

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2427

September Term, 2014

AARON RAFEAL MUMFORD

v.

STATE OF MARYLAND

Meredith,
Berger,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: October 20, 2015

*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.

Aaron Mumford (“Mumford”), appellant, was convicted of possession of heroin with intent to distribute in the Circuit Court for Wicomico County. On appeal, Mumford raises the single issue of whether the evidence was sufficient to support his conviction for possession with intent to distribute. We shall affirm.

FACTS AND PROCEEDINGS

In the early morning hours of April 27, 2014, Trooper Travis Workman observed a 2003 Oldsmobile Alero which did not have adequate registration plate illumination. He initiated a traffic stop. Mumford was the sole occupant of the vehicle. After approaching the vehicle, Trooper Workman detected the odor of burnt marijuana and subsequently searched the vehicle. The search revealed two rubber banded bundles, each of which contained thirteen small packets of what Trooper Workman believed to be heroin. The bundles were recovered from the center console adjacent to the driver’s seat. No paraphernalia associated with heroin use was recovered, nor was any currency recovered from Mumford. Mumford was placed under arrest, and the suspected heroin was ultimately submitted to the lab for analysis.

Forensic chemist Jessica Taylor received the twenty-six small packets for analysis, all of which were identical. She randomly selected five of the packets to test. The testing revealed that each packet contained 1/100th of a gram of heroin. Ms. Taylor testified that any quantity below 10/100th of a gram was classified a “trace” amount. The total net weight of the heroin in the tested packets was 5/100ths of a gram. Ms. Taylor explained that she imputed the same results to the untested packets. Ms. Taylor explained that this imputation

of results is the standard operating procedure for the Maryland State Police when testing multiple bags of suspected controlled dangerous substances. Ms. Taylor explained that the method of “hypergeometric testing” is “a type of sampling that is a statistically-based sampling plan” which “allows [the analyst] to sample a small portion of the entire population . . . and still draw a conclusion to the rest of the population that’s not analyzed.” Ms. Taylor further explained that this methodology was implemented in order to allow testing to be completed “in a timely and efficient manner.”

The Oldsmobile belonged to Mumford’s girlfriend, Shakeina Trader (“Trader”). Trader testified that Mumford was borrowing her vehicle at the time of the traffic stop. According to Trader, Mumford told her that he had smoked marijuana on the day of the stop. Trader further testified that Mumford told her that the heroin recovered from the center console of the Oldsmobile belonged to him, but that he intended to use the heroin rather than sell it.

Trooper Kenneth Moore testified as an expert in the valuation of heroin. He explained that he believed the heroin seized from the Oldsmobile was consistent with an intent to distribute based upon the twenty-six separate packets, the fact that the packets were divided into two bundles of thirteen packets, and the absence of paraphernalia and currency. Trooper Moore testified that heroin users typically purchase between one and three packets at a time and up to eight packets in a day. He further testified that heroin is generally

ingested with a syringe or smoking device. According to Trooper Moore, a dose of heroin has a street cost of between \$20-30.

Mumford was ultimately convicted of possession of heroin with intent to distribute and sentenced to a term of five years' imprisonment. This timely appeal followed.

DISCUSSION

On appeal, Mumford raises the single issue of whether the circuit court erred by denying his motion for judgment of acquittal on the charge of possession with intent to distribute.¹ As we shall explain, our review of the record leads us to conclude that sufficient evidence exists to support Mumford's conviction for possession of heroin with intent to distribute.

“[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime

¹ As a preliminary matter, we address the State's assertion that the sufficiency issue is not preserved for our review on appeal. The State avers that, although Mumford moved for judgment of acquittal at the conclusion of the State's case, the motion below was based upon claims of a lack of proof of knowledge of the drugs that were found in the automobile Mumford borrowed from his girlfriend, inadequate analysis and amount, and lack of credibility of witnesses. The State urges us to find that the issue is not preserved because, on appeal, Mumford asserts that the evidence of his intent to distribute was entirely circumstantial and nothing more than an inference. We are unpersuaded by the State's preservation argument. Although the issue is framed somewhat differently on appeal, Mumford argued several of the issues raised in this appeal before the circuit court, i.e., that the small quantity of drugs in each bag could not support a possession with intent to distribute conviction.

beyond a reasonable doubt.” *Smith v. State*, 415 Md. 174, 184 (2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The Court of Appeals has explained:

It is not our role to retry the case. Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. We defer to the jury’s inferences and determine whether they are supported by the evidence.

Id. at 185 (internal citations omitted).

Under the laws of Maryland, a person may not “possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance.” Md. Code (2002, 2012 Repl. Vol.), § 5-602(2) of the Criminal Law Article (“CL”). “The element of intent is generally proved by circumstantial evidence.” *Colin v. State*, 101 Md. App. 395, 407 (1994). We have explained:

In Maryland, no specific quantity of drugs has been delineated that distinguishes between a quantity from which one can infer and a quantity from which one cannot make such an inference. *Collins v. State*, 89 Md. App. 273, 279, 598 A.2d 8 (1991); *Gipe v. State*, 55 Md. App. 604, 617-18, 466 A.2d 40 (1983) “Intent to distribute controlled dangerous substances is ‘seldom proved directly, but is more often found by drawing inferences from facts proved which reasonably indicate under all the circumstances the existence of the required intent.’” *Salzman v. State*, 49 Md. App. 25, 55, 430 A.2d 847 (1981) quoting *Waller v. State*, 13 Md. App. 615, 618, 284 A.2d 446 (1971), *cert. denied*, 264 Md. 752 (1972). “And the very quantity of narcotics in possession may indicate an intent to distribute.” *Salzman*, 49 Md. App. at 55, 430 A.2d

847 (citing *State v. Beers*, 21 Md. App. 39, 318 A.2d 825 (1974)).

Purnell v. State, 171 Md. App. 582, 612 (2006). “There are various ways to prove such intent.” *Id.* (quoting *Herbert v. State*, 136 Md. App. 458, 463 (2001)). Furthermore, we have emphasized that the quantity of narcotics -- although probative of intent -- “is not an end in itself.” *Id.* (quoting *Herbert, supra*, 136 Md. App. at 463). “It is the intent itself that is critical Thus, even a large quantity of drugs might not yield a finding of intent to distribute, if other circumstances indicated large private consumption. *Conversely, a much smaller quantity might yield such finding of intent, if evidence other than the quantity possessed showed that intent.*” *Id.* at 612-13 (quoting *Herbert, supra*, 136 Md. App. at 463) (emphasis in *Purnell*).

Mumford contends that various factors render the evidence supporting his conviction insufficient, including the small amount of heroin found in the tested packets.² Mumford emphasizes that prior to the traffic stop, no surreptitious behavior had been observed. Mumford further emphasizes that no paraphernalia associated with drug distribution was found, such as scales or cutting devices, and that no money or weapons were recovered. Mumford avers that the evidence presented could not have convinced any rational trier of

² Mumford asserts that each of the five bags which were tested contained 1/100th of a gram of heroin per bag, with a total net weight of 5/100th of a gram for the five tested bags. The chemist’s testimony was that she found a “trace amount” in each bag, which is anything “less than .1,” or 1/10th.

fact, beyond a reasonable doubt, of his intent to distribute in this case. Instead, Mumford contends, the evidence could only give rise to “supposition or speculation.”

We reject Mumford’s assertion. The record reflects sufficient evidence to support Mumford’s conviction. Trooper Workman recovered twenty-six individually wrapped packets of suspected heroin, which were bundled into two separate bundles of thirteen packets, from the vehicle that Mumford was driving. At trial, forensic chemist Jessica Taylor testified that based upon the “scientifically accepted technique [of] hypergeometric sampling” she was “95 percent confident” that at least thirteen of the recovered packets contained heroin. Trooper Moore, an expert in the valuation and street use of heroin in Salisbury and Wicomico counties, testified that, in his opinion, the heroin recovered from the vehicle driven by Mumford was “destined to be distributed to other persons.” Trooper Moore testified that the packets were packaged in a manner that was typical for the distribution of heroin. He explained that “[b]ased on the 26 bags of it, they’re broken down into bundles. Bundles is kind of the middle man weight that you find for persons that are not necessarily a big dealer but somebody that’s in the business that’s, if you will, wishing or hoping to make a move in order to sell it.” Trooper Moore found it significant that there weren’t “any syringes or needles or smoking devices or spoons or straws or anything found” in the vehicle. Trooper Moore also explained that “habitual heroin users don’t like to snort” heroin.

Trooper Moore further testified that the number of packets of heroin supported his conclusion that the heroin recovered from the vehicle was “destined” for distribution. He explained that heroin users typically only possess the amount of heroin that they would use for their “next hit.” Trooper Moore further explained that most heroin dealers will not sell users more than one or two doses at a time because it increases the dealer’s profit margin to require users to “keep . . . coming back for those 1 or 2 bags.” Trooper Moore additionally emphasized that dealers “don’t want to take a chance on [a user] going out and overdosing or taking over their business.”

Trooper Moore further observed that no currency was recovered from the vehicle. He explained that this would be consistent with a drug dealer who had recently resupplied, or “re-upped.” Trooper Moore explained that a “re-up is when you resupply yourself. Mostly that’s associated with a person in a middle level or upper level as drug sellers. They will wait for their supplier to come in and resupply them.” Trooper Moore testified that a dealer who has re-upped often is not carrying cash. Trooper Moore’s ultimate conclusion was that “two bundles especially in the manner in which it was found as well as the lack of any item used to inhale or ingest or anything to do with heroin is consistent with that to be distributed or redistributed to persons.”

Based upon the evidence described above, a reasonable fact finder could have found that Mumford possessed the twenty-six individual packets of heroin with the intent to distribute it to others. The jury was entitled to credit the testimony of forensic chemist

Jessica Taylor and Trooper Moore while rejecting the testimony of Mumford's girlfriend, Shakeina Trader. The forensic testing results of the heroin, as well as Trooper Moore's detailed expert testimony about the street use of narcotics, were sufficient to support the jury's verdict. Accordingly, we affirm.

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