UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0961

September Term, 2015

GREGORY LATRELL HARPER

v.

STATE OF MARYLAND

Meredith,
Reed,
Moylan, Charles E., Jr.
(Retired, specially assigned),

JJ.

Opinion by Reed, J.

Filed: February 17, 2017

Evidence obtained during a routine traffic stop for an inoperative brake light led to charges against the appellant, Gregory Latrell Harper, for possession of heroin, possession of heroin with intent to distribute, and possession of marijuana. The appellant was convicted by a jury of all counts and sentenced to 25 years' incarceration, with all but 15 years suspended, the first 10 of which to be served without the possibility of parole, to be followed by 5 years' probation for possession of heroin with intent to distribute. In addition, the appellant was sentenced to a concurrent one-year term of incarceration for possession of marijuana. On appeal from these convictions, the appellant presents us with the following questions:

1. Did the trial court err in denying Appellant's motion to suppress tangible evidence?

2. Did the trial court impose an illegal sentence for possession of marijuana, and err in failing to consider a non-mandatory sentence for possession with intent to distribute?

3. Did the trial court err in admitting evidence concerning an incident at a basketball court in conjunction with evidence that Appellant lived and was arrested in a "high-drug" area?

For the following reasons, we shall vacate the sentence received by the appellant for his possession of marijuana conviction and remand for resentencing on the same, but otherwise affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case are not in dispute.

On August 15, 2014, Detective Christopher Manalansan, along with Detectives Jenkins and Frye,[1] were patrolling a "high drug area" in an unmarked car when, near a basketball court, they observed a man leaning into the passenger's side window of a parked vehicle occupied solely by the appellant. As the detectives approached, the man leaning into the vehicle backed away, and the vehicle drove off, causing the detectives to notice that the vehicle's center brake light was not working. That inoperative brake light formed the sole basis for the traffic stop that ensued.

In the initial moments of the traffic stop, the appellant alighted from the vehicle. He was approached by all three detectives, who ordered him repeatedly and with escalating volume to step back inside. The appellant re-entered the vehicle without incident. Detective Manalansan then took the appellant's driver's license and vehicle rental agreement back to the patrol car to perform a license and warrant check. Meanwhile, Detectives Jenkins and Frye remained with the appellant.

At this point, Detective Jenkins went on to ask the appellant a series of questions. First, he asked the appellant whether he "had any illegal [sic] on him or in the vehicle," to which the appellant responded in the negative. Next, he asked the appellant for permission to search both his person and the vehicle. The appellant replied "Sure, there's nothing in here," and proceeded to step out of the vehicle. Detective Jenkins then inquired into

[1] The first names of Detectives Jenkins and Frye are not contained in the record.

whether the appellant was carrying any weapons. The appellant indicated that he had "a little something" in his pocket. Therefore, Detective Jenkins opened the pocket and, upon doing so, discovered two ziploc bags containing fifty (50) capsules of heroin as well as three bundles of currency totaling $3,002.00. The appellant was subsequently handcuffed and placed under arrest. Detective Manalansan testified that at the time of the arrest, he was still in the patrol car with the appellant's driver's license and possibly the rental agreement writing up a warning for the brake light violation. An ensuing search of the vehicle led to the additional discovery of a small amount of marijuana.

The undercover observations near the basketball court and physical evidence obtained as a result of the traffic stop led to charges against the appellant for possession of heroin, possession of heroin with intent to distribute, and possession of marijuana. On February 19, 2015, the Circuit Court for Anne Arundel County held a pre-trial motions hearing, the Honorable Paul G. Goetzke presiding, during which the appellant moved to suppress the physical evidence. The circuit court denied that motion. A trial was held on March 24-26, 2015, the Honorable Paul F. Harris presiding. The jury found the appellant guilty on all counts. A sentencing hearing was held on July 6, 2015,[2] and this timely appeal followed.

[2] The details of the appellant's sentences are outlined above.

DISCUSSION

I. MOTION TO SUPPRESS

A. Parties' Contentions

The appellant argues the circuit court erred in denying his motion to suppress tangible evidence because the State failed to prove the voluntariness of his consent to the searches of his person and vehicle. Therefore, because "[t]he sole substitute for the satisfaction of the warrant requirement suggested by the record is Appellant's purported consent to the searches," the appellant asserts the heroin and bundles of cash found in his pocket, as well as the marijuana found in the vehicle, were seized in contravention of the Fourth Amendment. The appellant goes so far as to contend "the record affirmatively establishes [that his consent was involuntary]." He argues the following facts are indicative of the involuntariness of his consent and thus the illegality of the resulting searches: 1) that "[w]hen he exited his vehicle, three officers displaying badges approached him, and ultimately surrounded his car"; 2) that he was "ordered, in a voice that became increasingly loud, to get back into the car"; 3) that "his license, and probably his copy of the rental agreement, were taken from him and not returned at the scene, leaving him unable to lawfully drive"; and 4) that he was "never told that he had a right to refuse consent."

The State responds that for two reasons, the circuit court correctly denied the appellant's motion to suppress tangible evidence. First, the State argues "contrary to [the appellant's] claim, his consent was not the 'sole substitute for the satisfaction of the warrant

requirement suggested by the record.'" The State asserts that "[a]fter [the appellant] gave consent, but before any search occurred, he admitted to a detective that he 'had a little something in his pocket.'" According to the State, this admission coupled with the appellant's "participation in a suspected drug transaction only moments earlier, provided probable cause to arrest him and to search him incident to arrest." However, in the alternative, the State contends "even if the search of [the appellant's] person could only be justified by his consent, the totality of the circumstances shows that his consent was voluntary, and therefore valid." In support of its argument that the consent was voluntary, the State points to the following facts: 1) that only two officers were with the appellant at the time consent was requested; 2) that all the officers were dressed in plainclothes and none of them had their weapons drawn; 3) that Detective Jenkins spoke calmly when requesting the appellant's consent; 4) that the consent was requested and given before the prolongation of a lawful, routine traffic stop for an inoperative brake light; 5) that the appellant was never threatened or intimidated by any of the officers; and 6) that "although [the appellant] was not told he was free to leave, that is because he was not free to leave; the traffic stop was still ongoing when . . . consent [was requested]."

B. Standard of Review

The Court of Appeals has explained that

> [on] review [of] a trial court's grant or denial of a motion to suppress evidence alleged to have been seized in contravention of the Fourth Amendment, we view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-

> finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality de novo and must "make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case."

Corbin v. State, 428 Md. 488, 498 (2012) (quoting *Williamson v. State*, 413 Md. 521, 531-32 (2010)).

Furthermore,

> [t]he ultimate burden of proving that evidence seized without a warrant should not be suppressed falls on the State. *State v. Bell,* 334 Md. 178, 191, 638 A.2d 107, 114 (1994). In reviewing a Circuit Court's grant or denial of a motion to suppress evidence under the Fourth Amendment, we ordinarily consider only the information contained in the record of the suppression hearing and not the trial record. *Dashiell v. State,* 374 Md. 85, 93, 821 A.2d 372, 376 (2003) (quoting *State v. Collins,* 367 Md. 700, 706–08, 790 A.2d 660, 663–64 (2002)). Where, as here, the motion to suppress was denied, we view the facts in the record in the light most favorable to the State, the prevailing party on the motion. *Dashiell,* 374 at 93, 821 A.2d at 376–77 (quoting *Collins,* 367 Md. at 707, 790 A.2d at 664). With respect to weighing and determining first-level facts (such as the number of officers at the scene, the time of day, whether certain words were spoken, etc.), we extend great deference to the fact-finding of the suppression hearing judge. *Dashiell,* 374 Md. at 93, 821 A.2d at 377 (quoting *Collins,* 367 Md. at 707, 790 A.2d at 664). Therefore, "'[w]hen conflicting evidence is presented, we accept the facts as found by the hearing judge unless it is shown that his findings are clearly erroneous.'" *Dashiell,* 374 Md. at 93, 821 A.2d at 377 (quoting *Collins,* 367 Md. at 707, 790 A.2d at 664). As to the ultimate conclusion of whether there was a Fourth Amendment violation, however, "we must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *See Collins,* 367 Md. at 707, 790 A.2d at 664 (citing *Riddick* [*v. State*], 319 Md. [180,] 183, 571 A.2d [12139,] 1240 [(1990)]).

State v. Green, 375 Md. 595, 607 (2003) (some citations omitted).

C. Analysis

The Fourth Amendment to the United States Constitution protects against "unreasonable searches and seizures." U.S. Const. amend. IV. As the Court of Appeals has aptly noted, "[t]he guarantees of the Fourth Amendment apply to the States through the operation of the Fourteenth Amendment." *State v. Green*, 375 Md. 595, 608 (2003).

"The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991) (citing *Katz v. United States*, 389 U.S. 347, 360 (1967)). "Ordinarily, a search of a person conducted without a warrant . . . is presumptively unreasonable, unless one of the recognized exceptions to the warrant requirement applies." *Varriale v. State*, 444 Md. 400, 412 (2015), *cert. denied*, 136 S. Ct. 898 (2016). Consent is one such exception. *See Id.* "For a consensual search to satisfy the Fourth Amendment, the consent must be voluntary, *i.e.*, free from coercion." *Id.* In turn, "[v]oluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent." *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973).

Another "exception[] to the warrant requirement is a search incident to a lawful arrest." *Scribner v. State*, 219 Md. App. 91, 99, *cert. denied*, 441 Md. 63 (2014) (quoting *Arizona v.* Gant, 556 U.S. 332, 338 (2009)). This exception applies "when an officer lawfully arrests the occupant of an automobile, [in which case] he may, as a

contemporaneous incident to that arrest, search the passenger compartment of the automobile and any containers therein." *Id.* (quoting *Gant*, 556 U.S. at 340-41) (internal quotations omitted). The State asserts the search of the appellant's pocket was permissible under this and the consent exception to the warrant requirement.[3]

[3] Though not addressed by the State, the warrant exception from *Terry v. Ohio*, 392 U.S. 1 (1968), comes close to applying in this case. In *Terry*, the Supreme Court held that

> *where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous*, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, *he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.* Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Id. at 30-31 (emphasis added). To be clear, the State did not argue the seizure of the heroin resulted from a lawful *Terry* search. However, the facts being as they are make a brief mention of the applicability of *Terry* worthwhile. Had Detective Jenkins patted down the appellant's outer clothing after the appellant, in response to being asked whether he had any weapons on him, admitted to having "a little something in his pocket," and had Detective Jenkins been able to determine without any "squeezing, sliding, [or] otherwise manipulating" of the capsules that what he was feeling was heroin, then the tangible evidence may well have been admissible under *Terry*. *See, e.g., Madison-Sheppard v. State*, 177 Md. App. 165, 187 (2007). However, this is not how the traffic stop in the case *sub judice* transpired because Detective Jenkins opened the appellant's pocket without first patting it down and determining there was a weapon inside. Accordingly, it was for good reason that the State did not pursue a *Terry* argument.

We shall first address the State's contention that the search was permissible under the "search incident to a lawful arrest" exception. According to the State, the detectives' observation of a suspected hand-to-hand drug transaction combined with the appellant's pre-search admission that he had "a little something" in his pocket gave "Detective Jenkins . . . permi[ssion] to arrest [the appellant] and search him incident to arrest, regardless of the validity of [the appellant's] consent." This argument is without merit. Although the State is correct in that "a police officer with probable cause to believe that a suspect has or is committing a crime may arrest the suspect without a warrant [and search the suspect's person incident to arrest]," *Conboy v. State*, 155 Md. App. 353, 364 (2004), that is not what happened here. Detective Jenkins did not place the appellant under arrest before searching his pocket. As we have previously stated, it is only "*[o]nce lawfully arrested* [that] police may search 'the person of the arrestee' as well as 'the area within the control of the arrestee' to remove any weapons or evidence that could be concealed or destroyed." *Id.* (quoting *United States v. Robinson*, 414 U.S. 218, 224 (1973)) (emphasis added). No lawful arrest of the appellant was made prior to the search of his pocket. Therefore, the "search incident to a lawful arrest" exception to the warrant requirement does not apply.

We now turn our attention to whether the tangible evidence is admissible under the consent exception to the warrant requirement. Again, in order for a consent to be valid, it must be voluntary. Voluntariness, as we indicated *supra*, is a factual determination to be made based on the totality of the circumstances. And as a factual determination, voluntariness is left to the sound discretion of the trial court. *See Dashiell,* 374 Md. at 93.

For the reasons that follow, we shall hold that the appellant's consent was voluntary and, therefore, the tangible evidence was properly admitted.

The appellant is correct in that three officers were present during the traffic stop and his license and rental agreement were not returned to him prior to his consent being requested. However, it is also true that only two officers were near the vehicle when the appellant's consent was requested, that all the officers were in plainclothes and that none of them had their weapons drawn, and that the license and rental agreement were not returned because the traffic stop for the inoperative brake light had just begun. Quite simply, in light of the totality of the circumstances, the trial court's determination regarding the voluntariness of the consent did not constitute an abuse of discretion. Therefore, the appellant's motion to suppress tangible evidence was properly denied.

II. SENTENCES IMPOSED

A. Parties' Contentions

The appellant argues "the trial court imposed an illegal sentence upon the conviction for possession of marijuana, and erred in failing to consider a non-mandatory sentence for possession of heroin with intent to distribute." There is no distinction between the appellant's position and that of the State was respect to the conviction for possession of marijuana: Both agree we should vacate the appellant's concurrent one-year prison term for that conviction because after the arrest but before the trial and sentencing hearing, possession of less than 10 grams of marijuana became a civil offense punishable by fine

only. The parties disagree, however, when it comes to the sentence for possession of heroin with intent to distribute.

The appellant points out that "§ 5-609.1 of the Crim. Law Art. [("CL")] now confers discretion upon a trial judge to dispense with what should otherwise be a mandatory sentence" under CL § 5-608(b), the statute under which he was sentenced for possession of heroin with intent to distribute, "if such a sentence would work a substantial injustice to the defendant and is not necessary to protect the public." Therefore, he argues he is entitled to resentencing on his conviction for possession of heroin with intent to distribute, despite the fact that the amendment to CL § 5-609.1 became effective on October 1, 2015, which was after his trial and sentencing. The appellant asserts "as a general matter changes in law during the pendency of a direct appeal, favorable to the accused, are applied by the appellate court." More fundamentally, however, the appellant contends that *Waker v. State*, 431 Md. 1 (2013), stands for the principle that "where a society through its elected representatives perceives a need to reduce a criminal sanction, the benefit of that reduction should extend beyond those individuals who faced only the reduced sanction on the date of the crime itself."

For its part, the State argues that because "the statute giving trial courts discretion to depart from the mandatory sentences [under CL § 5-608(b)] did not take effect until after [the appellant's] sentencing," the sentence for possession of heroin with intent to distribute is preserved under Md. Code Ann., GEN. PROVIS. ART. § 1-205, which is commonly

referred to as the "general savings" clause.[4] The State points out that the Court of Appeals has interpreted the general savings clause as "saving any penalty, forfeiture, or liability incurred under a statute which is subsequently repealed or amended unless the repealing act expressly provides otherwise." *State v. Johnson*, 285 Md. 339, 345 (1979). Thus, because the appellant's sentence for possession of heroin with intent to distribute was "already incurred and imposed under the prior law," *Waker*, 431 Md. at 11 (quoting *Johnson*, 285 Md. at 343), the State asserts it should be affirmed.

In addition, the State contends the sentence for possession of heroin with intent to distribute should be affirmed because it is not "illegal" and because resentencing would serve no purpose. First, the State argues "[f]or a sentence to be 'illegal' under Maryland Rule 4-345(a)[5] . . . 'the illegality must inhere in the sentence itself, rather than stem from

[4] The general savings clause provides:

> **Effect on penalty, forfeiture, or liability**
> (a) Except as otherwise expressly provided, the repeal, repeal and reenactment, or amendment of a statute does not release, extinguish, or alter a criminal or civil penalty, forfeiture, or liability imposed or incurred under the statute.
>
> **Purposes for which statute shall remain in effect**
> (b) A repealed, repealed and reenacted, or amended statute shall remain in effect for the purpose of sustaining any:
> (1) criminal or civil action, suit, proceeding, or prosecution for the enforcement of a penalty, forfeiture, or liability; and
> (2) judgment, decree, or order that imposes, inflicts, or declares the penalty, forfeiture, or liability.

[5] Md. Rule 4-345(a) simply states that "[t]he court may correct an illegal sentence at any time.

trial court error during the sentencing proceeding.'" (quoting *Bonilla v. State*, 443 Md. 1, 4 (2015)). Therefore, the State asserts the error complained of by the appellant "is not cognizable as an illegal sentence under Rule 4-345(a)" and must be affirmed. In the alternative, the State contends the record clearly indicates that even if we were to remand for resentencing on the conviction for possession of heroin with intent to distribute, the trial court would impose the exact same sentence. In particular, the State argues statements made by the trial judge during the sentencing hearing regarding the appellant's extensive history as a drug dealer indicate that a conclusion was made that the sentence ultimately imposed was necessary to protect the public. Accordingly, the State asserts a remand for resentencing on this particular conviction would serve no purpose because it would result in the re-imposition of the exact same sentence.

B. Standard of Review

It is well settled that

> [o]nly three grounds for appellate review of sentences are recognized in [Maryland]: (1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional requirements; (2) whether the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations; and (3) whether the sentence is within statutory limits.

Jackson v. State, 364 Md. 192, 200 (2001) (quoting *Gary v. State*, 341 Md. 513, 516 (1996)) (emphasis omitted). In the case *sub judice*, we are called upon to review the appellant's sentence on the third ground. In doing so, "although we do not engage in *de novo* fact-

finding, our application of the [statutory sentencing limits] to the facts is *de novo*." *Khalifa v. State*, 382 Md. 400, 417 (2004).

C. Analysis

i. Possession of Marijuana

The traffic stop which led to the appellant's conviction for possession of marijuana occurred on August 15, 2014. The State concedes that "possession of less than 10 grams of marijuana became a civil offense punishable [only] by fine on . . . October 1, 2014." The appellant was sentenced on July 6, 2015. Therefore, pursuant to *Waker v. State*, 431 Md. 1 (2013), the appellant should have been sentenced under the statute that took effect on October 1, 2014. We hold that his current sentence is illegal because it exceeds the limits of the new statute. Accordingly, we shall remand for resentencing on the possession of marijuana conviction.

ii. Possession of Heroin with intent to Distribute

Unlike the sentence for the possession of marijuana conviction, we affirm the sentence for possession of heroin with intent to distribute. The State is correct that the general savings clause, as interpreted by the Court of Appeals in *State v. Johnson*, 285 Md. 339 (1979), preserves this sentence. In *Johnson*, the difference between the law in effect at the time of sentencing and the law in effect when the case was on appeal was that "a judge upon revoking probation is *now clothed with the discretion* to impose less than the full term of the suspended sentence." *Id.* at 342 (emphasis added). In other words, just like in the present case, the sentencing statute in *Johnson* was amended to provide the trial judge with

discretion to impose a lesser sentence after Johnson's sentence was imposed. *Id.* The Court of Appeals held that the earlier version of the statute applied. *Id.* at 346. In accordance with *Johnson*, we affirm the sentence imposed on the appellant in the present case.[6]

III. EVIDENCE OF MAN LEANING INTO CAR WINDOW IN "HIGH DRUG" AREA

A. Parties' Contentions

The appellant argues "the trial court erred in admitting evidence concerning an incident at a basketball court in conjunction with evidence that appellant resided and was arrested in a 'high drug' area." Regarding the "high drug" area testimony, the appellant asserts this evidence lacked any probative value. "What other people were doing in his neighborhood," the appellant contends, "had no bearing upon [the only issue in the case]," which was whether he possessed the capsules of heroin for personal use and/or with the intent to distribute them. And concerning Detectives Jenkins and Manalansan's testimony that they observed a man leaning into the appellant's parked vehicle, the appellant argues this evidence was inadmissible because it had the potential for unfair prejudice. The appellant asserts he was on trial was possession with intent to distribute, not distribution.

[6] Assuming, *arguendo*, that the general savings clause prevented the application of CL § 5-609.1 as it was prior to its October 1, 2015, amendment, we would still have to affirm the sentence for possession of heroin with intent to distribute. A sentence is not "illegal" under Md. Rule 4-345(a) unless "the illegality . . . inhere[s] in the sentence itself, rather than stem[s] from trial court error during the sentencing proceeding." *Bonilla*, 443 Md. at 4. Even if we vacated the appellant's sentence for possession of heroin with intent to distribute and remanded for resentencing on the same, the trial court could re-impose the same sentence and still be within the limits of the version of CL § 5-609.1 in effect today. Therefore, the illegality complained of by the appellant does not "inhere in the sentence itself."

Therefore, he contends "[this testimony] ran afoul of the presumptive exclusionary rule for 'other-crimes' evidence."

The State, on the other hand, argues the circuit court properly admitted the evidence of the man leaning into the vehicle because it "was relevant to prove [the appellant's] intent to distribute and its probative value was not substantially outweighed by the danger of unfair prejudice." The State asserts the appellant's argument of "other-crimes" evidence is unpreserved, but contends that even if it was preserved it would fail because it "Rule 5-404(b)[7] does 'not apply to evidence of crimes (or other bad acts or wrongs) that arise during the same transaction and are intrinsic to the charged crime or crimes.'" (quoting *Odum v. State*, 412 Md. 593, 611 (2010)).

B. Standard of Review

In *Hall v. Univ. of Maryland Med. Sys. Corp.*, 398 Md. 67 (2007), the Court of Appeals indicated that

> [g]enerally, the standard of review with respect to a trial court's ruling on the admissibility of evidence is that such matters are left to the sound discretion of the trial court and unless there is a showing that the trial court abused its discretion, "its ruling[ ] will not be disturbed on appeal." *Bern–Shaw Ltd. Partnership v. Mayor and City Council of*

[7] Rule 5-404(b) provides:

> **Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, § 3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

> *Baltimore,* 377 Md. 277, 291, 833 A.2d 502, 510 (2003), *quoting Farley v. Allstate Ins. Co.,* 355 Md. 34, 42, 733 A.2d 1014, 1018 (1999) (brackets in original). The application of that standard, however, "depends on whether the trial judge's ruling under review was based on a discretionary weighing of relevance in relation to other factors or *on a pure conclusion of law.*" *Bern–Shaw,* 377 Md. at 291, 833 A.2d at 510(emphasis added). If "the trial judge's ruling involves a pure legal question, we generally review the trial court's ruling *de novo.*" *Id.; Nesbit v. GEICO,* 382 Md. 65, 72, 854 A.2d 879, 883 (2004) (concluding that when a trial court's decision in a bench trial "involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review"), *quoting Walter v. Gunter,* 367 Md. 386, 392, 788 A.2d 609, 612 (2002). *See also Bernadyn v. State,* 390 Md. 1, 8, 887 A.2d 602, 606 (2005) (concluding, in a criminal case, that a trial court's decision to admit or exclude hearsay is not discretionary and that "whether evidence is hearsay is an issue of law reviewed *de novo*").

Hall, 398 Md. at 82-83.

C. Analysis

All relevant evidence is generally admissible under Md. Rule 5-402. The Rules define "relevant" evidence as "evidence having 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." Md. Rule 5-401. The exception to the general rule that all relevant evidence is admissible is when the probative value of a piece of evidence is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

The appellant asserts the trial court improperly admitted the testimony of Detectives Jenkins and Manalansan regarding how they observed a man leaning into the window of the appellant's parked vehicle and the fact that there had been a number of complaints of drug activity in the area around the basketball court. We disagree. The appellant was charged with three drug-related offenses, including possession of both marijuana and heroin and the possession of heroin with intent to distribute. The testimony at issue was thus highly relevant under the standard delineated in Md. Rule 5-401 because it had at least some tendency to make the appellant's possession of and intent to distribute drugs more probable than it would otherwise be. *See* Md. Rule 5-401. Therefore, under the general rule, the testimony was admissible unless its probative value was substantially outweighed by one or more of the dangers or considerations of Md. Rule 5-403. The appellant specifically alleged the danger of unfair prejudice. However, it cannot be said that the disputed testimony was unfairly prejudicial. "[T]he fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5-403." *Odum*, 412 Md. at 615 (internal quotation and citation omitted). Instead, in order for evidence to be unfairly prejudicial, it must "influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which he is being charged." *Id.* None of the testimony at issue here has such a prejudicial effect in the sense that it has the tendency to impermissibly influence the jury. Instead, it seems the appellant seeks to have this evidence deemed inadmissible simply because it hurts his case.

We need not address the appellant's argument of "other crimes" evidence because a review of the trial transcript indicates that the contemporaneous objection was made on the specific bases of relevancy and prejudice. Therefore, the issue of whether the testimony under consideration constitutes inadmissible "other crimes" evidence has not been preserved for appeal. *See Ware v. State*, 360 Md. 650, 675 (2000) ("Appellant objected below on the grounds that the evidence was irrelevant and that its prejudicial effect outweighed its probative value. Appellant's argument that the evidence ran afoul of Rule 5-404(b) was never made to the trial court and therefore was not preserved.").

For the aforementioned reasons, we answer the appellant's first and third questions presented in the negative. Regarding his second question, we affirm the sentence imposed by the trial court for possession of heroin with intent to distribute, but remand for resentencing on the possession of marijuana conviction.

SENTENCE IMPOSED FOR POSSESSION OF MARIJUANA VACATED. ALL OTHER JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. REMANDED FOR RESENTENCING ON POSSESSION OF MARIJUANA CONVICTION. COSTS TO BE PAID BY ANNE ARUNDEL COUNTY.