

Circuit Court for Baltimore City
Case No.: 120175057

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 475

September Term, 2022

ROBERT L. BROWN

v.

STATE OF MARYLAND

Friedman,
Albright,
Harrell, Glenn T., Jr.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 13, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**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 Baltimore City, Robert L. Brown, appellant, was convicted of unlawful possession of a firearm; wearing, carrying, or transporting a handgun on his person; and unlawful possession of ammunition. On appeal, Brown presents two questions for our review, rephrased here:

- (1) Did the circuit court err in sentencing Brown as to multiple counts of possessing a handgun?
- (2) Did the circuit court err in admitting evidence that marijuana was collected when Brown was arrested?¹

For the following reasons, we shall affirm the judgments of conviction but vacate Brown’s sentence on Count 2.

BACKGROUND

In April 2020, while patrolling Baltimore City in an unmarked vehicle, Detective Patrick Carpenter and Sergeant Giuseppe Polanco saw two men and a woman engage in a suspected drug deal. The Officers watched one of the men—wearing a black jacket—hand cash to the other—wearing a camouflage jumpsuit—in exchange for “a small object.” When they saw the Officers, the men started walking in the opposite direction. When the Officers did a U-turn, the men ran. As the Officers gave chase, they saw the man wearing

¹ Brown styles these questions as: “(1) Did the lower court err in sentencing Mr. Brown as to multiple counts of possessing a handgun where the court and parties suggested proceeding via a ‘hybrid’ trial; where there had been no verdict as to one charge by the jury or judge; where Mr. Brown had not been present during any discussion of permitting the court, as fact-finder, to render a verdict as to one charge; and where Mr. Brown had not waived his right to a jury trial as to that charge? (2) Where Mr. Brown was charged solely with handgun and ammunition possession offenses, did the lower court err in admitting evidence that marijuana was collected when he was arrested?”

the black jacket pull out a “light-colored object” and drop it in the grass. The Officers quickly searched the area and “located a silver revolver, handgun.”

The Officers then continued to search for the man in the black jacket. Roughly a block-and-a-half away, Detective Carpenter encountered Brown, who “looked like [the suspect] in the face, but . . . was no longer wearing the black jacket.” Brown was “heavily breathing like he had just stopped running.” Brown was also with a woman who “was wearing an oversized black jacket.” Sergeant Polanco recovered several items from the jacket—including four vials containing marijuana—and submitted them to evidence control along with the handgun.

At trial, the State sought to introduce photographs of the items Sergeant Polanco submitted. Specifically, State’s Exhibit 5 showed a revolver, five bullets, and four vials containing marijuana. Brown objected that the photograph was irrelevant, but the trial court overruled his objection and admitted the photograph into evidence.

Brown was convicted of three charges: unlawful possession of a regulated firearm after a prior conviction, wearing/carrying a handgun upon his person, and unlawful possession of ammunition. He was sentenced, however, for four offenses, including a second count alleging unlawful possession of the same handgun, to an aggregate term of six years’ incarceration. This appeal followed.

DISCUSSION

Brown first contends that his sentence for unlawful possession of a handgun on Count 2 is illegal. The State agrees. And so do we.

Count 1 of Brown’s indictment charged him under Md. Code Ann., Pub. Safety § 5-133(c), which prohibits those with certain prior conviction from possessing “regulated firearms.” The jury found Brown guilty of this Count. Count 2 of the indictment charged Brown under Md. Code Ann., Crim. Law § 5-622, which prohibits those with certain prior drug convictions from possessing firearms. This Count was not submitted to the jury. Brown was therefore not convicted of that crime.² Consequently, his sentence for Count 2 is illegal and must be vacated. *See Chaney v. State*, 397 Md. 460, 466 (2007).³

Brown next contends that the circuit court erred in admitting evidence that the police collected marijuana from the black jacket when he was arrested, claiming it was both irrelevant and unfairly prejudicial. We disagree.

We note, preliminarily, that Brown specifically objected to the photograph on the ground that it was irrelevant, but at no time did he argue in the trial court that it was prejudicial. As a result, the argument that the photograph was prejudicial was not preserved for our review. *See Perry v. State*, 229 Md. App. 687, 709 (2016) (“[W]here an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal.”); *see also Mines v. State*, 208 Md. App. 280, 291

² The record shows that the trial court mistakenly believed that the parties had agreed to a court verdict on Count 2. Even if that were true, Brown’s sentence would remain illegal because (1) the trial court never announced its own verdict on Count 2, *see* Md. Rule 4-328; *Chisum v. State*, 227 Md. App. 118, 139 (2016), and (2) the trial court lacked discretion to bifurcate counts between different factfinders within a single trial, *Hemming v. State*, 469 Md. 219, 243 (2020).

³ Because Brown’s sentence for Count 2 was concurrent with his sentence for Count 1, vacating it does not alter the sentencing “package” devised by the circuit court. Remand for resentencing is thus unnecessary. *See Twigg v. State*, 447 Md. 1, 26–28 (2016).

(2012) (noting that specifically objecting to relevance does not preserve the issue of unfair prejudice). We therefore consider only his relevancy argument.

Evidence is relevant if it has “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. This threshold “is a very low bar to meet.” *Williams v. State*, 457 Md. 551, 564 (2018). Still, if evidence fails to clear this hurdle, it is inadmissible, and a trial court has no discretion to decide otherwise. *See* Md. Rule 5-402 (“Evidence that is not relevant is not admissible.”). We give no deference to a court’s relevancy determinations and review them *de novo*. *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 52 (2013).

The Officers here both testified that they saw a man wearing a black jacket engage in what they believed to be a drug deal before running away, dropping a handgun as he fled. When they encountered Brown nearby, minutes later, both Officers were confident he was the same man. But neither was 100% sure because Brown was then dressed in a blue shirt, while the woman with him was wearing the black jacket. And indeed, in both his opening statement and closing argument, Brown refused to concede he was the man in the black jacket who the Officers saw engaging in a drug deal. But it is highly likely someone who has just engaged in a drug deal will still have the drugs on them, assuming they were the buyer. Thus, the fact that marijuana was found in the black jacket worn by the woman with Brown tended to make it more probable that it was the same jacket worn by the man the Officers saw engage in the drug deal, who was the same man they saw drop the

handgun. The evidence was therefore relevant, and the trial court did not err in admitting it.

APPELLANT’S CONVICTION AND SENTENCE FOR UNLAWFUL POSSESSION OF A FIREARM IN COUNT 2 VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY TO REVISE THE COMMITMENT RECORD AND DOCKET ENTRIES. COSTS TO BE DIVIDED EQUALLY AMONG THE PARTIES.

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0475s22cn.pdf>