

Circuit Court for Wicomico County
Case No. C22-CR-17-00278

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2118

September Term, 2018

RICHARD D. MOISE

v.

STATE OF MARYLAND

Reed,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: October 9, 2019

*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.

Richard Moise (hereinafter “Appellant”) was charged with armed robbery, conspiracy to commit armed robbery, and related offenses. On October 10, 2017, a jury in the Circuit Court for Wicomico County convicted Appellant of robbery, reckless endangerment, and four counts of conspiracy—to commit armed robbery, robbery, first-degree assault, and second-degree assault. On October 19, 2017, Appellant filed a Motion for a New Trial¹ alleging that he was wrongfully convicted based on the uncorroborated testimony of an alleged accomplice and the improper admission of Exhibit 11.² The circuit court denied Appellant’s motion and sentenced him to twenty-five years’ incarceration for conspiracy to commit first-degree assault with all remaining counts merged.

Appellant timely filed this appeal and presents the following question for our review, which we rephrased:³

- I. Did the trial court err as a matter of law when it admitted the Loose Change Maryland Lottery scratch-off ticket over Appellant’s relevance objection?

For the following reasons, we answer in the negative and affirm the judgment of the circuit court.

¹ Appellant discharged his counsel post trial. The court reserved ruling on the motion to allow Appellant’s new counsel to become familiar and prepare to argue the motion.

² Exhibit 11 consists of the items found during the search of Appellant’s vehicle: a date stamped Gander Mountain receipt, Appellant’s Worcester-Wicomico Community College student identification card, and a Loose Change Maryland Lottery scratch-off ticket.

³ Appellant presents the following question:

1. Whether the circuit court determined that a Maryland Lottery scratch-off found in Mr. Moise’s car was relevant, and thus entered it into evidence, incorrectly as a matter of law?

FACTUAL AND PROCEDURAL BACKGROUND

On November 29, 2016, at approximately 9:00 p.m. two masked men entered and robbed the Vintage Beer & Wine store at gunpoint. The perpetrators stole money out of the cash register and four packs of Maryland Lottery scratch-off tickets. A Maryland State Lottery Investigator reported to police on December 2, 2016, that someone attempted to cash one of the stolen tickets at the Chicken Man convenience store in Salisbury, Maryland. After reviewing the surveillance video from the convenience store, Tairell Copper was identified as one of the perpetrators. The video also depicted a relatively new white four-door vehicle.

Copper was arrested and charged. During the police interview, Copper disclosed his association with Appellant. Upon further investigation, a search of MVA records revealed that a 2017 white four-door Toyota Corolla, comparable to the vehicle observed in the surveillance video, was registered to Appellant. On December 14, 2016, officers obtained a search warrant for Appellant's vehicle and found one white cotton glove, a receipt from Gander Mountain, a student identification card for Appellant, a black knit glove, and a Loose Change Maryland Lottery ticket.⁴

In June of 2017, Copper entered into a plea agreement with the State and agreed to testify that he and Appellant robbed the liquor store while a third accomplice waited in

⁴ The Loose Change scratch-off ticket found in Appellant's car was not the ticket that Copper attempted to cash; however, the ticket falls in the range of the numbered scratch-offs that Appellant was alleged to have stolen.

Appellant's white Toyota Corolla. Copper also admitted that he and Appellant attempted to cash one of the stolen scratch-off tickets at the Chicken Man convenience store.

At trial, Appellant and the State stipulated that one of the Loose Change Maryland Lottery tickets stolen from Vintage Beer & Wine was attempted to be cashed at the Chicken Man convenience store. The State offered Exhibit 11 which consisted of the items found during the search of Appellant's vehicle: a date stamped Gander Mountain receipt, Appellant's Worchester-Wicomico Community College student identification card, and a Loose Change Maryland Lottery scratch-off ticket. Appellant objected to the admission of Exhibit 11 as irrelevant; however, the circuit court overruled his objections and submitted the evidence to the jury.

On October 10, 2017, a jury convicted Appellant of robbery, reckless endangerment, and four counts of conspiracy—to commit armed robbery, robbery, first-degree assault and second-degree assault. Appellant moved for a new trial arguing that his conviction was based on the uncorroborated testimony of an alleged accomplice. Appellant contends that, had Exhibit 11 been properly excluded, the jury would not have had sufficient evidence to support a guilty verdict. The circuit court denied Appellant's Motion for a New Trial and found that the evidence presented was sufficient to corroborate Copper's testimony and support the jury's guilty verdict. Appellant was then sentenced to twenty-five years' incarceration for conspiracy to commit first-degree assault with all remaining counts merged.

STANDARD OF REVIEW

When determining the proper standard of review to apply on a relevancy question, this Court must discern “whether the ruling under review was based on a discretionary weighing of relevance in relation to other factors or on a pure conclusion of law.” *Parker v. State*, 408 Md. 428, 437 (2009) (internal citation omitted). Whether evidence admitted at trial is relevant as a matter of law is reviewed *de novo*. See *J.L. Matthews, Inc. v. Md.-Nat'l Capital Park & Planning Comm'n*, 368 Md. 71, 92 (2002). “Although trial judges have wide discretion in weighing the relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence.” *Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 48 (2016) (internal citation omitted).

Once evidence is deemed relevant, this Court is reluctant to reverse the trial court “unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.” *Merzbacher v. State*, 346 Md. 391, 404–05 (1997). Even if the trial court erred below, we will not reverse the court’s judgment if the error was harmless; rather, the complaining party must demonstrate that the error prejudicially affected the verdict below and resulted in substantial injustice. See *Perry*, 447 Md. at 49.

An error is deemed harmless if a reviewing court having independently reviewed the record can declare a belief, beyond a reasonable doubt, that the error had no bearing on the verdict. *State v. Heath*, 464 Md. 445, 458 (2019) (citing *Dorsey v. State*, 276 Md. 638,

659 (1976)). Accordingly, whether the evidence in dispute was erroneously admitted or excluded, this Court must be “satisfied that there is no reasonable possibility that the evidence” contributed to the jury’s verdict. *State v. Heath*, 464 Md. 445, 466 (2019) (citing *Dorsey v. State*, 276 Md. 638, 659 (1976)).

DISCUSSION

A. Parties Contentions

Appellant contends that the circuit court improperly admitted State’s Exhibit 11, at least with respect to the Maryland Lottery scratch-off ticket. Further, had the ticket been properly excluded as irrelevant, little corroborating evidence remained for a jury to find Appellant guilty beyond a reasonable doubt. Maryland’s accomplice corroboration rule⁵ prohibits a person accused of a crime from being convicted based on uncorroborated witness testimony. *See Turner v. State*, 294 Md. 640, 641–42. Citing this rule, Appellant

⁵ During the pendency of this appeal, the Court of Appeals abrogated Maryland’s accomplice corroboration rule in *State v. Jones*, No. 03-K-15-005488, 2019 WL 4051708 (MD Aug. 28, 2019). In an opinion written by Chief Justice Barbera, the Court adopted a “new rule that would no longer require that accomplice testimony be corroborated by independent evidence to sustain a conviction.” *Id.* at *3. Rather, a jury will determine the credibility of an accomplice’s testimony following a cautionary instruction on the reliability of such evidence. *Id.* at *10. Thus, the issue before the reviewing court is no longer whether the testimony is legally sufficient to support a conviction, instead, courts will consider whether the weight of the evidence is sufficient to be submitted to a jury so that a jury may convict. *Id.* at *12. Guided by principles of fairness, the court adopted a prospective application of the new rule to be applied to all trials commencing at the date of the Court’s mandate. *Id.* at * 13. The case at bar was under review before judgment was entered in *Jones*. For this reason, we apply Maryland’s accomplice corroboration rule as it was before the Court of Appeals’ mandate.

argues that the evidence before the jury was legally insufficient to support the jury's verdict.

Appellee submits that Appellant's claim should be rejected because it was not preserved by proper objection at trial. Furthermore, if Appellant had properly preserved the issue for appellate review, the circuit court did not err in admitting Exhibit 11 as relevant. Lastly, Appellee contends that even if the circuit court erred in admitting Exhibit 11, the error was harmless.

B. Analysis

i. Preservation of the Issue

Appellant contends that trial counsel's relevance objection against the admission of State's Exhibit 11 preserved the issue for appeal. "It is well-settled that an appellate court ordinarily will not consider any point or question 'unless it plainly appears by the record to have been raised in or decided by the trial court.'" *Robinson v. State*, 404 Md. 208, 216 (2008) (quoting Md. Rule, 8-131(a)). Maryland Rule 4-323 requires, in part, that "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Md. Rule 4-323. The following colloquy occurred after the State moved to admit Exhibit 11:

[COURT]: Any objection?

[DEFENSE COUNSEL]: The only objection as to number 11 is relevance, what does an ID and a couple of receipts have to do with an armed robbery?

[COURT]: Your objection is noted. I'm going to overrule it for the reason you stated, I'm going to admit State's Exhibit Number 10 and – Number 10 was without objection, and Number 11 over objection. So they are admitted.

Tr. 10/10/2017 at p. 216. The record makes clear that Appellant only objected to the relevance of the student identification card and receipts in State's Exhibit 11. Appellant did not explicitly object to the introduction of the Loose Change Maryland Lottery ticket; accordingly, the circuit court overruled the stated objection based on Appellant's reasoning.

Furthermore, Appellant waived his claim by failing to object to the Detective's testimony that the Loose Change Maryland Lottery ticket was found during the search of Appellant's vehicle. *See Yates v. State*, 429 Md. 112, 120–21 (2012) (“Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received.” (citation and internal quotation marks omitted)); *DeLeon v. State*, 407 Md. 16, 30–31 (2008) (holding that the defendant waives his objection if, at another point during trial, evidence on the same point is admitted without objection). Appellant, for the first time, raised the objection to the Loose Change Maryland Lottery ticket during the motion for a new trial. Accordingly, the issue was not preserved for appellate review.

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