

Circuit Court for Talbot County  
Case No. 20-K-16-011139

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1826

September Term, 2016

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MARK MITCHELL

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: December 7, 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.

Following a jury trial in the Circuit Court for Talbot County, Mark Mitchell, appellant, was convicted of three counts of pandering, one count of possession with intent to distribute Oxycodone, and one count of possession of Oxycodone. Mitchell's sole claim on appeal is that the trial court erred in allowing the State to elicit inadmissible hearsay testimony. For the reasons that follow, we affirm.

During the State's re-direct examination of Detective Robert Schuerholz, the following exchange occurred:

PROSECUTOR: Okay. In response to Mr. Rogers's [defense counsel's] question [during cross-examination], asking you about what Ms. Carberry told you about the drugs, she did tell you something about where she had gotten those pills, didn't she?

DETECTIVE SCHUERHOLZ: She did.

DEFENSE COUNSEL: Objection.

PROSECUTOR: He opened the door.

COURT: Overruled.

PROSECUTOR: What'd she tell you?

DETECTIVE SCHUERHOLZ: That they were given to her by Mr. Mitchell.

PROSECUTOR: She tell you why?

DETECTIVE SCHUERHOLZ: Yes.

PROSECUTOR: What was that?

DETECTIVE SCHUERHOLZ: Ms. Carberry stated that Mr. Mitchell [ ] provided her with the Oxycodone pills to take away the pain of her providing sexual services based on the fact that she would be required to have sex while she was on her period. And what Mr. Mitchell would indicate for her to do to allow for that to happen is to place makeup sponges inside her vagina which caused pain for her and she would

then utilize the Oxycodone pills that were provided from Mr. Mitchell to take away that pain.

Mitchell claims that Ms. Carberry’s statements to Detective Schuerholz constituted inadmissible hearsay.<sup>1</sup> However, that claim is not preserved for appellate review. It is well established that “[o]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection.” *DeLeon v. State*, 407 Md. 16, 31 (2008). Thus, “to preserve an objection, a party must either object each time a question concerning the [matter is] posed or . . . request a continuing objection to the entire line of questioning.” *Wimbush v. State*, 201 Md. App. 239, 261 (2011) (internal quotation marks and citation omitted).

Mitchell concedes that defense counsel only objected after Detective Schuerholz answered the prosecutor’s first question and that, thereafter, Detective Schuerholz testified about Ms. Carberry’s statements to him without objection. He nevertheless claims that, in light of the trial court’s ruling on his objection, continuing to object would have been futile. *See Watson v. State*, 311 Md. 370, 372 n.1 (1988) (finding that an additional objection was unnecessary to preserve error where the trial judge had already reiterated his pretrial ruling immediately before the admission of the challenged evidence). We disagree.

Nothing in the record indicates that the trial court, in overruling defense counsel’s objection, had made a final and unequivocal ruling on the issue of whether Ms. Carberry’s statements to Detective Schuerholz were inadmissible hearsay. The prosecutor’s first

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<sup>1</sup> Ms. Carberry also testified at trial that she was addicted to heroin and that Mitchell would provide her with opiates. A vial containing three Oxycodone pills was found on Mitchell during a pat-down frisk.

question to Detective Schuerholz did not elicit any hearsay testimony and she justified her question on the grounds that defense counsel had opened the door during cross-examination. Moreover, after hearing the prosecutor’s explanation, defense counsel never made it clear to the trial court that he also believed Detective Schuerholz’s testimony to be hearsay or that he believed no exceptions to the hearsay rule were applicable. Consequently we are not persuaded that a subsequent objection to Detective Schuerholz’s testimony would have been futile under the circumstances.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR TALBOT COUNTY  
AFFIRMED. COSTS TO BE PAID  
BY APPELLANT.**