

Circuit Court for Baltimore County
Case No. 03-K-09-002157

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3395

September Term, 2018

DONTE MAURICE NALLS

v.

STATE OF MARYLAND

Berger,
Leahy,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: February 14, 2020

*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.

During the early morning hours of April 19, 2009, Dontrell Jones and Kelly Kim were shot through their bedroom window while they slept in their second floor bedroom. Donte Maurice Nalls, appellant, was identified as the shooter and was ultimately convicted of first-degree assault of Mr. Jones, Ms. Kim, and their daughter, Cassie Harris, as well as attempted murder of Cassie Harris, and additional firearms-related offenses.

Nalls presents a single issue for our review in this appeal:

Whether the circuit court's error in instructing the jury that Nalls was disqualified from possessing a regulated firearm due to a prior conviction requires reversal of all of Nalls' convictions.

For the reasons explained herein, we shall hold that the trial court's error was harmless beyond a reasonable doubt and affirm.

FACTS AND PROCEEDINGS

We previously set forth the factual and procedural background in detail in our prior unreported opinion in Nalls' initial appeal. *Donte Nalls v. State of Maryland*, Case No. 85, September Term, 2010 (filed March 26, 2012). We set forth certain limited facts in order to provide context for our discussion. We further summarize the procedural history that occurred after our previous opinion.

On the evening of April 18, 2009, Cassie Harris encountered Nalls, whom she knew as an acquaintance, at a nightclub. Ms. Harris and Nalls engaged in a verbal and then physical altercation at the nightclub. The altercation was broken up by the staff at the nightclub. Thereafter, Harris and her friends left the club and went to the home that Ms. Harris shared with her mother and step-father, arriving at approximately 2:30 a.m. Harris

spoke with her mother before she and her friends retired to Harris's bedroom, which was located in the basement. Harris had previously occupied a second-floor bedroom, but approximately two weeks prior, Harris and her parents had switched bedrooms. The second-floor bedroom faced the back alley and was located above a covered back porch that was supported by three pillars. The bedroom could be accessed by climbing the pillars and entering through a window.

At approximately 5:00 a.m. on April 19, 2009, Mr. Jones and Ms. Kim were awoken in the second-floor bedroom by loud popping noises that sounded like firecrackers. They realized that they had both been shot. Neither Mr. Jones nor Ms. Kim saw the shooter. The bedroom window was open. Ms. Harris was awoken by a loud crash and the sound of her mother screaming. She ran upstairs to the bedroom and discovered her mother and step-father lying on the floor surrounded by blood.

Nalls was arrested the same day as the shooting. A trial was held from October 27 through November 2, 2009. As we will detail in this opinion, several witnesses testified in the State's case and a single witness testified for the defense.¹ A jury found Nalls guilty of first-degree murder, three counts of first-degree assault, three counts of use of a handgun in the commission of a crime of violence, and illegal possession of a regulated firearm. Nalls was sentenced to life imprisonment for the attempted first-degree murder conviction, twenty-five years' imprisonment for each count of first-degree assault, and twenty years'

¹ Nalls elected not to testify.

imprisonment for each count of use of a handgun in the commission of a crime of violence.² The conviction for illegal possession of a regulated firearm merged for sentencing purposes.

On direct appeal, we vacated the sentence imposed for the first-degree assault of Ms. Harris, holding that the sentence should have merged into his sentence for attempted first-degree murder of Ms. Harris. We further vacated Nalls' conviction for illegal possession of a regulated firearm and remanded for a new trial on that count. Our holding with respect to the illegal possession of a regulated firearm was premised upon the same erroneous instruction at issue in this appeal.

During Nalls' trial, near the close of the State's case-in-chief, the State sought to introduce evidence of Nalls' prior conviction for second-degree assault in order to provide a factual predicate for the charge of possession of a firearm by a prohibited person. Nalls refused to stipulate to his conviction, and the State sought to introduce the certified docket entries into evidence. The docket entries included convictions in addition to the conviction for second-degree assault. Defense counsel objected on the basis that the docket entries

² The twenty-five-year term of incarceration for first-degree assault of Ms. Harris and the twenty-year term of incarceration for use of a handgun in the commission of a crime of violence were run concurrently to the sentence for attempted first-degree murder. The twenty-five-year sentence imposed for the first-degree assault of Ms. Kim was consecutive to the twenty-five-year sentence imposed for the assault of Ms. Harris and concurrent to the life sentence. The twenty-year term for use of a handgun in the commission of a crime of violence against Ms. Kim was to run concurrently. The twenty-five-year sentence for first-degree assault of Mr. Jones was consecutive to the sentences related to Ms. Kim and concurrent to the life sentence. The twenty-year sentence for use of a handgun in the commission of a crime of violence against Mr. Jones was to run concurrently.

included other convictions in addition to second-degree assault. Defense counsel sought to have the other convictions redacted from the exhibit, but the trial court determined that “it’s a physical impossibility to redact it,” explaining that “the documents that have been presented, which are forty-seven, are so voluminous and . . . the prejudicial value outweighs the probative value if I were to submit the entire exhibit.” Instead, the trial court decided to “instruct the jury . . . as a matter of law that [Nalls] has a qualifying conviction” that prohibited the possession of a regulated firearm.

The court subsequently instructed the jury as follows over defense counsel’s objection:

Ladies and gentlemen, I am going to instruct you as a matter of law of a fact, that’s my ruling and that is that the Defendant has been convicted of a qualifying crime which prohibits him from possessing a regulated firearm. Now, that’s my call as to whether or not he has that conviction. It’s your call to match up that evidence with all the rest of the evidence in the case when you decide the crime that’s being submitted to you for your consideration as to whether or not the Defendant was in possession of a firearm, a regulated firearm, when he has a qualifying conviction prohibiting same. Okay? So instead of going through a lot of paperwork and eviden[ce], I’m just instructing you that he does, in fact, have that conviction. He’s not supposed to have a firearm, a regulated firearm. Okay?

During jury instructions at the close of the case, the circuit court revisited this matter and instructed the jury as follows:

. . . and finally there is the charge of illegal possession of a regulated firearm. In order to convict the Defendant of this crime, the State must prove beyond a reasonable doubt that the Defendant possessed a regulated firearm. Two, that the, at the time the Defendant had been convicted of a crime that

prohibited him from possessing the firearm. **The State and defense agree that the Defendant has been convicted of a crime, well, they really don't, I instructed you that as a matter of law, that there is a conviction of a crime for which there is a prohibition from possessing a regulated firearm under the law.** Possession means having control over the firearm, whether actual or indirect. A person not in actual possession who knowingly has both the power and the intention to exercise control over the firearm has indirect possession. In determining whether the Defendant has indirect possession of the firearm, consider all of the surrounding circumstances. These circumstances include the distance between the Defendant and firearm, whether the Defendant has some ownership or possessory interest in the place where the firearm was found, even though in this case that is not the situation.

(Emphasis added.)

On appeal to this Court, Nalls contended that the trial court erred by instructing the jury that Nalls had a qualifying conviction as a matter of law. Nalls asserted that the trial court's instruction inappropriately relieved the State of its burden of proving each element of an offense beyond a reasonable doubt. The State conceded error, and we agreed with the parties. We held that "the trial court erred in instructing the jury that [Nalls] had been convicted of a disqualifying crime, which prohibited him from possessing a regulated firearm, where he had not admitted to nor stipulated to the previous conviction." *Nalls v. State*, slip op. at 14. We vacated the conviction for illegal possession of a regulated firearm and remanded for a new trial on that count.

In a footnote, we addressed briefly Nalls' assertion that the remaining convictions were tainted as well:

[Nalls] also asserts that: “the obvious prejudice flowing from instructing the jury that [Nalls] has previously been convicted of a crime tainted the remaining convictions as well.” Although perhaps implied, [Nalls] does not specifically argue that the convictions other than his conviction of possession of a regulated firearm should be reversed, nor does he cite any authority that would support that argument. Under these circumstances, we will not address whether the instruction affected any convictions other than the conviction for illegal possession of a regulated firearm. *Beck v. Mangels*, 100 Md. App. 144, 149 (1994) (refusing to address an issue raised by appellant where appellant failed to “offer any substantial argument supporting his position”), *cert. dismissed as improvidently granted*, 337 Md. 580 (1995).

Nalls v. State, slip op. at 14 n.7.

Nalls subsequently filed a petition seeking post-conviction relief in the circuit court in which he claimed, *inter alia*, that he had been deprived of the effective assistance of appellate counsel. Nalls asserted that his appellate attorney was ineffective when he failed to argue with specificity that the improper jury instruction relating to his prior conviction necessitated reversal of all of his convictions. The post-conviction court granted Nalls’ petition for post-conviction relief on this basis and issued an order granting Nalls the right to file a belated appeal on this issue only. This appeal followed.

We shall set forth additional facts in the discussion section of this opinion as they are necessitated by our consideration of the issues on appeal.

DISCUSSION

The State concedes, as it did in Nalls’ original appeal, that the trial court’s instruction regarding Nalls’ prior conviction was erroneous. The State urges this Court to

conclude, however, that any error was harmless beyond a reasonable doubt. We agree that the error was harmless.

A criminal defendant has the right to a fair trial, but not necessarily to a perfect trial. *State v. Babb*, 258 Md. 547, 552 (1970). The Court of Appeals enunciated the harmless error test in *Dorsey v. State*, explaining:

[W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed “harmless” and a reversal is mandated. Such reviewing court must thus be 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.

276 Md. 638, 659 (1976). *See also Williams v. State*, 462 Md. 335, 355 (2019) (reaffirming the *Dorsey* standard and explaining that “[c]onsistent with the *Dorsey* standard, unless we determine beyond a reasonable doubt that the error in no way influenced the verdict, the error cannot be deemed harmless and a reversal is mandated.”).

A reviewing court does not merely consider whether there was sufficient independent evidence without taking into consideration any erroneously admitted evidence. *Dionas v. State*, 436 Md. 97, 117 (2013) (“An ‘otherwise sufficient’ test . . . is a misapplication of the harmless error test.”). Rather, the reviewing court must consider “whether the trial court’s error was unimportant in relation to everything else the jury considered in reaching its verdict.” *Id.* at 118. After error has been established, the State bears the burden of demonstrating that the error was not prejudicial. *Id.* at 108. When

determining whether an error is harmless beyond a reasonable doubt, the reviewing court examines the entirety of the record. *Id.* at 109. “[A]ny factor that relates to the jury’s perspective of the case necessarily is a significant factor in the harmless error analysis.” *Id.*

As we shall explain, having considered the entirety of the record in this case, we are persuaded that the trial judge’s erroneous instruction regarding Nalls’ prior conviction was harmless beyond a reasonable doubt in light of the overwhelming evidence of Nalls’s guilt. Eyewitness testimony from several witnesses, including Cassie Harris and former friends of Nalls, established the following. Cassie Harris encountered Nalls at a nightclub in Baltimore County on the night of April 18, 2009. Ms. Harris had previously dated Nalls’ cousin, Brian Santiago, and she knew Nalls through Brian and Moses Santiago. Nalls “got into an argument with some girl,” later identified as Ms. Harris, at the nightclub. The argument escalated to a physical confrontation in front of other nightclub patrons. After a bouncer told Nalls and Nalls’ brother, Elwood Lewis, to leave, the fight continued outside of the nightclub. Police arrived at the nightclub. Nalls and Mr. Lewis were both arrested but subsequently released later that night.

After they were released, Nalls and Mr. Lewis got into a van with Moses Santiago and two friends, Jose Reyes and Shannon Noble. Ms. Noble and Mr. Reyes both were called as witnesses for the State. After Nalls and Mr. Lewis entered the van, they discussed the altercation that had occurred at the nightclub and discussed “what they were going to do.” Mr. Santiago drove to Mr. Reyes’ house, where Nalls resided with his girlfriend,

Carla Reyes (the sister of Jose Reyes). Mr. Reyes testified that Nalls and Mr. Lewis “went upstairs” and “grabbed some guns.” Mr. Reyes observed that Nalls and Mr. Lewis each had a gun in hand in the van. Nalls’ gun was an “automatic.” Nalls said that they were going to Ms. Harris’ house to shoot her.

The group drove to Ms. Harris’s neighborhood. Both Mr. Reyes and Ms. Noble testified that the van stopped, Nalls and Mr. Lewis exited the vehicle, and a few minutes later, they heard gunshots. Nalls and Mr. Lewis returned to the van and Nalls said that he had “gunned [Ms. Harris] down.” The van drove away. While the van was down the street, a gun went off behind Ms. Noble. Ms. Noble and Mr. Santiago were both injured.³ Mr. Santiago let Nalls and Lewis exit the vehicle and then drove to Johns Hopkins Hospital.

The testimony from the eyewitnesses was corroborated in several ways that left no reasonable doubt that Nalls was a shooter at Ms. Harris’ home on April 19, 2009. One such way was via a note, written in Nalls’ handwriting,⁴ which was admitted into evidence at trial. Following the shooting, Ms. Noble was detained at the Baltimore County detention center for a period of time. While she was awaiting a bail review hearing, someone dropped a note onto her lap.⁵ The note was retrieved by a detention center officer. The note

³ Ms. Noble was struck in the arm and her leg was grazed. Mr. Santiago was struck in the arm. Mr. Santiago was the driver and Mr. Reyes sat in the front passenger seat. Ms. Noble was sitting in the middle row of the van, closest to the door. Nalls and Mr. Lewis were in the rear row of the vehicle.

⁴ Ms. Noble testified that she recognized Nalls’ handwriting.

⁵ Ms. Noble testified that she saw Nalls before she went into her bail review hearing.

addressed Ms. Noble by name, asked her to lie about what happened on April 18-19, 2009, and instructed Ms. Noble to tell a detailed story when asked about the night of the shooting. The note advised Ms. Noble that it was “up 2 you and [Mr. Santiago] 2 get us home” and asked Ms. Noble to “make a statement tell[ing] them what I just wrote you.” The note further advised Ms. Noble, “don’t break under pressure over there.” In addition, Ms. Noble testified that she had spoken with Nalls via telephone and Nalls had asked her not to testify truthfully and “[d]on’t get on the stand.”

Evidence recovered from the crime scene further supported the jury’s guilty verdict. Shell casings were recovered from the bedroom in which the shooting occurred and from the porch roof outside the window to the bedroom. An additional casing was recovered from the van in which Nalls and his companions had been traveling. Forensic analysis determined that all of the casings had been fired from the same 9-millimeter Luger handgun. When police executed a search and seizure warrant at the Reyes’ residence, where Nalls resided with his girlfriend, a box of matching 9-millimeter Luger ammunition was recovered from a lockbox under the bed in Nalls’ bedroom. In addition to the ballistics evidence, Nalls’ palm print was discovered on the structural pole supporting the roof over the porch. From above this porch roof, shots were fired through the window into the bedroom in which Dontrell Jones and Kelly Kim were sleeping.

This is the evidence upon which the jury concluded that Nalls was responsible for the April 19, 2009 shooting: Nalls was convicted based upon eyewitness identifications and detailed testimony from Nalls’ friends; Nalls’ palm prints were found at the scene of

the shooting and ammunition matching the weapon used in the shooting was found in his bedroom as well as in the van in which he had been riding; and, furthermore, a detailed note encouraging a State's witness to tell a fabricated story rather than testify truthfully, written in Nalls' handwriting, was recovered after being dropped into the lap of the State's witness.

Against this backdrop, Nalls asserts that the judge's improper instruction that "there is a conviction of a crime for which there is a prohibition from possessing a regulated firearm under the law" constitutes reversible error. Based upon our independent review of the record, as we outlined *supra*, there is overwhelming evidence established at trial regarding Nalls' guilt. Accordingly, we are persuaded, beyond a reasonable doubt, that the trial court's error in no way influenced the jury's verdict. *See Dorsey, supra*, 27 Md. at 659. In reaching this conclusion, we considered whether the trial court's erroneous instruction "was unimportant in relation to everything else the jury considered in reaching its verdict." *Dionas, supra*, 436 Md. at 118.

Nalls relies primarily upon the decision of the Court of Appeals in *Brooks v. State*, 299 Md. 146 (1984), when arguing that the trial court's erroneous instruction was not harmless beyond a reasonable doubt. In *Brooks*, a defendant was charged with various offenses arising from a murder during an armed robbery. *Id.* at 151. He was convicted of robbery with a deadly weapon, conspiracy to commit armed robbery, and carrying a deadly weapon with intent to injure. *Id.* At the close of the State's case, the defense had moved for a judgment of acquittal with respect to the conspiracy count. *Id.* at 152. The court

initially granted the defense motion but subsequently reversed its ruling and permitted the conspiracy charge to be considered by the jury, which returned a guilty verdict. *Id.* at 152-53. The Court of Appeals vacated the defendant’s conspiracy conviction on double jeopardy grounds and reversed and remanded for a new trial on the robbery with a deadly weapon and carrying a deadly weapon with intent to injure offenses, holding that the “errors of the trial judge serve[d] directly to invalidate the judgment on the conspiracy charge” and “also br[ought] into question the validity of the judgments on the other two charges.” *Id.* at 156.

The *Brooks* Court set forth the harmless error standard and concluded that it was unable to declare a belief, beyond a reasonable doubt, that the trial court’s error in no way influenced the verdicts. *Id.* at 157. The Court observed that “[a]ll three crimes of which Brooks was found guilty stemmed from the same incident” and were “interrelated.” *Id.* The Court further explained that, “it d[id] not appear that ‘the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the [errors committed by the trial judge] that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded.’” *Id.* (quoting *Ross v. State*, 276 Md. 665 (1976) (bracketed language added by the *Brooks* Court)). The Court did not address the evidence put forth by the State in support of the convictions in *Brooks* or explain in any detail why the trial court’s error brought into question the validity of the defendant’s other two convictions. Notably, we previously commented that the Court’s

conclusion in *Brooks* had “little accompanying discussion.” *Bowers v. State*, 124 Md. App. 401, 417 (1999).

To be sure, in this case, like *Brooks*, Nalls’ convictions were interrelated in that Nalls’ conviction for the already vacated illegal possession of a regulated firearm offense stemmed from the same incident as Nalls’ other convictions. Although we do not know the quantum of evidence adduced in support of the convictions at issue in *Brooks*, as we discussed *supra*, the State’s evidence of Nalls’ guilt was overwhelming. The weight of the evidence summarized *supra* is certainly a major factor in our analysis. We further observe that the trial court did not at any point identify the nature of Nalls’ previous conviction, nor did either attorney comment upon the offense in closing argument in any way that would have reflected upon Nalls’ character. The prosecutor did not ask the jury to infer anything based upon Nalls’ prior conviction other than that he was, as a result, not permitted to have a handgun. Indeed, the prosecutor’s only reference to Nalls’ prior conviction during closing argument was when the prosecutor stated that this “qualifies as . . . illegal possession of a handgun because of that prior guilty finding, that prior conviction, the [d]efendant was prohibited from possessing a handgun in this case.” This single, passing reference was only in the context of the illegal possession of a regulated firearm offense, which has already been vacated by this Court.

Nalls asserts that the trial court’s error should not be considered harmless beyond a reasonable doubt, arguing that “evidence of a defendant’s prior conviction, no matter how

sanitized, is prejudicial.”⁶ We disagree. Of course, we recognize that evidence of a defendant’s prior bad act is inadmissible to demonstrate “a defendant’s criminal character.” *See, e.g., Smith v. State*, 218 Md. App. 689, 710 (2014). It is beyond dispute that the trial court erred when it informed the jury that Nalls had a prior conviction. Nonetheless, having reviewed the record in its totality, we agree with the State that the strength of the State’s case overwhelmed any alleged prejudice Nalls suffered as a result of the trial judge’s improper instruction. Given the strength of the State’s case, we hold that there is no reasonable probability that, absent the erroneous instruction, the jury would have returned a not guilty verdict on any of the remaining offenses. We, therefore, affirm.

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

⁶ Nalls’ brief devotes several pages to a discussion of Maryland and United States Supreme Court caselaw regarding the admissibility of evidence of a defendant’s prior conviction when the prior conviction has special relevance to a particular charged offense. The State has conceded that the trial court’s instruction was given in error, and, in this opinion, we have already explained that the circuit court’s instruction was erroneous. We need not, therefore, address the analytical underpinnings of the trial court’s error.