Circuit Court for Wicomico County
Criminal Case No. 22-K-16-0379

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1901

September Term, 2016

TREVOR BROOKS

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: October 2, 2017

*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.

Trevor Brooks, appellant, was convicted by a jury sitting in the Circuit Court for Wicomico County, of possession of pentylone, a controlled dangerous substance. On appeal, Brooks presents one question for our review: "Did the trial court err in admitting evidence of the odor and presence of marijuana in appellant's car when he was not charged with possessing it?" For the following reasons, we shall affirm.

In the State's case, Corporal James Jackson testified that he stopped the vehicle Brooks was driving for failure to have headlights on at night. Defense counsel objected when Corporal Jackson stated he detected a "strong odor of burnt marijuana" as he was speaking to Brooks, and the court overruled the objection. But when the prosecutor then continued to question the officer about the fact that he smelled marijuana, and what he did as a result, there was no objection:

> CORPORAL JACKSON: . . . I contacted the operator of the vehicle and sole occupant who was identified as Trevor Brooks. While I was talking to him I detected a strong odor of burnt marijuana come from the vehicle.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Basis?
>
> [DEFENSE COUNSEL]: Relevance.
>
> THE COURT: Overruled.
>
> [PROSECUTOR]: Can you describe from that point what it was that you did in relation to you smelling the odor of burnt marijuana?
>
> CORPORAL JACKSON: I requested an additional unit to assist me with the traffic stop so I could conduct a probable cause search of the vehicle.

Because there was no objection to the prosecutor's question regarding the odor of marijuana, the objection to evidence that police detected the odor of burnt marijuana

emanating from Brooks's vehicle was not preserved. As we have stated, "[c]ases are legion … to the effect that an objection must be made to each and every question to preserve the matter for appellate review[.]" *Berry v. State*, 155 Md. App. 144, 172 (2004) (citation omitted). *See also 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.") (citations omitted).[1]

Brooks also contends that the trial court erred in denying his request to remove marijuana, which had been found in his vehicle, from the sealed evidence bag, on the ground that he was not charged with possession of marijuana.[2] Assuming, without deciding, that the trial court erred in denying this request, any error was harmless beyond a reasonable doubt.

An error is harmless when a reviewing court is "satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict." *Dionas v. State*, 436 Md. 97, 108 (2013) (citation omitted). "To say that an error did not contribute to the verdict is

[1] Defense counsel objected to subsequent testimony from Corporal Jackson regarding the fact that he detected the odor of burnt marijuana from within Brooks's vehicle, but, for the purposes of appellate review, the objection had already been waived.

[2] Defense counsel had also requested that any reference to marijuana be redacted from the chemist's report and the chain of custody report that were admitted into evidence along with the sealed evidence bag. The State consented to the redaction of the reports, but stated that the marijuana could not be removed from the sealed evidence bag, and the court agreed. Following the court's ruling that the marijuana could not be removed from the sealed evidence bag, defense counsel withdrew the request to redact any reference to marijuana in the reports, apparently out of a concern that the jury would think it was additional pentylone or "something else."

. . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." *Frobouck v. State*, 212 Md. App. 262, 284, (2013) (citations and internal quotation marks omitted).

At Brooks's trial, the jury heard evidence, which was not objected to, that the odor of burnt marijuana prompted police to search Brooks's vehicle, and that "contraband" was found, but nothing "that [the police] would arrest him for." The court then instructed the jury that Brooks was charged only with possession of pentylone and possession with intent to distribute pentylone, and that they should not consider any reference to or evidence of marijuana. *See Alston v. State*, 414 Md. 92, 108 (2010) ("As this Court has often recognized, 'our legal system necessarily proceeds upon the assumption that jurors will follow the trial judge's instructions.'" (citation omitted)).

Moreover, the State presented evidence that, as Brooks was being escorted by police from his car to the sidewalk, he "did do a slight pause" and that, shortly thereafter, police found a clear bag, containing a white powdered substance, along the path that Brooks had taken from his car to the sidewalk. According to the testimony of two police officers, that bag was not present prior to the time Brooks was taken out of the car. In addition, after he was arrested, Brooks informed the police that the white powdered substance in the bag found behind his car was "MDMA", that the street value was $40 per gram, and that it was "easy to make."[3] He also told police that he had the substance with him, in the car, and that he had tried to "dip it," which, according to the testimony of one of the police officers,

[3] According to the testimony of the State's forensic expert, MDMA has a "similar [chemical] structure" to pentylone.

meant "drop it," in order to "get it off of his person." Based on our review of the record, we are satisfied that there is no reasonable possibility that evidence that marijuana was recovered during the search of Brooks's vehicle contributed to the jury's verdict.

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