continuing objection was requested. As a result, the objection lodged below was limited to the trooper's testimony that he was traveling on Route 12 towards Carroll Street following a blue Jeep. Nothing in that testimony constitutes reversible error, as the same information was elicited on cross-examination. *See Paige v. State*, 226 Md. App. 93, 124 (2015)(when objected-to testimony is admitted later without objection, the original objection is deemed waived)(and cases cited therein).

Moreover, the court's response to the objection indicates that it sustained defense counsel's objection to the reading of testimony. The court's statement, "[h]e can use his report for notes," read in context, was an admonishment to the trooper not to read from the document, but to use it only to refresh his memory. The trial transcript indicates that Trooper Mazet complied with the court's directive. Later in his testimony, the trooper commented that he was "[j]ust referring to [his] notes" and used the phrase, "[t]o the best of my knowledge." Similarly, when asked about the female passenger in the Jeep, the trooper responded that he did not "have her name offhand." When asked if appellant's driver's license had been suspended, the trooper stated, "I believe he was revoked and suspended. I do have his driver's record if you need it." And, when asked if he knew appellant's age, the trooper stated, "I think he's in his fifties, just off memory." There is simply nothing in the record to support the contention that Trooper Mazet read his testimony from an unidentified document.

Nor did the court abuse its discretion in allowing Trooper Mazet to use the "report" or document before him for the purpose of refreshing his recollection. *Oken v. State*, 327 Md. 628, 672 (1992). The Court of Appeals has stated:

> While it is true that in many circumstances, an examining attorney must first establish that a witness's memory is exhausted before refreshing the recollection of that witness, *see* 6 L. McLain, *Maryland Evidence*, § 612.1 (and cases cited therein), laying such a foundation is not an absolute prerequisite.

Id. at 672. To the extent that the court permitted Trooper Mazet to use the document he had before him to refresh his recollection about the road he was on and details about the vehicle he was following when he encountered appellant, we find no abuse of discretion.

With respect to appellant's arguments pertaining to past recollection recorded, we simply note that there is absolutely nothing in the record to suggest that the document used by the trooper was either offered or accepted as a past recollection recorded.

Lastly, we agree with the State that even if Trooper Mazet read the objected-to sentences, and even if the court overruled defense counsel's objection, and even if there was some evidence that the trooper was not testifying from personal knowledge, any error would be harmless beyond a reasonable doubt. *Dorsey v. State*, 276 Md. 638, 659 (1976)(error is harmless if the court is able to declare, beyond a reasonable doubt, that the error in no way influenced the verdict). The only objection lodged below was to the trooper's testimony that the traffic stop occurred on Route 12 and the description of the vehicle that was stopped. None of this evidence was critical to the question of appellant's guilt or innocence and, as we have already pointed out, the same evidence was admitted later in the trial without objection.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.