UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1177

September Term, 2014

DAMIAN BROCKINGTON

v.

STATE OF MARYLAND

Zarnoch,
Leahy,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: May 21, 2015

The appellant, Damian Brockington, was convicted in the Circuit Court for Baltimore City by a jury, presided over by Judge Videtta Brown, of the possession of cocaine and of conspiracy to possess cocaine. On appeal, he raises the single contention that the State's evidence was not legally sufficient to support the convictions.

Far from being an instance of legal insufficiency, the State's proof of the appellant's guilt in this case was a veritable poster child of what a State's case ideally would like to be. The epicenter of a significant narcotics preparation and distribution operation was the appellant's legal residence at 4501 Homer Avenue in Baltimore City. On January 14, 2014, Detective Robert Hankard of the Baltimore City Police Department executed a search warrant at that address. The appellant was the only person present when the police entered his residence and throughout the search of the residence. The appellant, moreover, acknowledged to Detective Hankard that 4501 Homer Avenue was, indeed, his residence and that no one else lived there with him.

One of the crimes of which the appellant was convicted was conspiracy to possess cocaine. The appellant's co-conspirator was Douglas Pinder. Earlier on January 14, 2014, a police surveillance team had been "sitting on" 4501 Homer Avenue. Detective Michael O'Sullivan was part of that team. At one point earlier in the day, Detective O'Sullivan had observed Douglas Pinder enter and subsequently leave the Homer Avenue residence. No one else was observed going in or out prior to the appellant's subsequent arrival.

After leaving Homer Avenue in a vehicle, Pinder was stopped by the police. A police search revealed 100 gel capsules of suspected heroin in the car and $1,273 in cash on Pinder's person. Also recovered from Pinder was a set of keys, one of which was a key to 4501 Homer Avenue. Pinder indicated that the drugs had come from 4501 Homer Avenue and that more drugs could be found there. Pinder also indicated that heroin and "cap quicks" could be found there. The surveillance team, meanwhile, continued to "sit on" the house, while Detective Hankard prepared an application for a search warrant for the home.

While Detective O'Sullivan, along with Detective Saunders, was watching the house, the appellant was observed pulling his car up in front of the residence, exiting the car "quickly," and running into the house. The detectives tried to intercept him before anything in the house could be disturbed by activating the lights on their unmarked police vehicle, but the appellant was able to get into the house before the detectives could stop him. When they reached the front door it was closed. They "banged" on the door and announced "police" for approximately ten seconds. They then entered with the house key that had earlier been taken from Pinder. When they entered, the appellant was at the top of the stairs, exiting the bathroom. The police heard the water running. Detective O'Sullivan went upstairs and observed that the toilet was running. The detectives sat down in the living room with the appellant and awaited the arrival of Detective Hankard with the search warrant. As Detective Hankard entered the house with the search warrant, the appellant and the two

detectives were seated in the living room. The subsequent search revealed 4501 Homer Avenue to be an evidentiary cornucopia.

In the living room and about seven to eight feet from the front door sat a coffee table. On it Detective Hankard observed a "pretty large pile" of suspected heroin. On the floor next to the coffee table was a large trash bag containing packaging materials and a green canvas bag containing suspected capsules of heroin. The large trash bag also contained a box of sandwich bags, two bottles of quinine (one empty and one three quarters full), gelatine capsule packages (one opened and four unopened packages each containing 750 capsules), a sifter, and two spoons. The green canvas bag contained 21 bags of cocaine and heroin capsules. Detective Hankard also observed a gel cap press and a digital scale on another living room table.

Detective Hankard also recovered from the living room closet a white bag containing seven bars of mannite. The detective also recovered $100 in cash from the top of a stereo in the living room, an additional $954 in cash from appellant's person, $1,357 in cash from the bedroom dresser, and an operable Smith & Wesson 10 millimeter auto caliber along with nine full metal jacket cartridges from the bedroom closet. Detective Hankard also recovered a "conceal-a-can" containing powder residue from the upstairs bathroom to which the appellant had run when first entering the house. The device was "marked and labeled as a

household product" but had "a false bottom where it unscrewed" to "conceal contraband." Two playing cards were also found in the living room.

When Detective O'Sullivan had first observed the appellant rushing into the house, the appellant was carrying a black plastic bag. A black plastic bag was later found on the living room floor, containing a sifter and other items.

Monique Pitts, a chemist with the Baltimore City Police Department Crime Laboratory Drug Analysis Unit, testified as to her analysis of the various items recovered from 4501 Homer Avenue. A bag of beige powder was found to contain 73.29 grams of heroin. A plastic bag containing a white powder was determined not to be narcotic but dimenhydrinate, which is a cutting agent. Six sets of 50 gel caps each and one set of 100 gel caps were determined to contain heroin. Another 100 gel caps contained cocaine base or crack. Eighteen other gel caps contained cocaine base. A "quick capper" contained heroin residue. Several plastic bags and a digital scale all contained heroin residue. The metal spoons contained heroin residue.

To wrap up the State's case, Detective Hankard was recalled to testify as an expert witness on the narcotics traffic in Baltimore. He explained that a medium or large scale drug organization generally operates out of a "stash house," a residential home in which drugs are kept in large quantities and manufactured or "cut" with cutting agents. In such a "stash house," one would also typically find cutting agents and firearms.

The detective testified that a "quick cap" or gel cap press, such as the one found on the living room table, is used to package heroin for sale on the street. He testified that quinine, such as the bottle of quinine found in the trash bag in the living room, is typically mixed with heroin to enhance its effect. He testified that drug dealers use cut-off plastic sandwich bags, a supply of which was found in the living room, to package drugs for street sale. Detective Hankard also testified that playing cards, two of which were found in the living room, are typically used to collect powdered drugs on a surface and to wipe off excess drugs from a quick cap machine. He explained how drug dealers use kitchen sifters, such as the one found in the living room trash bag, to sift impurities and lumps out of the powdered narcotics. He testified as to how digital scales, such as the scales found on a living room table, are used for weighing drugs. He explained how the "conceal-a-can," such as the one found in the upstairs bathroom, contains a false or hidden compartment for concealing money or drugs. He also explained that the can of Old Bay seasoning found on the living room coffee table was significant because drug dealers in Maryland typically use it as a cutting agent with both heroin and cocaine in an attempt to trademark their drugs.

Even the appellant's ostensibly exculpatory testimony in his own defense was also helpful to the State's case. One of the appellant's two convictions was for conspiracy to possess cocaine with Douglas Pinder. The appellant testified that he had been friends with Pinder for four or five years, and that he had given Pinder a house key to 4501 Homer

Avenue "for emergencies" and because Pinder had "come out to the house when the cable was installed." All of this was obviously helpful in corroborating and strengthening the State's case showing a connection between the appellant and Pinder, a connection vital to the proof of conspiracy.

Even the appellant's running entrance into his house on January 14 just prior to the arrival of the police permits an inference of the appellant's guilt. After making his hurried entrance, he ran immediately upstairs to the bathroom and, moments thereafter, flushed the toilet. The police were not long behind him and there was only time for one flush. The "conceal-a-can" with the hidden compartment for concealing drugs was found in the bathroom but was empty.

There might, to be sure, be a permitted inference that the appellant's dash to the bathroom was the result of a urinary or bowel problem and the haste was precipitated by the excretory emergency. There could also, however, be a permitted inference that the hasty dash to the bathroom, at some time after Pinder had been arrested and while Detective Hankard was obtaining a search warrant for the house, was occasioned by the fact that the appellant had somehow been alerted that the police were hot on the trail and by the need to destroy as much of the evidence as possible before they arrived at the house. In any event, there was not time for more than one flush.

If there are two permitted inferences in the case, one exculpatory and one inculpatory, we are not even permitted, when assessing the State's satisfaction of its burden of production, to look at the exculpatory inference. We are enjoined to take that version of the evidence, including inferences, most favorable to the State's case. The appellant talks to us, however, as if we were a neutral fact-finder. We are not.

Our only difficulty in resolving this appeal is in trying to conceive how the appellant, faced with this juggernaut of incriminating evidence, can seriously contend that the evidence did not satisfy the prima facie burden of production permitting Judge Brown to submit the case to the jury. 4501 Homer Avenue was self-evidently a "stash house." Evidence of a narcotics operation was found in the living room, in the living room closet, in the basement, in the upstairs bathroom, in the upstairs bedroom, and in the upstairs bedroom closet. The appellant was the lawful possessor of 4501 Homer Avenue. No one else lived there. The appellant was the only person in the house when the police entered it and when they searched it. This is as much a "pat hand" of criminal complicity as one could imagine.

In arguing his contention, the appellant cannot cite any case where an appellate court has ever held the evidence to be insufficient under circumstances even close to the case at hand. The cases cited and relied upon by the appellant, as he dredges for an isolated factor here or a phrase there, are not remotely apposite. In Rich v. State, 205 Md. App. 227, 44 A.3d 1063 (2012), the State was attempting to prove that Rich was in possession of several

small bags of cocaine found in the flowerbed of a third person's home that was located within five feet of the spot where Rich had been arrested two or three days earlier. In Taylor v. State, 346 Md. 452, 697 A.2d 462 (1997), the State was attempting to prove that Taylor was in possession of marijuana found in an Ocean City motel room because he was one of five persons who had rented the motel room and was one of the four people in the room when the marijuana was found. In Livingston v. State, 317 Md. 408, 564 A.2d 414 (1989), two marijuana seeds were found on the floor of the front seat of an automobile subjected to a traffic stop. Livingston was not the owner or the driver of the automobile but, as a backseat passenger, was one of the three occupants of the car. The Court of Appeals held that that was not enough to prove that he was in possession of the marijuana seeds. "Here, the presence of the two seeds on the floor in the front of the car, without more, is insufficient to inculpate Livingston, a rear seat passenger, for possession of marijuana." 317 Md. at 413. In State v. Leach, 296 Md. 591, 463 A.2d 872 (1983), Leach was held not to have been in possession of contraband found in closed container on a bedroom dresser and in a bedroom closet under circumstances where Steven Leach's brother Michael, rather than Steven himself, was the lawful possessor of the premises and Steven merely had access to it. These factual situations are not remotely apposite to those before us in the present case.

The appellant employs one other defense tactic that we cannot help but find questionable. He recounts testimony by the appellant that he spends most nights at his

girlfriend's residence and only visits 4501 Homer Avenue occasionally. The appellant also testified that he knew absolutely nothing about drugs or drug paraphernalia being in 4501 Homer Avenue. There was also some testimony by the girlfriend corroborating the appellant's innocence. The problem is that in discussing the issue of legal sufficiency, the appellant takes this defense testimony as true and makes his argument as if that defense version of the evidence were the body of evidence that we must assess.

As we look at that testimony, however, we cannot avoid the conclusion that it is testimony favorable to the defense. As such, of course, it would have no bearing on the legal sufficiency of the evidence. We are enjoined, in deciding whether the State has met its burden of production, to consider only that version of the evidence most favorable to the State. The appellant's testimony is certainly not that. Neither is his girlfriend's testimony. Under the version of the evidence most favorable to the State, such testimony is totally discredited. It is as if it does not exist. In any event, we hold that the State's evidence was abundantly sufficient to support the convictions.

JUDGMENTS AFFIRMED; COSTS TO BE PAID BY APPELLANT.