Circuit Court for Somerset County
Case No. 19-K-16-010670

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0003

September Term, 2017

ADRIAN FITCHETT

v.

STATE OF MARYLAND

Leahy,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 18, 2019

A jury in the Circuit Court for Somerset County convicted Adrian Fitchett ("Appellant") of keeping or maintaining a common nuisance. Appellant was sentenced to a term of five years' imprisonment. In this appeal, Fitchett presents the following question for our review:

> I. Was the evidence sufficient to sustain the conviction of keeping or maintaining a common nuisance?

For reasons that follow, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In the morning hours of March 4, 2016, Corporal Lee Stevens of the Wicomico County Sheriff's Office was assisting the Somerset County Narcotic Task Force ("SCNTF") in executing a search warrant at a mobile home located in Crisfield, Maryland. Corporal Stevens, and several other officers, were situated near the front of the home preparing for a breach through the front entrance.

Before entering the residence, officers deployed two "distraction device[s]," which produce a bright light, loud noise, and smoke. The devices are designed to distract any occupants so that the officers could gain the element of surprise. After the first distraction device was deployed, Corporal Stevens entered the residence and observed a female subject, later identified as Frances Bishop ("Ms. Bishop"). He secured her and then transferred her to the other officers situated behind him. Two other individuals, later identified as Corey Fontaine ("Mr. Fontaine") and Jason Sutton ("Mr. Sutton"), were also found inside of the home and secured.

Captain Todd Richardson, also from the Wicomico County Sheriff's Office, was responsible for "rear security." He deployed the second distraction device at the rear door of the trailer. As he deployed the device, he observed an individual, later identified as Adrian Fitchett ("Appellant"), "stepping out of the door" and "coming down the step" with "a child in his arms." Captain Richardson directed Appellant to "step towards" him and, upon doing so, handed Appellant to another officer.

After all individuals were secured, Trooper Jamie Marshall of the SCNTF, who was on the scene as the "seizing officer," surveyed the home and surrounding property. In the kitchen Trooper Marshall observed approximately $960.00 in cash on the kitchen floor and a digital scale on the kitchen counter. He also observed a television in one of the bedrooms depicting a live feed from a video camera that had been mounted on the outside of the home. In another room he observed Anestatal powder, and in another room he observed a Food Saver device and heat sealing bags. In the bathroom he observed cash and heroin. Outside of the house was a parked and inoperable truck. After a search of the vehicle was conducted, Trooper Marshall observed multiple heat-sealed bags, matching those found in the kitchen, containing "a large amount" of heroin.

Appellant was ultimately arrested and charged with possession of a controlled dangerous substance with intent to distribute; possession of a controlled dangerous substance; possession of controlled dangerous substance paraphernalia; and keeping or maintaining a common nuisance. His trial was held in the Circuit Court for Somerset County.

During trial, Trooper Marshall testified to the layout of the home and the locations of the various items found inside and outside of the home. Trooper Marshall explained one of the bedrooms belonged to Ms. Bishop and the other belonged to Sutton. Toward the back of the home near the rear door, there was another hallway that led to a bathroom and a third bedroom, which Trooper Marshall identified as belonging to Appellant and Mr. Fontaine. Trooper Marshall testified that the television with the live feed, the Food Saver device, and the heat sealing bags were all found in the third bedroom. Trooper Marshall also testified that "a prescription bottle with [Appellant's] name on it" was also found in the third bedroom.

Lieutenant Michael Ward of the Somerset County Sheriff's Department testified on behalf of the State as an expert in identification, distribution, and packaging of controlled dangerous substances ("C.D.S"). Lieutenant Ward stated that the total quantity of heroin, approximately 28.6 grams, was "more than any user would possess" and was "for distribution." Lieutenant Ward also stated that the Anestatal powder, which was found in Sutton's bedroom, was a cutting agent, typically added to raw heroin to stretch the amount of the drug. Lieutenant Ward further testified that scales, similar to the one found in the kitchen, were used to package the drug. He further testified that drug dealers often kept drugs outside of their home "to distance [themselves] from the C.D.S."

At the close of the State's case, Appellant moved for judgment of acquittal on all counts. Moreover, for the charge of keeping or maintaining a common nuisance, Appellant argued that the State failed to establish the "reoccurring nature" of the common nuisance; that there was "little to no connection other than his presence at the time of the search

warrant to [Appellant] and the common nuisance;" and that Appellant was "not the owner of the residence or of the vehicle." The circuit court ultimately denied the motion.

As part of the Appellant's case, Deputy Robert Kemp of the SCNTF testified that, on the day of the search, he was assigned as "pre-raid surveillance" and was stationed "about a house away" from the mobile home. Deputy Kemp explained that, in the morning hours prior to the raid, he observed a black Dodge Charger drive up to the mobile home and then leave. Deputy Kemp further testified, at some time later, approximately ten minutes prior to the execution of the search warrant, he observed the same Dodge Charger drive up to the mobile home and park in the driveway. The vehicle's driver, who matched Appellant's description, and a small child exited the vehicle.

Ms. Bishop testified on behalf of Appellant. She explained that she was Appellant's grandmother and that she had lived at the mobile home for "more than fifteen years." Bishop stated that Mr. Fontaine, her other grandson, and Mr. Sutton, her nephew, also lived in the home. Ms. Bishop further testified that when she awoke on the morning of the raid, Appellant was not at home. When asked whether Appellant had stayed at the mobile home the night before, Ms. Bishop responded that he "very seldom stayed home" and that he "was mostly in Salisbury with his daughter's mother." Ms. Bishop explained that, on the morning of the raid, she left the mobile home to run an errand and when she returned approximately one hour later, Appellant was there with his daughter. Ms. Bishop stated that Appellant worked as a grave digger for her funeral business and that he "came just about every day" to see her. Regarding the surveillance cameras, Ms. Bishop testified that

she "became aware of them" and that she "assumed" they were installed because "people" were "messing around" in her yard, which contained "some expensive stuff."

On cross-examination, Ms. Bishop stated that Mr. Fontaine did not normally stay in the third bedroom. Rather, the bedroom mostly belonged to Appellant and Appellant kept his clothing and other things in that bedroom. Ms. Bishop also testified that Appellant's daughter stayed at the home every weekend and often during the summer months. She further testified that all three men, including Appellant, had a key to the mobile home, which they could use to access the residence when she was not at home. Ms. Bishop testified that the truck, which was found to contain large amounts of heroin, belonged to her deceased husband. She stated that she stored some of her tools for her grave-digging business in the truck and that "they would come get the tools from there."

Ms. Bishop denied knowing that the truck contained heroin or that there was a scale on the kitchen counter at the time of the raid. When asked whether activities occurred in her home of which she was unaware, she explained that because of her work and social schedule, she did not always "know what was going on." Regarding the surveillance cameras, Ms. Bishop testified they had been installed approximately three or four months prior to the raid but that she did not know who installed them.

Following Ms. Bishop's testimony, Appellant testified. He explained that on the day of the raid, he was visiting Ms. Bishop's house because his daughter did not have school that day. He explained that, at the time, he mostly resided with his daughter's mother but would go to Ms. Bishop's home to take care of his four dogs, which he kept in the back of the property. Appellant denied any knowledge of the heroin found in the bathroom or

the heroin found in the truck. Appellant also stated that there were three surveillance cameras attached to the exterior of the mobile home and that he was familiar with them.

On cross-examination, Appellant admitted that when he did stay at the mobile home, he would use the back bedroom. Appellant also admitted that he visited the mobile home "almost every day" to "take care of the dogs." Appellant further testified that he had "a friend" install the security cameras. Appellant stated that, at the time of the raid, he was in or around the kitchen, but that he was unaware of the digital scale or the cash on the ground.

At the close of all evidence, Appellant renewed his motion for judgment of acquittal, incorporating his previous arguments but adding that witnesses had established that Appellant did not "typically" stay at the mobile home and that "he did not essentially sleep there often or spend a lot of time there." Appellant also argued, as he did during his first motion for judgment of acquittal, that the State failed to show that Appellant had any ownership interest in or other connection to "the property" or "the vehicle where the drugs were located." The circuit court again denied his motion.

The circuit court then instructed the jury on the relevant law, including the elements of keeping or maintaining a common nuisance. Appellant was subsequently convicted of keeping or maintaining a common nuisance. This appeal followed.

STANDARD OF REVIEW

"The test of appellate review of evidentiary sufficiency 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 beyond a reasonable doubt.'" *Donati v. State*, 215 Md. App. 686, 718 (2014) (internal citations omitted). That same standard

applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts." *Neal v. State,* 191 Md. App. 297, 314 (2010). "While we do not re-weigh the evidence, 'we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Id* (citations omitted).

That said, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State,* 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati,* 215 Md. App. at 718 (citations omitted). Moreover, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal,* 191 Md. App. at 314 (citations omitted).

DISCUSSION

A. Parties' Contentions

Appellant argues that the evidence adduced at trial is insufficient to sustain his conviction of keeping or maintaining a common nuisance. Appellant avers that, in order to establish that he "kept" a common nuisance, the State needed to show that he either had some control over the place of the common nuisance, *i.e.*, the mobile home, or that he had

some control over the common nuisance itself, *i.e.*, the drug activity. Appellant maintains that the State failed in making that showing, as the evidence conclusively established that he had no legal authority to control what happened inside the mobile home, either prior to or on the day of the raid; that he was more of a "casual visitor" to the mobile home; and, that he had no connection to the drug activities at the house. Moreover, he does not dispute that the drug activity uncovered at the mobile home constituted a "common nuisance;" rather, Appellant's sole argument is that he did not "keep" that common nuisance.

The State disagrees, arguing that although the statute does not define what it means to keep a common nuisance, case law does not require proof of ownership or some possessory interest in the property. The State further avers that it is not necessary to prove that the defendant lived at the property but rather, that Appellant used the property at issue to store, distribute, or use illegal narcotics over a period of time. We agree.

B. Analysis

The crime of keeping or maintaining a common nuisance is codified in Section 5-605(b) of the Criminal Law Article of the Maryland Code, which states: "[a] person may not keep a common nuisance." The statute defines "common nuisance" as "a dwelling, building, vehicle, vessel, aircraft, or other place: (1) resorted to by individuals for the purpose of administering illegally controlled dangerous substances; or (2) where controlled dangerous substances or controlled paraphernalia are manufactured, distributed, dispensed, stored, or concealed illegally." MD. CODE, CRIMINAL LAW, § 5-605(a).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the General Assembly." *Bellard v. State*, 452 Md. 467, 481 (2017) (citation omitted). In

so doing, we "look first to the language of the statute, giving it its natural and ordinary meaning." *Id.* (internal citation omitted). "In addition, [this Court should] neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly used or engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning." *Id.* (internal citations omitted). In short, "[i]f there is no ambiguity in the language, either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends." *Id.* (internal citations omitted).

"If the language of the statute is ambiguous, however, then courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives, and the purpose of the enactment under consideration." *Id.* (internal citations omitted). The Maryland Court of Appeals has held that a statute is ambiguous "when there exist two or more reasonable alternative interpretations of the statute." *Id.* (internal citations omitted). As such, this Court is required "to resolve that ambiguity in light of the legislative intent, using all the resources and tools of statutory construction at [this Court's] disposal." *Id.* (internal citations omitted).

Thus, in construing a statute, we should avoid a construction "that is unreasonable, illogical, or inconsistent with common sense." *Id.* at 482 (internal citations omitted). "In addition, the meaning of the plainest language is controlled by the context in which i[t] appears." *Id.* (internal citations omitted). As the Maryland Court of Appeals has stated:

> [B]ecause it is part of the context, related statutes or a statutory scheme that fairly bears on the fundamental issue of legislative purpose or goal must also be considered. Thus, not only are

> [our courts] required to interpret the statute as a whole, but, if appropriate, in the context of the entire statutory scheme of which it is part.

Id. (internal citations omitted).

In the present case, the statute at issue states that "[a] person may not keep a common nuisance." Md. Code, Criminal Law, § 5-605(b). According to Merriam and Webster, the natural and ordinary meaning of the word "keep," as it is used according to the plain language of the statute, is to "conduct, manage" or "preserve, maintain" (as in "keep a tearoom" or "keep a garden"). That definition is consistent with how this Court defined the word "keep" when discussing the legislative intent behind former Section 286(a)(5) of Article 27 of the Maryland Code, which would ultimately be re-codified without substantive change as Md. Code, Criminal Law, § 5-605(b). *See Skinner v. State*, 16 Md. App. 116, 125 (1972) (defining "keep" as "'conduct, manage, carry on (as in, 'keep a business' or 'keep a small tearoom')."). That definition is also consistent with how we defined the word "keep" when construing the statutory crime of "keeping a disorderly house." *See Ward v. State*, 9 Md. App. 583, 586 (1970) (noting that keeping a disorderly house is "that of a common nuisance" and is shown by facts establishing that the defendant "maintain[ed], promote[d], or continue[d]" that common nuisance.); *cf. Skinner*, 16 Md. App. at 125 (noting that "'common nuisance' under the statute carrie[s] the same connotations as [does] 'common law disorderly house.'") (internal citations omitted).

Importantly, and despite Appellant's claims to the contrary, any analysis as to whether a defendant has "kept" a common nuisance should focus on the circumstances of the common nuisance itself and not solely, or even necessarily, on the defendant's legal

authority over the place where the common nuisance is located. *See e.g. Mora v. State*, 123 Md. App. 699, 729 (1998) (evidence sufficient to sustain defendant's conviction of keeping a common nuisance, despite wife's uncontroverted testimony that she, not the defendant, controlled the premises); *McMillan v. State*, 325 Md. 272, 294 (1992) (evidence sufficient to show that defendant had maintained a common nuisance at a nightclub he merely managed); *Tucker v. State*, 19 Md. App. 39, 46 (1973) (activities on premises, not proprietary interest or physical occupancy, determinative of whether evidence sufficient to sustain conviction of maintaining a common nuisance); *Ware v. State*, 13 Md. App. 302, 308 (1971) (evidence sufficient to sustain conviction of keeping a common nuisance, despite fact that the defendant neither lived at nor owned the premises); *See also Curley v. State*, 215 Md. 382, 389-90 (1958) ("A house may be disorderly either from the purpose for which it is appropriated, or from the mode in which it is kept. The charge does not respect ownership or proprietorship, but the conduct of the place.").

That conclusion is further supported by the Maryland Criminal Pattern Jury Instruction for "Keeping a Common Nuisance," which the trial court read verbatim. In that instruction, the court stated:

> A common nuisance is a house, building, vehicle or other place that is used repeatedly or continuously for the purpose of unlawfully administering, distributing, dispensing, storing or concealing a controlled dangerous substance or drug paraphernalia.
>
> In order to convict the Defendant of keeping or maintaining a common nuisance the State must prove that the Defendant kept or maintained either, one, a place that another person or persons repeatedly or continuously used to administer, distribute, dispense, store or conceal a controlled dangerous

> substance or drug paraphernalia, or, two, a place in which a controlled dangerous substance or drug paraphernalia intended for use by others was repeatedly or continuously stored or concealed.

Thus, a defendant may be found guilty of keeping a common nuisance if the State shows that the defendant "kept…a place in which a controlled dangerous substance or drug paraphernalia, intended for use by others, was repeatedly or continuously stored or concealed." MPJI-Cr 4:24.8. In its "Notes on Use," the Maryland State Bar Standing Committee on Pattern Jury Instructions states that the above instruction should be used "if there is sufficient evidence that the defendant *used the property* to store, distribute, or manufacture controlled dangerous substances intended for use by others." *Id.* (emphasis added). The Committee, in its "Comment" section, further notes that a defendant can be found guilty of keeping a common nuisance if he "unlawfully *uses the property* to manufacture, sell, or store illegal narcotics." *Id.* (emphasis added). Lastly, the Committee notes that, in establishing the elements of keeping a common nuisance, "[t]here is no need to show that the defendant has legal ownership or possession of the premises." *Id.* (citing *Mora v. State, supra*, 123 Md. App. 699, 728 (1998)).

Therefore, the question here is whether the evidence is sufficient to establish that Appellant used, conducted, managed, preserved, or maintained the mobile home to repeatedly or continuously store, distribute, or manufacture a controlled dangerous substance intended for use by others. We hold that it is and will explain.

First, the evidence clearly established that Appellant was more than a mere "casual visitor" to the mobile home. Not only did Appellant visit the home nearly every day, but

he also had his own bedroom in which he slept and kept personal items, including clothing and medication, and a space on the property where he kept and tended to his dogs. Appellant's school-aged daughter also stayed at the mobile home, and Ms. Bishop stated the daughter was there "every weekend" and was "always there" during the summer. Finally, Appellant had a key to the mobile home, was authorized by Ms. Bishop to access the home when she was not there, and even installed security cameras on the exterior of the home, one of which was connected to a television in his bedroom via a live feed.

As for the drug activity, a large quantity of heroin was found just outside the mobile home in an abandoned truck that Ms. Bishop stated was "always open" and that Ms. Bishop's employees, one of which was Appellant, routinely accessed to procure tools.[1] Those drugs were found wrapped in "heat sealed bags" that matched heat sealed bags found, along with a "Food Saver device," in Appellant's bedroom. Also in Appellant's bedroom was the aforementioned television displaying the live video feed from the security camera Appellant had installed, and no explanation was provided for why he had the security cameras installed or why they were connected to a television in his bedroom.[2] In addition, a separate quantity of heroin was found in the mobile home's bathroom, which

[1] Appellant maintains, albeit in a footnote, that, because the indictment against him identified the common nuisance as 3510 Freedom Town Road, Crisfield, Somerset County, Maryland, "the question is whether [Appellant] had control over the residence, not the truck." We disagree, as a property address is fairly understood to include the entire property and not simply the home contained therein.

[2] Although Bishop did state that she had issues with people taking things from her yard, she did not testify that the cameras were installed for that or any other reason. On the contrary, she testified that she did not know why the cameras were installed and that she "assumed" they were installed because of the thefts.

was located next to Appellant's bedroom, and Anestatal powder, a cutting agent, was found in the bedroom belonging to Sutton. Finally, just prior to the raid, Appellant was standing in or near the home's kitchen, where the police would discover, in plain view, a digital scale and a large amount of cash scattered about. From these facts, a reasonable inference can be drawn that Appellant, along with one or all of the remaining residences, was "keeping" the mobile home for drug activity.

In reaching that conclusion, we are mindful of the fact that Appellant was found not guilty of all possession charges, including possession with intent to distribute. Nevertheless, that fact does not preclude a finding of guilt as to the charge of keeping a common nuisance, even if the basis for that finding includes an inference that Appellant was in fact distributing drugs. Such seemingly contradictory verdicts would, at most, be factually inconsistent, and factually inconsistent verdicts are permissible in Maryland. *See McNeal v. State*, 426 Md. 455, 458 (2012) (describing factually inconsistent verdicts as "illogical, but not illegal."). Moreover, this Court has previously held that a charge of possession of a controlled dangerous substance and a charge of maintaining a common nuisance were not the same for double jeopardy purposes because, in part, "possession" is not an element of the crime of maintaining a common nuisance. *See Salzman v. State*, 49 Md. App. 25, 51-52 (1981).

Appellant argues that, in order for a person to "keep" a common nuisance, the person must have some sort of legal control over the premises. Appellant maintains that such "control" has two significant features: one, it requires legal authority over the place, its occupants, and/or the activities conducted therein; and, two, it requires a "temporal

dimension," *i.e.*, "some degree of continuing control." Appellant avers that the State failed to show he had the requisite "control" over the mobile home and, as a result, the evidence is insufficient to sustain his conviction.

Appellant is mistaken. To begin, Appellant fails to cite, and we could not find, any Maryland case that states that a person must have legal control over the premises in order to be found guilty of keeping a common nuisance.[3] To the contrary, this Court, as previously noted, has routinely affirmed convictions on charges of keeping a common nuisance despite evidence that the defendants had no legal or proprietary interest in the premises at issue.

Still, even if we accept Appellant's claim that a defendant must have some legal and continuing authority over the premises in order to be guilty of keeping a common nuisance, we find the evidence sufficient to meet that burden. The evidence established: (1) Appellant came to the mobile home almost every day; (2) he slept and kept personal items in a bedroom that was "mostly" his; (3) he kept his animals on the property, which he routinely visited and tended; (4) he had a key to the mobile home, which he could use to access the home when Ms. Bishop was not there; (5) his daughter stayed at the mobile home every

[3] Instead, Appellant relies on a series of cases from other jurisdictions, none of which we find persuasive. The cases cited by Appellant involve a much more nuanced and detailed application of the law that neither this Court nor the Court of Appeals has adopted. In some cases (like *State v. Bowens*, 140 N.C. App. 217 (2000), *State v. Harris*, 157 N.C. App. 647 (2003), and *U.S. v. Morgan*, 117 F.3d 849 (1997)), the courts rely on law that is specific to their jurisdiction (and not necessarily Maryland). *See* 140 N.C. App at 221; 157 N.C. App. at 651; 117 F.3d at 855. Moreover, just about every case involved some sort of application and interpretation of the federal "crack house statute," which contains specific elements that have never been applied by any Maryland court.

weekend and throughout the summer; (6) he worked for Ms. Bishop's grave-digging business and had access to the property, including the truck, in that capacity; and (7) had security cameras installed on the exterior of the mobile home, one of which was connected to a television in his bedroom. The evidence also showed that Ms. Bishop was well aware of those circumstances and provided, either expressly or implicitly, her permission for their occurrence. In short, the evidence established that Appellant had sufficient and continuing authority over the mobile home and the activities contained therein such that a reasonable inference can be drawn that he "kept" a common nuisance. Accordingly, we affirm.

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