Circuit Court for Howard County
Case No. C-13-CR-19-000605

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2521

September Term, 2019

RONALD WILLIS CHEEK

v.

STATE OF MARYLAND

Berger,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: January 11, 2021

Appellant Ronald Willis Cheek was convicted by a jury in the Circuit Court for Howard County of four counts of misdemeanor human trafficking under Maryland Code Crim. Law § 11-303.(a)(1)(ii).[1] Appellant presents the following question for our review:

> "Did the trial court err in denying Mr. Cheek's motion to preclude the testimony of Officer Bennett?"

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Howard County on four misdemeanor counts of knowingly harboring another person for prostitution, one count corresponding to each of four victims. The jury convicted him of all four counts. The court sentenced appellant to a term of incarceration of ten years on each count, to be served consecutively.

Testimony at trial indicated that appellant collected prostitution revenue from four women who were staying together at a motel, and that he provided food, drugs, and condoms to the same women. One of these four women, Ms. K.S., testified that she met appellant after she went to Baltimore in June of 2019 with a friend to get heroin, ran out of money soon thereafter, and began engaging in prostitution to support her drug habit. She met appellant on the streets of Baltimore, and he later brought her into his car and drove her to the Terrace Motel in Howard County. In a room there, the two used heroin and crack

[1] Maryland Code Crim. Law § 11-303.(a)(1)(ii) proscribes harboring another in any place for prostitution.

and had sex. They spent two or three days alone in the same motel room, after which another woman came to the room and joined them in the use of drugs. Ms. K.S. then learned that this other woman was staying in a separate room in the Terrace Motel with two other women. The separate motel room had one king size bed for the three women who had been staying there. Soon thereafter, Ms. K.S. moved into that room as the fourth resident. The four women used prurient postings on Mega Personals to seek clients for brief "dates" in the motel room.

According to Ms. K.S., she never gave appellant money directly, but any woman performing a "trick" would slide money under the bathroom door of the motel room, passing it to the three other women who would wait in the bathroom. Ms. K.S. understood that one of them would deliver that money to appellant.

On July 10, 2019, detectives of the Howard County Police Department and officers of the Arlington County, Virginia, Police Department went to the Terrace Motel and arrested appellant.

Officer Tyler Bennett of Arlington County was part of the team that arrested appellant. Officer Bennett patted down appellant and felt what he believed to be narcotics in his pocket. He removed from appellant's pocket a hard substance, apparently cocaine, inside of a tied-off plastic bag, and two capsules of an off-white powdery substance. Appellant told him that the capsules contained fentanyl.

At trial, at least five police officers testified for the State. Detective Jennifer Grimes of the Howard County Police Department testified that an employee of the motel gave her

the name of someone other than appellant when she sought a record of the person who rented the room where the young women were staying.

Appellant's defense at trial was that someone else, a stranger to him, paid for the women to live at the motel. He suggested that he was not a pimp, that he was not harboring the women at the motel, and that he was only at the motel himself because he lost housing at a friend's home, where he had lived before he went to the motel for some weeks.

Appellant testified in his own defense. He testified that he was an addict like his four female acquaintances at the motel, and that he had met them all at "dope spots" in Baltimore. He maintained that another man rented the room for the young women. He said that he had never met the man before in his life until one of the women brought that man along when the group first went to the Terrace Motel. This other man not only paid for the room where the women stayed, but the other man also paid for appellant's room for two weeks. After appellant had been at the motel for two weeks, he began paying for his own room and a night manager of the motel began to comp the room of the women in exchange for sexual favors.

Because this appeal centers upon Officer Bennett's testimony about appellant's drug possession at the time of his arrest, we will set out those facts in more detail. Officer Bennett's challenged testimony was the subject of defense objections on multiple grounds, including (at minimum) relevance and prejudice.

On the morning of the first day of trial, defense counsel moved *in limine* to exclude testimony about "any evidence based upon any violation of any other statute or any other

way in which human trafficking can be proven within the statute." Defense counsel argued that the evidence was not relevant, and that it was inadmissible "prior bad acts" evidence that did not fall within any exception.

The State responded that "there is going to be testimony regarding drug use and that the defendant provided drugs to the victims in this case."

At trial, defense counsel objected to Officer Bennett's testimony, but focused his objections on relevance and prejudice, not prior bad acts evidence. Defense counsel argued as follows:

> DEFENSE COUNSEL: I don't think [drug possession] is relevant as to the charge of prostitution. It may be relevant to a charge of, say, possession, but it is not relevant to whether or not [appellant] was harboring these three girls. I think it runs in the vein of the other motion *in limine*. Additionally, I think it is more prejudicial than probative. He was arrested with drugs on him—he is charged in a separate case, pled in that separate case, but I don't believe it is relevant here.
>
> THE COURT: But it would be sort of—it would be consistent with the testimony of Ms. [K.S.]?
>
> THE STATE: [Confirming Ms. K.S.'s name.] Yes, your Honor.
>
> THE COURT: That was one of the drugs that was made available to them.
>
> DEFENSE COUNSEL: Your Honor, I would simply lodge my objection. I believe she did testify that way, but again, I don't believe that whether or not they found it on him at a certain point in time [court reporter here notes that it "sounds like: 'they did it later'"] that it is relevant in that way. But I simply would note my objection.

The State argued that the evidence was relevant to corroborate the testimony of K.S., that "it all took place contemporaneously," and that the drugs were a key aspect of how he was

harboring the women. The State argued that providing the motel room, the food, and the drugs were all part of harboring the women.

The trial judge agreed with the State, finding that the evidence of the drug possession was admissible and more probative than prejudicial. After the testimony of two other witnesses that morning, and before the State called Officer Bennett, the trial court granted a continuing objection to the defense:

> DEFENSE COUNSEL: Your Honor, since this was the subject of a motion *in limine*, I would just reassert that. I ask for a continuing objection for the length of his testimony, as I believe all of it to be objectionable.
>
> THE COURT: Okay. And just—I apologize, but the objectionable aspect of this testimony would be?
>
> DEFENSE COUNSEL: *Was relevance and probative nature—the prejudicial values exceed the probative value of the testimony.*
>
> PROSECUTOR: And the State's position is that it corroborates the victim both with regard to who was providing the drugs and the type of drugs, and I think all of that goes towards the bigger issue.
>
> THE COURT: The fentanyl?
>
> PROSECUTOR: The fentanyl, yes.
>
> THE COURT: I will give you a continuing objection—but overruled.

The parties asked the circuit court for incorporation of their arguments from the defense motion *in limine*:

> DEFENSE COUNSEL: Thank you. And if I just may incorporate my arguments in the motion *in limine* portion?
>
> THE COURT: Yes, sir.

PROSECUTOR: And mine as well, Your Honor.

THE COURT: Yes, ma'am.

Although the defense motion *in limine* raised issues of prior bad acts, the State contends that the motion was not addressed to the recovery of drugs from appellant at the time of his arrest and did not refer to the drug recovery as prior bad act evidence. The State also points to a defense motion *in limine* from the first day of trial, in which the defense did mention inadmissible prior bad acts evidence but only in the context of testimony about other ways human trafficking could be committed.

Appellant was convicted and sentenced as noted above, and he filed this timely appeal.

II.

Before this Court, appellant argues that the trial court erred in denying appellant's motion to exclude Officer Bennett's testimony about finding alleged narcotics in appellant's possession at the time of appellant's arrest. He argues that the evidence was irrelevant because it does not make it any more or less likely that appellant was knowingly harboring the four women for the purposes of prostitution; that it constituted inadmissible prior bad acts evidence; and that it was more prejudicial than probative. In appellant's view, the error was not harmless and requires reversal.

As a threshold matter, the State raises a preservation issue as to the prior bad acts argument. The State claims that appellant argued only relevance and prejudice about

Officer Bennett's testimony on removal of the fentanyl from appellant's pants pocket; and as to prior bad acts, appellant argued only that other ways to commit human trafficking was bad acts evidence. Alternatively, if preserved, this evidence was not inadmissible bad-acts/other-crimes evidence. The State cites *Odum v. State*, 412 Md. 593 (2010), explaining that the strictures against other-crimes evidence embodied in Rule 5-404(b) do not apply to evidence of crimes or bad acts that "arise during the same transaction and are intrinsic to the charged crime or crimes." The State argues that appellant's possession of the fentanyl was contemporaneous with the charged offenses, and related to the charged offenses. In sum, the State maintains that the trial court did not abuse its discretion in finding that Officer Bennett's testimony about the fentanyl was relevant, probative, and not more prejudicial than probative.

III.

We address first the State's preservation argument and hold that the prior bad acts evidentiary argument related to the fentanyl is not preserved for our review. Rule 8-131(a) states that "[o]rdinarily an appellate court will not decide an issue unless it plainly appears by the record to have been raised in or decided by the trial court." This issue is not preserved for our review because defense counsel did not object on the grounds of impermissible bad acts testimony or hearsay, but instead objected only on the grounds of

relevance and undue prejudice.[2] It is well established that appellate review of an evidentiary ruling, when a specific objection was made, is limited to the ground assigned at the time of the objection. *Grandison v. State*, 341 Md. 175, 220-221 (1995). Therefore, as the specific ground for objection asserted here on appeal is not the same as that raised at trial, we will not review the ruling on that basis but will review it for relevance and prejudice.[3]

A. Relevance

Evidence is relevant where, if established, it would have legal significance to the litigation. *Paige v. Manuzak*, 57 Md. App. 621, 632 (1984) (citing 1 Wigmore, § 2 (Tillers rev. 1983)); Rule 5-402 (codifying the standard of whether evidence would make any legally significant fact "more probable or less probable than it would be without the evidence"). We agree with the trial court and the State that the testimony of Officer Bennett, as to the drugs in appellant's pocket at the time of the arrest, was relevant. The likelihood that there was fentanyl in appellant's pocket tended to corroborate the testimony of Ms. K.S. about the specifics of the drug use at the motel and the source of the supply. Further, as the State argued to the circuit court, the testimony was relevant to the State's

[2] As recited above, defense counsel argued: "I don't think [drug possession] is *relevant* as to the charge of prostitution…. Additionally, I think it is *more prejudicial than probative*. He was arrested with drugs on him—he is charged in a separate case, pled in that separate case, but I don't believe it is *relevant* here." (Emphases added.)

[3] Assuming *arguendo* that the other-crimes basis for exclusion was preserved, we would hold that the evidence did not constitute inadmissible prior bad acts evidence. The trial judge was within his discretion to allow the State to present its theory that the drug possession and drug use was intrinsic to appellant's method of accomplishing the crime charged—*i.e.*, that the harboring was inextricable from the supply of drugs to the women.

theory of how the *harboring* was accomplished.

B. Prejudice and Probity

Rule 5-403 reads, in pertinent part, as follows: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by danger of unfair prejudice, confusion of the issues, or misleading the jury. . . ."

In the case at bar, Officer Bennett's testimony as to the drugs in appellant's pocket was probative for the same reasons that it was relevant—corroboration of other witness testimony and method of accomplishing the crime. Under the Rule, however, the analysis does not end here; prejudice can outweigh probative value, resulting in exclusion of evidence that is both relevant and probative.

Appellant argues that the testimony as to the drug possession is inflammatory and could mislead or confuse the jury. The trial judge weighed the evidence, however, and found that the probative value outweighed the prejudicial effect. The trial judge did not abuse his discretion.

Appellant attempts to buttress his argument as to prejudice by invoking *Terry v. State*, 332 Md. 329, 334 (1993), where the Court of Appeals held that a prior criminal act lacked "special relevance," and could have prejudiced the jury against the defendant. This case is distinguishable from *Terry* because the drug possession was temporally proximate to the harboring offense. It is distinguishable also because the drug possession was "specially relevant" both to testimony of another witness and to a reasonable theory of the

method by which the accused may have accomplished the crime of harboring another for prostitution. The trial judge did not abuse his discretion.

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